

Minutes of the ELI Council Meeting

22 September 2025, Vienna

Venue: University of Vienna

Chair: Pascal Pichonnaz (ELI President)

Present:

Chair: Pichonnaz, Pascal (ELI President)

Council Members

Augenhofer, Susanne	Machnikowski, Piotr
Bachmaier Winter, Lorena	Mader, Oliver
Başoğlu, Başak	Maugeri, Maria Rosaria
Beale, Hugh (proxy for Howells, Geraint)	Mazepa, Svitlana
Bielska-Sobkowicz, Teresa	Patti, Francesco Paolo
Calderai, Valentina	Pozzo, Barbara
Cannarsa, Michel	Poillot Peruzzetto, Sylvaine
Cavalier, Georges	Pretelli, Ilaria
Cockerill, Sarah	Rodríguez de las Heras Ballell, Teresa
Craig, Paul (proxy for Anagnostopoulou, Despoina)	Ruda, Albert
Dollani, Nada	Santos Silva, Marta
Georgieva, Hristina	Scherpe, Jens
Gimeno-Ribes, Miguel	Schroeter, Ulrich G (proxy for Sarah Bechaalany)
Grasso, Gianluca	Schulte-Nölke, Hans
Jiménez Muñoz, Francisco Javier	Shirvindt, Andrey
Keane, Paul	Skrjabina, Anna
Koch, Bernhard (proxy for Neumayr, Matthias)	Szabados, Tamás
Kramer, Xandra	Toader, Camelia
Kubica, María Lubomira	Tot, Ivan
Lehmann, Matthias	Valle, Laura
	Zalar, Aleš

Ex-Officio Council Members

Pichonnaz, Pascal (President)
Gammeljord, Anne Birgitte (First Vice-President)
Sirena, Pietro (Treasurer)
Vos, Sir Geoffrey (Second Vice-President)
Blenk, Moritz (CNUE)
Manfred, Buric (ELRA)
Taus, Mihai (ELRA)

Other Attendees

Gössl, Susanne
Laudonio, Aldo
Möslein, Florian
Reinhard, Zimmermann
Rott, Peter
Sanders, Anne
Stelma-Roorda, Rieneke
Thomsen, Steen
Ward, Adrian D
Wautelet, Patrick
Wendehorst, Christiane (ELI Scientific Director)

Members of the ELI Secretariat

Wilcox, Vanessa (Secretary General)
Dudek, Tomasz
Lages de Almeida, Marta (keeper of the minutes)
Rebulet, Margot

The meeting commenced at 09:00.

I. Welcome and Approval of the Agenda

- (1) Pascal Pichonnaz welcomed members, acknowledged that half of the Council was standing for election, and wished candidates well. He emphasised the importance of diversity in Council composition. Pascal Pichonnaz conveyed the apologies of an Executive Committee member, Aneta Wiewiórowska-Domagalska, who recently had a serious riding accident.
- (2) Pascal Pichonnaz informed those present of several changes within the Senate. He thanked Sir Francis Jacobs, the first President of the Institute, and Irmgard Griss, former President of the Austrian Supreme Court, both of whom are stepping down after many years of service. He emphasised that ELI would not be where it is today without their important work.
- (3) He then announced the new members who will join the Senate: Lord Thomas (former Lord Chief Justice of England and Wales, and former ELI Vice-President); Elisabeth Lovrek (former President of the Austrian Supreme Court, who will begin in January 2026); Doris König (Vice-President of the German Federal Constitutional Court, who will join once her judicial term ends); and Marko Bošnjak (former President of the European Court of Human Rights and now a judge at the Court of Justice of the EU).
- (4) **The agenda was approved.**

II. Report from ELI Presidency

- (5) Pascal Pichonnaz delivered a report on the recent activities across the Institute's project portfolio, the numerous representational activities undertaken by the Presidency, and several ongoing initiatives, all of which are detailed in the relevant Annex. He underlined that ELI is an Institute built on projects and expressed his satisfaction at their continued growth and their varied instrumentality in Europe and beyond. He thanked the Scientific Director, Christiane Wendehorst, and the Secretariat for their efforts.
- (6) Among other things, he also thanked Sylvaine Poillot Peruzzetto for organising ELI's 2026 Annual Conference in Paris.

III. Report from the ELI Treasurer: Approval of 2024 accounts

- (7) Treasurer Pietro Sirena presented the 2024 accounts, reporting a positive surplus, savings on personnel costs, and revenue from investments. Sirena stressed the need for ELI to diversify its

funding portfolio and noted that, although significant efforts were made to secure Fundraising Officers, the Institute faced several challenges in this regard.

- (8) He outlined two possible 2026 budget scenarios: with the EU grant, a deficit of €59,300, mainly to cover the Fundraising Officer for the first year; and without the EU grant, a balanced budget under a conservative approach would be taken.
- (9) Pietro Sirena thanked the Council, Secretariat, and in particular the Secretary General and finance officers, noting this would be his last report as Treasurer.
- (10) **The 2024 accounts were approved (34 in favour, 3 abstentions).**

IV. Projects and Similar Activities

(a) Enterprise Foundations in Europe

- (11) Project Co-Reporters Anne Sanders and Steen Thomsen outlined the project's main achievements: the case for enterprise foundations, comparative insights, model rules and explanatory remarks, tax principles and best practice recommendations. They revealed their plans to establish a Special Interest Group (SIG) on the topic.
- (12) Project Assessors, Anne Birgitte Gammeljord and Miguel Gimeno Ribes praised the project. Ivan Tot described it as exemplary and strongly supported the creation of a SIG, while Matthias Lehmann highlighted the significance of enterprise foundations for economic and public benefit. ELI Scientific Director, Christiane Wendehorst, echoed these views, recommending approval.
- (13) Sarah Cockerill commended the project, noting two points: the difficulties with respect to remedies across different jurisdictions, and issues concerning customary remuneration as enterprise foundations are potentially so different. Anne Sanders stated that these points would be further considered and the report tweaked a little bit. They would also be developed in the context of the SIG. She acknowledged that this output aims at serving as inspiration to national legislators and therefore needs to be adapted to the specific needs of each country.
- (14) Council Members Paul Keane and Lorena Bachmaier Winter asked about dissemination plans for the output, to which the Co-Reporters explained plans for workshops and national outreach, working closely with the SIG. It was suggested that cooperation should be extended to tax authorities and Pascal Pichonnaz made it clear that the Co-Reporters suggestions would complement ELI's more detailed dissemination strategy.

(15) **The Council approved the project (47 in favour, 1 abstention)**

(16) Pascal Pichonnaz congratulated the Co-Reporters warmly.

(b) Model Rules on Succession of Digital Assets, Data and other Digital Remains

(17) Despite the absence of the Co-Reporters, Edina Harbinja (who was travelling to Vienna at the time), and Antoine Eigenmann (ho was required to be in court that day), the Council discussed the draft, featuring input from the Project's Assessors, Teresa Rodríguez de las Heras Ballell and Xandra Kramer. The Assessors praised the novelty of the project, but noted some aspects need further work. Teresa Rodríguez de las Heras Ballell stressed the need to clarify conceptual distinctions between digital assets and digital remains. She also highlighted drafting issues such as unnecessary distinctions that are not consistent with ELI's usual functional approach. Xandra Kramer emphasised, among others, that the formulation of some of the principles and some commentaries still need some work, as does Chapter 5. Also, the private international law aspects were immature, referring to her comments from June, and inconsistent with EU law, particularly Articles 11–12.

(18) Council members, Lorena Bachmaier Winter, Hugh Beale, Hans Schulte-Nölke, Ilaria Pretelli, Sir Geoffrey Vos, Bernhard Koch and Camelia Toader provided further comments. Bachmaier Winter noted that an interaction with the laws on data retention is missing, while Schulte-Nölke suggested adding expertise on IP and standard terms. Pretelli pointed to coordination problems between jurisdiction and applicable law provisions. Sir Geoffrey Vos noted the failure to differentiate between property, data, and rights, which are subject to different regimes. Moritz Blenck, on behalf of the Council of Notariats of the European Union (CNUE), said that the Model Rules use new terminology that deviate from well-established legal categories that provide legal certainty. This approach risks fragmenting the legal system by creating a patchwork of only specific rules that do not integrate well with established legal instruments and principles. Hugh Beale recommended restructuring the draft, beginning with an executive summary, and criticised conceptual unclarity.

(19) Christiane Wendehorst noted unresolved issues, including treatment of Facebook accounts, digitised photos, and IP rights, which she argued were not digital assets. She also criticised Article 9 on access to third-party data for 30 years. She asked about the origin and justification for this period and warned that it could conflict with data-retention rules or even require deletion of photographs or other materials.

(20) Pascal Pichonnaz confirmed that the Executive Committee would discuss supplementing the team with additional expertise and that the feedback received will be shared with the Co-Reporters.

(21) **It was decided not to submit the project for a vote.** The Co-Reporters will be asked to revise the draft in light of the feedback received, with possible additional experts joining, before a formal vote takes place.

(c) **Enhancing Child Protection: Private International Law on Filiation and the European Commission's Proposal COM/2022/695**

(22) Co-Reporters Ilaria Pretelli and Susanne Gössl outlined their draft.

(23) Project Assessors Francisco Javier Jiménez and Pietro Sirena endorsed the project, citing the team's commitment and high quality. And the Scientific Director congratulated the team, noting the project's controversial but necessary nature. She recommended approval of the output.

(24) **The Council approved the project (40 in favour, 2 abstentions).**

(25) Pascal Pichonnaz congratulated the Co-Reporters warmly.

(d) **Advance Choices for Future Disablement**

(26) Project Co-Reporters, Adrian D Ward and Rieneke Stelma-Roorda presented their output. Christiana Fountoulakis was excused, as she was hosting a conference at her new University at the same time.

(27) A discussion followed with Project Assessors Valentina Calderai, Ilaria Pretelli and Pietro Sirena. Calderai highlighted tension between inclusivity and robustness, recommending technological solutions and a 'ladder of complexity', among others, referring to the need for the Co-Reporters to consider how to ensure widespread adoption of the rules. The need for an implementation strategy was emphasised. Pretelli agreed, stressing the importance of registration systems to encourage adoption. Sirena considered that the draft lacks a coherent framework to ensure that advance choices operate effectively in practice.

(28) Christiane Wendehorst praised the work of the Reporters and their ability to redraft in light of the feedback received but advised on the need for a clearer, simpler structure to make the document more accessible to navigate.

(29) Hugh Beale and Sarah Cockerill called for clarity in Article 9. Hugh Beale asked whether some guidance should be given as to the grounds on which it might be appropriate to disapply a decision or to adjust a decision. Cockerill noted that the wide variety of national approaches to advance choices is not adequately reflected in the current principles. People making advance choices need to know how their own jurisdiction will treat their decision. Therefore, the rules should set an

obligation to clearly state the legal effect of advance choices, so individuals understand how their decisions will be treated, including when and to what extent those decisions may be varied or disapplied.

(30) **No vote was taken.** The project will undergo further refinement.

V. Other Initiatives

a) Draft Response to the European Commission Consultation on the Digital Fairness Act

(31) Reporter Peter Rott introduced the draft Response.

(32) Barbara Pozzo noted that existing EU rules already address social media influencers, while Marta Santos Silva commented on sections of the draft, such as Section 5 having suggested addressing new issues such as wasteful consumption and greenwashing, and Section 8 where she criticised the lack of concrete simplification measures, stressing that information overload can itself be manipulative. She recommended assessing whether QR codes truly serve transparency.

(33) Piotr Machnikowski questioned the assumption that legislation is the primary regulatory tool, warning that the dynamic nature of the digital world requires the Commission to empower and equip national authorities with both hard and soft instruments. Hugh Beale expressed uncertainty about some of the assumptions underlying the draft and emphasised the need for clearer articulation of ELI's position.

(34) Pascal Pichonnaz noted that the Commission's current orientation is toward flexibility, dynamic solutions, and business adaptability. To have an impact, ELI's position must resonate with this reality. He suggested distinguishing between issues that genuinely require new or adapted regulation and those that could be addressed through best practices, interpretative clauses, or annexes. As an example, he pointed to the Unfair Commercial Practices Directive: while dark patterns are not expressly listed, it could be clarified through an annex of prohibited practices, rather than by creating an entirely new regulation.

(35) In response to the discussions, Peter Rott acknowledged differences of emphasis. While he personally favoured legislative clarity and standardisation (which reduces costly 'trial and error' for businesses), he accepted that ELI might propose a more flexible approach. He reiterated that the draft was prepared on behalf of ELI, not in his personal capacity. He cautioned that the consultation was focused on 'digital fairness' rather than sector-specific issues such as food or health advertising, but agreed to consider incorporating suggestions, if the Council so wished. He

also underlined that the core challenge remains making compliance easier for businesses without lowering consumer protection standards.

(36) Members agreed that the draft should more clearly delineate between academic analysis and regulatory proposals, strengthen its treatment of dark patterns, and clarify the stance on harmonisation versus subsidiarity.

b) Draft Response to the European Commission's Public Consultation on 28th Regime – A Single Harmonized Set of Rules for Innovative Companies Throughout the EU

(37) Reporters Anne Sanders, Steen Thomsen and Florian Mösllein presented the draft Response, advocating for the creation of a supranational limited liability company regime accessible to natural persons and subsidiaries of larger groups, with emphasis on digitalisation and simplified tools.

(38) A discussion among Council Members took place. Bernhard Koch urged caution in tone, suggesting that statements portraying banks as penalising investors were too categorical. He also expressed doubts about EU competence to legislate a single corporate vehicle and recommended more objective language. Matthias Lehmann suggested coordination with parallel work by the Henri Capitant Association on the European Business Code, specifically on the regime of bonds, mortgages, pledges, etc. Miguel Gimeno Ribes questioned the legal instrument proposed, noting that past regimes were created through regulations, not directives. He also called for clarification of references to supervisory bodies.

(39) CNUE's representative warned against the creation of parallel structures such as European business registers as these add more bureaucracy, and advised in favour of European access points. CNUE also asked for the proposed standardised European model articles of association or shareholder agreements to be abandoned.

(40) Teresa Rodríguez de las Heras Ballell welcomed the draft but cautioned that a new regime could add complexity unless carefully designed to achieve policy goals. She recommended keeping criteria open to innovation and avoiding overly rigid categories.

(41) Christiane Wendehorst reminded members of the extremely short drafting timeline compared to ELI's usual multi-year projects, and stressed the importance of careful wording.

(42) **The council decided that the Response will be revised in light of Council feedback, circulated to members for final review, and submitted to the Commission within the consultation deadlines.**

VI. Governance

a) Amendments to the ELI Statute

- (43) Pascal Pichonnaz introduced the proposed amendments, which related in part to ELI's legal status as a charitable institution under Austrian law. He explained that Deloitte had been consulted and had engaged with the Austrian tax authorities, who advised in favour of making structural changes to avoid affecting ELI's charitable recognition.
- (44) Among other things, the amendments further aimed to clarify that ELI addresses not only EU law but European law more broadly, thereby reflecting the Institute's wider scope of activities.
- (45) Marta Santos Silva highlighted the importance of ELI's outreach beyond Europe, noting the Portuguese Hub's success in engaging the Portuguese-speaking legal community, with growing participation from Brazil and India. She welcomed the proposed amendments as reinforcing ELI's inclusive approach.
- (46) **The Council approved the amendments to the Statute (45 votes in favour, unanimity).**

b) Amendments to the ELI Election Byelaw

- (47) Pascal Pichonnaz outlined the proposed amendments to the Election Byelaw, aimed at improving clarity and procedure.
- (48) **The Council approved the amendments unanimously.**

c) Amendments to ELI Reimbursement Guidelines

- (49) The proposed revisions to the Reimbursement Guidelines were presented. They were described as technical adjustments intended to ensure consistency and transparency in reimbursement practices, with no major policy shifts.
- (50) **The Council approved the amendments unanimously.**

d) Draft ELI Policy on the Use of AI

(51) Pascal Pichonnaz outlined that above and noted that the policy was consistent with evolving EU proposals but intentionally designed not to be rigid, as the field of AI is developing rapidly. He emphasised that the key aim was to ensure responsible use of AI tools within.

VII. Any other business

(52) Anne Birgitte Gammeljord thanked Pascal Pichonaz for all his work as President.

The Council meeting ended at 12:20.