

ELI Council Meeting 9 October 2024 (10:30–13:00), Dublin

Venue: Bencher's Room, King's Inn, Henrietta St, Dublin 1, D01 KF59, Ireland

Present:

Chair: Pichonnaz, Pascal (ELI President)

Council Members

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

Ex-Officio Council Members

Gammeljord, Anne Birgitte (First Vice-President)
President of the European Land Registry Association (ELRA), Mihai Taus
Pichonnaz, Pascal (President)
President of the International Union of Judicial Officers (UIHJ), Marc Schmitz
Sirena, Pietro (Treasurer)
Vos, Sir Geoffrey (Second Vice-President and proxy for Mader, Oliver)

Other Attendees

Buric, Manfred (UIHJ)
Gil Bazo, María Teresa (for the section on Update of ELI's Detention of Asylum Seekers project)
Lassere, Bruno (Senate member)
Shetreet, Shimon (for the section on Mt Scopus project)
Turenne, Sophie (for the section on Mt Scopus project)
Zalar, Boštjan (for the section on Update of ELI's Detention of Asylum Seekers project)
Zoll, Fryderyk (for the section on Mt Scopus project)
Wendehorst, Christiane (ELI Scientific Director)
Wortham, Leah (for the section on Mt Scopus project)

Members of the ELI Secretariat

Wilcox, Vanessa (Secretary General)
Bianchi, Laura (Project Officer, keeper of the minutes)
Lages de Almeida, Marta (Project Officer)

9 October 2024

The meeting commenced at 10:30.

I. Welcome and Approval of the Agenda

- (1) Pascal Pichonnaz welcomed those present and passed the floor to Donal Gerard O'Donnell, Chief Justice of Ireland. O'Donnell also welcomed those present and conveyed his best wishes for the continued success of ELI's meetings and Conference.
- (2) Pichonnaz thanked the ELI Irish Hub for contributing to the organisation of the Conference.
- (3) **The agenda was approved.**

II. Report from the ELI Presidency

- (4) Pichonnaz summarised key aspects of the above, including the launch of the ELI Library in Ukraine. He also acknowledged the dissemination efforts of ELI's national Hubs.

III. Projects and Similar Initiatives

(a) ELI-Mount Scopus European Standards of Judicial Independence

- (5) Project Co-Reporter, Sophie Turenne, outlined the aims and output of the project.
- (6) A discussion ensued with the Project's Assessor, Teresa Bielska Sobkowicz and ELI's Scientific Director, Christiane Wendehorst, and other Council members providing input. There was praise for the high quality and timeliness of the draft. Camelia Toader congratulated the Reporters but expressed concern about the length of some comments. She disagreed with the last comment of Standard 4, believing it opens the door to political interference in judicial nominations. Turenne suggested adding a cross-reference to clarify permissible and impermissible actions.
- (7) **The Council approved ELI-Mount Scopus European Standards of Judicial Independence (46 'yes', no 'no' and no 'abstentions').**

(b) Update of ELI's Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards Independence

- (8) Project Co-Reporter, Boštjan Zalar provided an update on the work done. He explained that feedback from Strasbourg Court lawyers, Pamela McCormick and Sophie Piquet is still pending. Pichonnaz explained that a vote will take place once all feedback has come in and the reporters have finalized the text..
- (9) A discussion followed, featuring input from the Project's Assessors, Laura Guercio (whose comments were read in her absence) and Sir Geoffrey Vos, ELI's Scientific Director, and other Council members. Among other things, participants suggested addressing challenges in jurisdictions such as Italy, regarding the coordination of protection mechanisms under the 1996 Hague Convention and Regulation 2019/1111, particularly concerning Ukrainian minors. More specifically, guardianship in such cases is often established through simple agreements rather than formal judicial orders, resulting in challenges in whether to designate such children as unaccompanied. The Reporter asked for the relevant case law that addresses this issue in Italy to be sent to them. Moreover, it was also proposed addressing the balance between human rights and accountability for offenses committed by Ukrainian men who refused to serve in the war, undermining national security under Ukrainian law, and are claiming asylum status. As this is a specific issue, the Reporters suggested an email be sent to them explaining it further. Among other things, the output was branded impenetrable in light of its length. The fact that the additions to the text, reflecting seven years of developments of the European Court of Human Rights and the Court of Justice of the European Union, are not marked consistently was also voiced. It was suggested that a short Executive Summary be added at the beginning, explaining how to navigate the checklists, what each is aimed at, what the difference between them is, how one would use them as a judge operating in the field and the nature of the updates. That said, the substance of the output and the updates were branded as excellent. It was suggested that feedback should be sought from the European Network of Councils for the Judiciary and the European Judicial Training Network.

(c) Access to Digital Assets

- (10) Project Co-Reporter Teresa Rodríguez de las Heras Ballell presented the revisions to the draft.
- (11) A discussion ensued with Project's Assessors Matthias Lehmann and Aneta Wiewiórowska-Domagalska, other Council members and ELI's Scientific Director providing input. Participants were happy with the new structure and recommended the addition of more details in some cases, such as examples to illustrate concepts. One proposed addressing the digital nomads phenomenon while underlining the importance of enhancing state cooperation in law enforcement. The general direction of the project was praised, but clarification on which elements should remain at principles level versus those left to national law and why, with a focus on

principles 4, 5, 8, and 10 was suggested. Among others, concerns were raised about the lack of a precise digital asset definition, proposing that specific definitions for different asset types might provide clarity. It was also recommended using a bolder and more consistent formulation, especially with regard to principle 4.

(d) ALI-ELI Biometrics Proposal

(12) Pichonnaz provided an update on the prospective project. He explained that Karen Yeung, proposed as ELI's Reporter, had already presented the proposal at the last online Council meeting. Over the summer, the ELI Presidency held discussions with the American Law Institute, who expressed enthusiasm for the project and will approve the proposal on 17 October. Pichonnaz invited Council members to endorse the proposal, also noting efforts to secure project funding. ELI's Scientific Director endorsed it, highlighting the project's timeliness.

(13) **The Council approved ALI-ELI Biometrics project (51 'yes', no 'no' and no 'abstentions').**

IV. Approval of Amendments to ELI Project Guidelines

(14) Pichonnaz explained the aims of the above. It was suggested that an explanation be added to the notion of the Philippe motion, to which it was stated that one is included. It was further suggested that the Guidelines make it clear that proposers can seek EU funding either before or after approaching ELI. However, this is already covered by art 6(1). It was proposed that 'will be a respected reference' in art 3(2)(d) be changed to 'is expected to be a respected reference'. Similar changes should apply to other provisions in art 3(2).

(15) **The Council approved the amendments to ELI Project Guidelines (54 'yes', no 'no' and no 'abstentions').**

V. Report from the Treasurer

(16) ELI's Treasurer, Pietro Sirena presented ELI's 2024 income and expenditure overview and the 2025 budget forecast. Additionally, the Council was invited to reappoint current auditors, Mag Wolfgang Eder and Mag Franz Schweiger, for 2024, 2025, and 2026.

(17) **The Council approved both the 2025 budget forecast and the reappointment of the current auditors (50 'yes', no 'no' and no 'abstentions').**

(18) One member of the Council suggested that ELI no longer print Conference brochures.

(19) Pichonnaz thanked Executive Committee members, the Scientific Director, as well as the Secretary General and her team for the excellent preparation of the Council meeting and for the work on all the projects. He also thanked the other organisers of this year's Annual Conference in Dublin.

The Council meeting ended at 13:00.