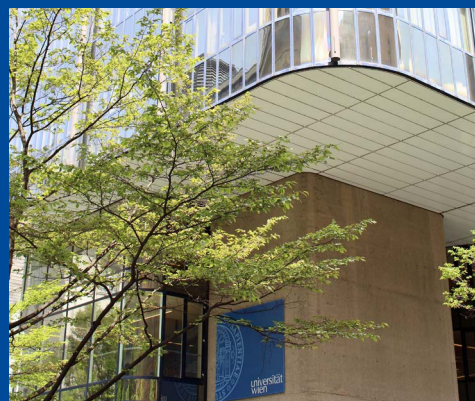
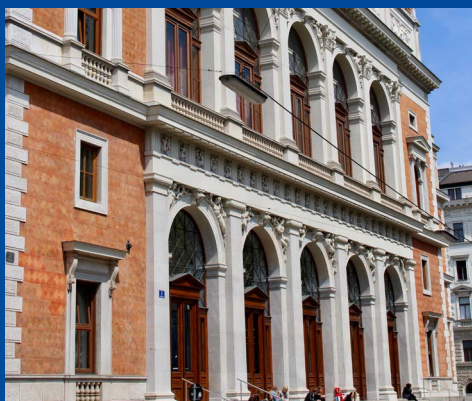




ELI

EUROPEAN  
LAW  
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# ACTIVITY REPORT 2015



EUROPEAN LAW INSTITUTE





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# CONTENTS

<b>About the European Law Institute</b>	<b>1</b>
General Information	2
History	2
The Secretariat	2
Membership	3
Funding Sources	4
Overview 2015	4
<hr/>	
<b>Activities of the ELI Bodies</b>	<b>5</b>
General Assembly	6
Council	7
Executive Committee	8
Senate	8
Arbitral Tribunal	8
<hr/>	
<b>Projects</b>	<b>9</b>
Introduction	10
Ongoing Projects	10
New Projects 2015	13
Ideas for New Projects	14
<hr/>	
<b>Hubs and Special Interest Groups</b>	<b>15</b>
Hubs	16
SIGs	18
<hr/>	
<b>ELI Annual Conference 2015</b>	<b>19</b>
Overview	20
<hr/>	
<b>Representation</b>	<b>21</b>
Introduction	23
European Union	23
ELI Institutional Observers	23
Other	23

# About the European Law Institute



## General Information

The European Law Institute (ELI) is an independent non-profit organisation established under Belgian law to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the process of European legal development. Its goal is to enhance European legal integration and improve the quality of European law.

The ELI provides a network for discussion and cooperation of jurists irrespective of their vocation or occupation, representing a variety of legal traditions.

## The Secretariat

Since 2011 the Secretariat of the ELI has been hosted by the University of Vienna. In 2015, this fruitful cooperation was extended for another four-year period.



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At the end of 2015, the ELI Secretariat moved to its new premises, close to its previous address. The new headquarters are located in the historic Börse building, which housed the Vienna Stock Exchange until 1998.

The main tasks of the Secretariat are to coordinate the ELI's day-to-day activities, oversee the management of the ELI's projects, provide guidance to the Special Interest Groups (SIGs) and Hubs, organise events and conferences, support ELI bodies in fulfilling their tasks and liaise with current and potential members.

In 2015, the ELI expanded in both membership and project development. For this reason, with the support of the European Union, the ELI recruited two new staff members for the ELI Secretariat in 2015.

The Secretariat saw some other changes in 2015, including the appointment of Dr Rosana Garcíandía as the ELI's new Secretary General.

## History

2010

MARCH

- Founding of the Association for a European Law Institute (ELIA)

APRIL

- Initiative of the Robert Schuman Centre for Advanced Studies of the European University Institute (EUI) in Florence to create a European Law Institute

2011

15-16 APRIL

- Decision on founding the ELI reached in Athens, Greece

31 MAY

- University of Vienna wins a tender to host the ELI's Secretariat

1 JUNE

- ELI Inaugural Congress in Paris, France

16 SEPTEMBER

- ELI General Assembly in Vienna, Austria

2012

28-29  
SEPTEMBER

- ELI Annual Conference and General Assembly in Brussels, Belgium

2013

4-6  
SEPTEMBER

- ELI Annual Conference and General Assembly in Vienna (including the first Council elections)

2014

24-26  
SEPTEMBER

- ELI Annual Conference and General Assembly in Zagreb, Croatia

2015

FEBRUARY

- Extension of the cooperation agreement with the University of Vienna until 2019

2-4  
SEPTEMBER

- ELI Annual Conference and General Assembly in Vienna (including Council elections)

## Membership

The ELI gathers over 1,000 members, representing all branches of law and legal professions. There are three categories of members:

**Fellows** are natural persons and must actively engage, by their professional, vocational or scholarly activities, in European legal development. They can undertake to speak, vote and participate in activities carried out within the framework of the ELI on the basis of their own personal and professional convictions without regard to the interests of particular stakeholders.

**Individual Observers** are natural persons who take an active interest in European legal development but cannot undertake to speak and vote without regard to the interests of particular stakeholders.

**Institutional Observers** are legal entities, or natural persons representing organisations, institutions or networks, which are actively involved in European legal development.

## Nationalities Represented in 2015

Albania	Estonia	Lithuania	Spain
Argentina	Finland	Luxembourg	Sweden
Australia	France	Malta	Switzerland
Austria	Germany	Moldova	The Czech Republic
Belgium	Greece	Morocco	The Netherlands
Bosnia and Herzegovina	Hungary	Nigeria	Ukraine
Brazil	India	Norway	The United Kingdom
Bulgaria	Iraq	Portugal	Turkey
Canada	Ireland	Romania	USA
China	Israel	Russia	
Colombia	Italy	Serbia	
Croatia	Japan	Slovakia	<b>TOTAL: 53</b>
Cyprus	Latvia	Slovenia	
Denmark	Liechtenstein	South Africa	

## 2015 Members in Figures

Membership	December 2015
Fellows	1038
Individual Observers	61
Institutional Observers	88
<b>Total</b>	<b>1187</b>

Twelve new Institutional Observers joined the European Law Institute in 2015:

- The Court of Cassation of France;
- The Maritime and Commercial High Court of Denmark;
- The Faculty of Law of the Catholic University of Lyon;
- The Faculty of Law of Toulouse 1 University Capitole;
- The Faculty of Law of the University of Belgrade;
- *Istituto Universitario di Studi Europei* (IUSE);
- The Academy of European Law (ERA);
- The Pan European Organisation of Personal Injury Lawyers (PEOPIL);
- *Consejo General de la Abogacía Española*;
- DLA Piper;
- The Vojvodina Bar Association;
- *Asociación Española de Peritos Judiciales y Mediadores Arbitrales* (AEPJMA);

## ELI Members Distribution





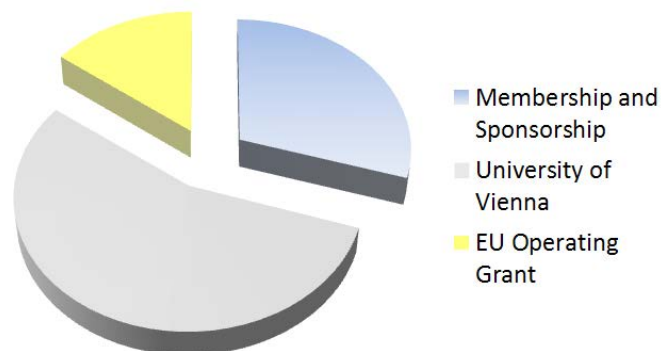
## Funding Sources

The ELI is an entirely independent non-profit organisation under Belgian law. There were three main sources of income for the ELI in 2015.

Firstly, the cooperation agreement between the University of Vienna and the ELI was extended until 2019, which guarantees that the Secretariat will be kindly hosted by the University of Vienna for another four-year term.

Secondly, membership fees of individual and institutional members as well as sponsorship for specific events and projects constitute a cornerstone for ELI funding.

Finally, an operating grant was awarded to the ELI for 2015 within a three year partnership agreement, signed with the European Union for the period 2015-2017.



## Overview 2015

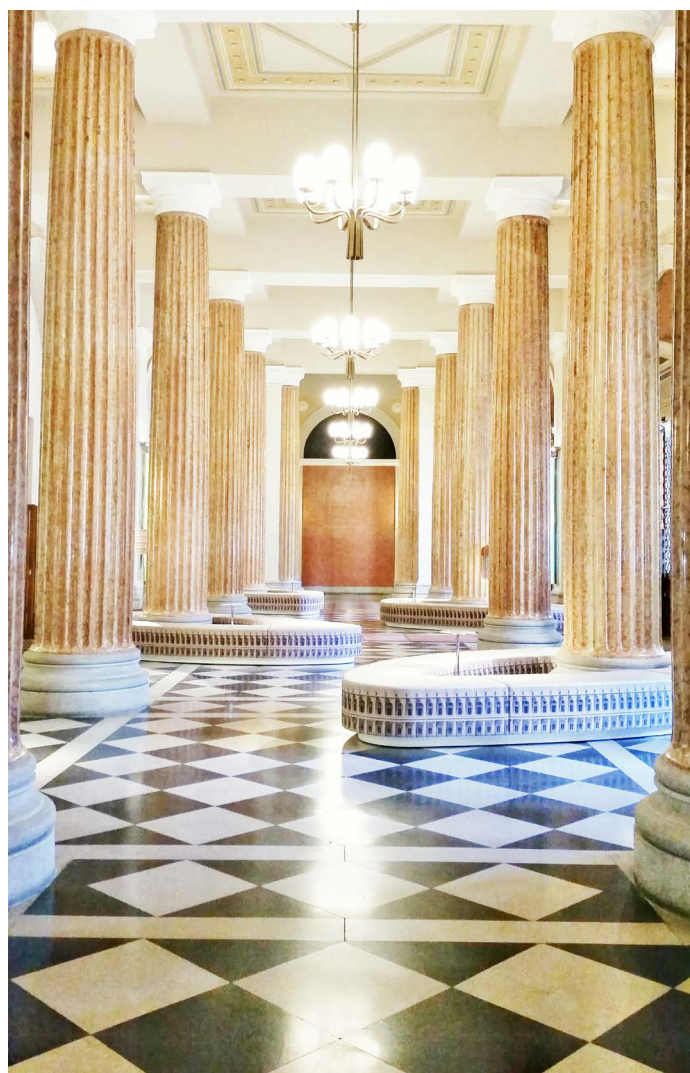
During 2015, the European Law Institute continued working towards better law-making in Europe and for the enhancement of European legal integration.

The 2015, the ELI work programme was implemented with a firm commitment to cooperation among jurists from different vocational backgrounds, including academics, judges, lawyers, notaries and other legal professionals involved in government and the legislative process (see Article 2 of the ELI Statute).

Following this principle, one of the main achievements of the ELI in 2015 was strengthening the network of legal professionals that contribute to the work and aims of the ELI.

The implementation of the 2015 Annual Work Programme allowed the continuation of ongoing projects.

During 2015, other ELI projects were initiated or further developed (Digital Single Market, Migration and Family Law).



## Distribution of Income

# Activities of the ELI Bodies

## *Our Mission*

*Among ELI's core tasks are to:*

- evaluate and stimulate the development of EU law, legal policy and practice, and in particular to make proposals for the further development of the *acquis* and for the enhancement of EU law implementation by the Member States;*
- identify and analyse legal developments in areas within the competence of Member States which are relevant at EU level;*
- study EU approaches regarding international law and enhance the role EU law could play globally, for instance in drafting international instruments or model rules;*
- conduct and facilitate pan-European research, in particular to draft, evaluate or improve principles and rules which are common to the European legal systems; and*
- provide a forum for discussion and cooperation between jurists (irrespective of their vocation or occupation), inter alia academics, judges, lawyers and other legal professionals, who take an active interest in European legal development and together represent a broad range of legal traditions.*

To accomplish these tasks, the ELI operates on its own initiative. It is also, however, available for consultation with institutions involved in the development of law on a European, international or national level.

The ELI is committed to the principles of comprehensiveness and collaborative working, and strives to bridge the oft-perceived gap between the different legal cultures, between public and private law, as well as between scholarship and practice.

To further that commitment, it seeks to involve a diverse range of experts, reflecting the richness of the legal traditions, legal disciplines and vocational frameworks found throughout Europe.

# General Assembly

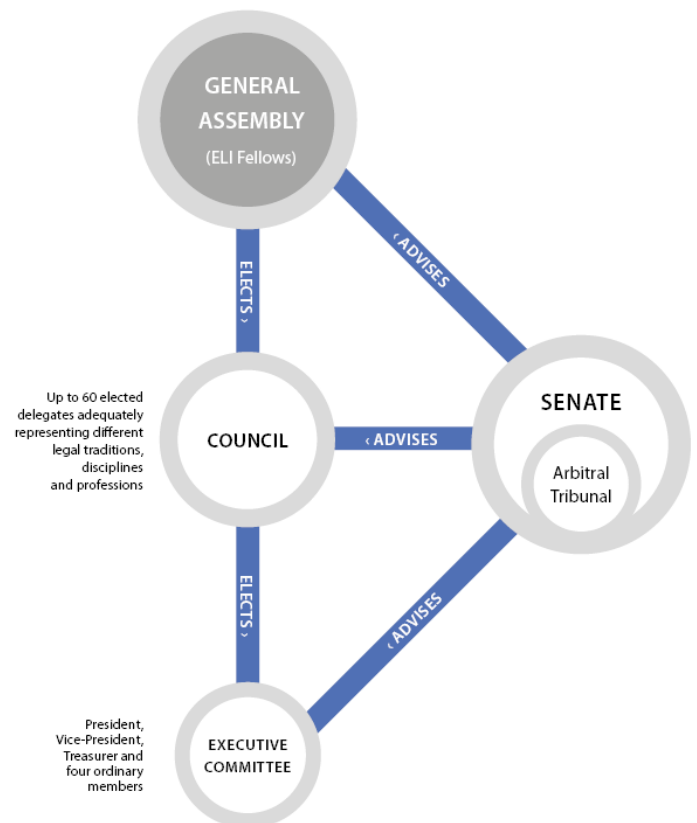


ELI General Assembly, 3 September 2015

The General Assembly is the highest ELI body, composed of all the ELI Members. The main functions of the General Assembly are to elect the members of the Council, to approve the accounts and the budget of the Institute, and to approve the results of any ELI projects carried out under the regular procedure. An ordinary meeting of the General Assembly is called every year to discuss the progress made by the Institute and its committees.

In 2015, the General Assembly was held on 3 September, in the Austrian Academy of Sciences, where the Annual Conference later took place. The meeting brought ELI Members together for the fifth time since the Institute's founding in 2011. In 2015, Fellows were invited to elect half of the current composition of the Council (30 seats). The elections were prepared and administrated by the ELI Secretariat and overseen by Dr Irmgard Griss, Speaker of the ELI Senate, who acted as Returning Officer.

The President and Executive Committee, the Treasurer, and the Chair of the Membership Committee presented their reports. Further, a report on projects provided a promising outlook for the coming years.



## Council

The Council is the ELI's main governing body. It consists of a maximum of 60 members, elected by the General Assembly from among ELI Fellows.

Apart from the maximum of 60 elected members, the Council may grant ex-officio Council membership to a maximum of 10 persons.

The Council may exercise any other powers not attributed by law or by the ELI Articles of Association to the General Assembly or to another body of the Institute. In particular, the Council is the competent body for the election of the members of the Executive Committee, including the President.

Other functions of the Council include, but are not limited to: approving membership applications, deciding which projects the ELI should embark on, appointing reporters, project team members and Advisory committee.

The Council delegates many of its tasks and powers to its standing committees. The Council meets at least twice a year but also makes decisions electronically on a regular basis.



Council Meeting on 3 September 2015

### Meetings of the Council

The Council met in Vienna, Austria

Date: 14 February 2015

Date: 3 September 2015

In 2015, elections were held in September for 30 seats of the Council in accordance with the ELI Election Byelaws. The vacant seats were identified by voluntary resignations and the drawing of lots at the Council meeting on 13 February.

Following the elections held on 3 September 2015, the Council is now comprised of the following members:

1.	Alunaru, Christian	23.	Graf von Westphalen, Friedrich	45.	Sabato, Raffaele
2.	Aubert de Vincelles, Carole	24.	Hrádek, Jiří	46.	Schulte-Nölke, Hans
3.	Avgerinos, Yannis	25.	Iamiceli, Paola	47.	Schulze, Reiner
4.	Azizi, Josef	26.	Illescas, Rafael	48.	Sorabji, John
5.	von Bar, Christian	27.	Infantino, Marta	49.	Stamelos, Harry
6.	Bargelli, Elena	28.	Jerez-Delgado, Carmen	50.	Storme, Matthias
7.	Beale, Hugh	29.	Jiménez Muñoz, Francisco Javier	51.	Thomas, Lord John
8.	Bermann, George	30.	Josipović, Tatjana	52.	Trstenjak, Verica
9.	Botusharova, Snezhana	31.	Kaiafa-Gbandi, Maria	53.	Vervaele, John
10.	Brkan, Maja	32.	Keglević, Ana	54.	Wagner, Gerhard
11.	Cafaggi, Fabrizio	33.	Király, Miklós	55.	Wallis, Diana
12.	Caponi, Remo	34.	Mader, Oliver	56.	Wendehorst, Christiane
13.	Clément, Marc	35.	Malberti, Corrado	57.	Wicke, Hartmut
14.	Clough, Mark	36.	Meijer, Maarten	58.	Wierzbowski, Marek
15.	Cvejić Jančić, Olga	37.	Micklitz, Hans-Wolfgang	59.	Zalar, Boštjan
16.	Dal, Georges-Albert	38.	Miller, Katharina	60.	Zlatescu, Irina
17.	Doralt, Walter	39.	Možina, Damjan		
18.	van Erp, Sjef	40.	Philippe, Denis		And the following Ex-Officio Members:
19.	Fauvarque-Cosson, Bénédicte	41.	Porchia, Ornella	61.	Ślązak, Maria
20.	Gammeljord, Anne Birgitte	42.	Povlakić, Meliha	62.	Tarrade, Jean
21.	Gernandt, Johan	43.	Prunbauer-Glaser, Marcella	63.	Lewis, Alasdair
22.	Gilligan, Paul	44.	Ruda, Albert	64.	Vos, Geoffrey
				65.	Andrieux, Françoise
				66.	Denham, Susan

## Executive Committee

The Executive Committee is the ELI's administrative body, appointed by the Council from among the Council members, for a two-year term (renewable once), consisting of the President, the Vice-President, the Treasurer and four ordinary members.

In 2015, the Executive Committee played a crucial role in the development of the Institute, making important strategic decisions concerning the structure and functioning of the Institute, its projects, its involvement in joint initiatives with other organisations and its international relations.

The work of the Executive Committee has been partly focused on strengthening the network and on intensifying cooperation with existing and new Institutional Observers.

To ensure the ELI's visibility at the national and international level, the Executive Committee promotes the ELI's work globally.

### Composition of the Executive Committee

- President: Diana Wallis
- Vice President: Christiane Wendehorst
- Treasurer: Johan Gernandt
- Other Members: Remo Caponi, Marc Clément, John Sorabji, Sjef van Erp

## Meetings of the Executive Committee

In 2015 the Executive Committee met in Vienna, Austria

Date: 13 February 2015

Date: 30 April 2015 (joint meeting with Senate)

Date: 3 June 2015

Date: 2 September 2015 (+ joint meeting with Senate)

Date: 11 December 2015

## Senate

The Senate is a body of persons each of whom has an outstanding reputation, ready to give advice and, where necessary, to settle disputes.

### Members of the ELI Senate

- Sabino Cassese
- Irmgard Griss
- Arthur Hartkamp
- Francis Jacobs
- Lord Jonathan Mance
- Janos Nemeth
- Jan Ramberg
- Jean-Marc Sauvé
- Vassilios Skouris (joined in December 2015)
- Walter van Gerven †
- Eddy Wymeersch
- Reinhard Zimmermann

In an attempt to strengthen the communication and cooperation between the ELI Executive Committee and Senate even more, the two bodies celebrated a joint meeting on 30 April 2015 in Vienna.

After this meeting, it was decided that a member of the Senate may join the future Executive Committee meetings as an observer.

### Meetings of the Senate

The Senate met in Vienna, Austria

Date: 30 April 2015

(+ joint meeting with Executive Committee)

Date: 2 September 2015

(+ joint meeting with Executive Committee)

## Arbitral Tribunal

The Arbitral Tribunal settles disputes that may arise between Association members, between Association members and one or several bodies of the Association, or between two or several bodies of the Association, and which concern the question whether or not an act or omission is in conformity with the Articles of Association, Codes of Conduct or Byelaws. It consists of three members of the Senate who are appointed by the Senate for a three-year term.

### Members of the Arbitral Tribunal

- Arthur Hartkamp
- Lord Jonathan Mance
- Jean-Marc Sauvé

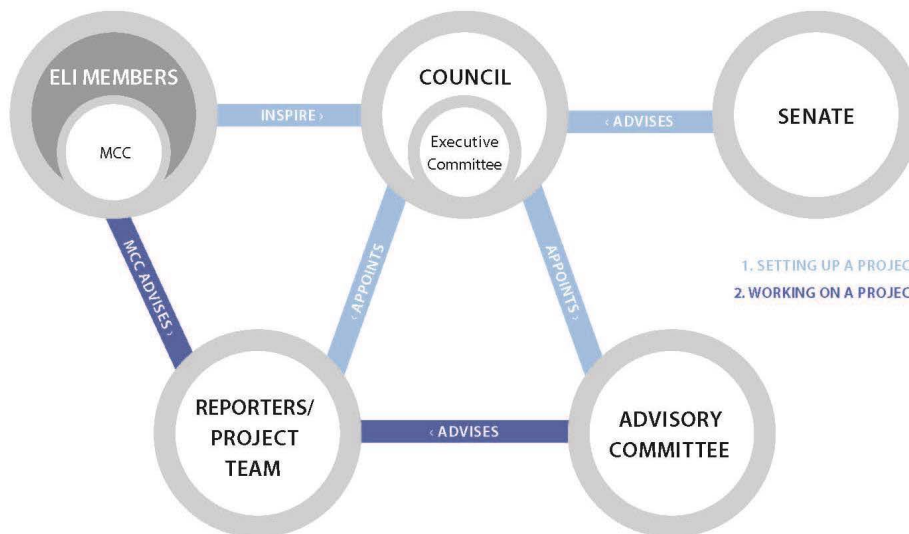
# Projects



- medium-to-long-term projects
- eg draft legislative instruments
- pro-active in nature



- short-term projects
- eg position papers
- usually re-active in nature



## Introduction

The ELI project teams worked intensively throughout the year to yield excellent results. The current teams around the projects on insolvency law, civil procedure law, criminal law and on the Digital Single Market continued their valuable work. 2015 also saw other ELI projects developing (Migration, Family Law).

## Ongoing Projects

### ELI Instrument on “Rescue of Business in Insolvency Law”

The aim of the project is to design (elements of) an appropriate legal enabling framework, which includes certain statutory procedures that encourage parties to negotiate solutions in a situation of business distress. In addition, such a framework would include rules to determine in which procedures and under which conditions an enforceable solution can be imposed upon creditors despite their lack of consent.

#### Vienna Conference: 19-20 March 2015

In March, the Faculty of Law of the University of Vienna hosted a conference on the ELI Project on the Rescue of Business in Insolvency Law, chaired by the reporters of the project, Prof Bob Wessels, Prof Stephan Madaus and Associate Prof Kristin van Zwieten. The two-day event was opened by the Dean of the Faculty of Law, Prof Paul Oberhammer, who is also a member of the Advisory Committee to the project.



Left to right: Paul Oberhammer, Dean of the Faculty of Law at the University of Vienna, Project Reporters Kristin van Zwieten, Bob Wessels and Stephan Madaus

During the first day of the conference, the current state of play in the field of business rescue in Europe was analysed. The main legal developments that took place in the EU since the EU Insolvency Regulation was adopted, with a special emphasis on the Commission’s ‘Recommendation on a new Approach to Business Failure and Insolvency’ (March 2014), being highlighted. Also, an overview of the background and objectives of the project were provided, upon which the National Correspondents presented their reports.

On the second day, specific issues for a legal enabling framework for business rescue in Europe were discussed in four subject-specific workshops:

1. restructuring under formal procedures;
2. restructuring outside formal procedures;
3. pre-pack deals, with emphasis to business valuations and the issue of insider deals; and
4. reform options.

#### Meetings of the Project Team

Reporters met in Dordrecht, The Netherlands

Date: 21-22 July 2015

Topics Discussed: research methods, order of argumentation, level of detail, overall structure of the report

Reporters met in Vienna, Austria

Date: 3 September 2015

Topics Discussed: the role of lawmakers, differences between financial difficulties of small companies and larger enterprises

Panel Discussion at the ELI 2015 Annual Conference in Vienna, Austria

Date: 4 September 2015

Topics Discussed: law reform issues, developments taking place within but also outside the EU

Reporters met at the INSOL Europe Academic Forum Conference in Berlin, Germany

Date: 30 September-1 October 2015

Topics Discussed: the role of insolvency practitioners, regulation and supervision of their activities

## ELI-UNIDROIT joint Instrument “Transnational Principles to European Rules of Civil Procedure”

The ELI and UNIDROIT cooperation aims at developing European Rules of Civil Procedure. The ALI and UNIDROIT adopted and jointly published Principles of Transnational Civil Procedure in 2014. The aim of the work was to reduce uncertainty for parties litigating in unfamiliar surroundings and promote fairness in judicial proceedings through the development of a model universal civil procedural code.

### Trier Conference: 26-27 November 2015

Europe’s leading civil procedure experts gathered in Trier, Germany to discuss the establishment of European rules of civil procedure. The Conference was organised by the ELI and UNIDROIT, and was hosted by the Academy of European Law (ERA).

ERA’s Director, Wolfgang Heusel, opened the Conference on 26 November, emphasising the importance of more unified procedural rules across the European countries. ELI President, Diana Wallis, welcomed the participants in the name of the ELI and UNIDROIT and expressed her gratitude for the interest of legal experts from all over Europe. Ms Wallis thanked the European Parliament and the European Commission, both of which sent representatives to this event, for their interest in the project.

The Conference was well attended with over 70 legal experts from accross Europe including a number of project observers from intergovernmental organisations, European institutions, professional associations and other research institutions.

In total, five panel sessions took place during the Conference. Each session was chaired by one member of the ELI-UNIDROIT Steering Committee, accompanied by the Reporters of the Working Groups and an independent leading discussant.

### Working Groups

1. Access to information and evidence
2. Provisional and protective measures
3. *Res judicata* and *lis pendens*
4. Obligations of the parties, lawyers and judges
5. Service and due notice of proceedings



Conference Participants at the Academy of European Law in Trier

### Meetings of the Working Groups and Project Events

WG on Service of Documents and Due Notice of Proceedings met in Uppsala, Sweden

Date: 12-13 February 2015

Topics Discussed: first draft of civil procedure rules.

Joint Meeting ELI-UNIDROIT and JURI Committee presentation at the European Parliament in Brussels, Belgium

Date: 16 April 2016

Topics Discussed: Steering Committee and Reporters discussed the progress of the project.

WG on Service of Documents and Due Notice of Proceedings met in Paris, France

Date: 29-30 June 2015

Topics Discussed: first draft of civil procedure rules.

The Project was presented at the ELI 2015 Annual Conference in Vienna, Austria

Date: 3 September 2015

Topics Discussed: overview of the first draft of civil procedure rules.

WG on Service of Documents and Due Notice of Proceedings met in Padua, Italy

Date: 29-30 October 2015

Topics Discussed: first draft of civil procedure rules.

WG on Obligations of the Parties, Lawyers and Judges met in Maastricht, The Netherlands and in Leuven, Belgium

Date: 25-26 November 2015

Topics Discussed: set of draft rules, accompanied by a commentary consolidated in a single document.



## ELI Statement “From CESL to the Digital Single Market”

---

This ELI project was initiated in response to the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (CESL), published by the European Commission in October 2011. The Working Group prepared a Statement on the Commission’s Proposal as well as a 1st Supplement to it.

In May 2015, the European Commission adopted a Digital Single Market Strategy. The ELI welcomed this development and the ELI Working Group prepared the 2nd Supplement to the Statement of the ELI on the Proposal for a Regulation on a CESL.

The Supplement sets out the approach, which the Working Party defined in April 2015 and forms the first part of a longer-term project within which the ELI develops a detailed draft legislative proposal. The document aims at providing clear recommendations for the EU Institutions on how to further develop the Proposal for the Digital Single Market.

The Working Group underlined that the Proposal has to be drafted in as clear and as straightforward a way as possible, has to provide a high level of customer protection and has to place a focus on legal certainty.

On 31 July 2015, the ELI Council Approved the Second Supplement to the ELI Statement on the Proposal for a Regulation on a Common European Sales Law (CESL), ‘Unlocking the Digital Single Market – An Instrument for 21st Century Europe’

### Meetings of the Project Team

Reporters met in London, UK  
Date: 30 March 2015

Topics Discussed: preparation of the draft ELI Statement entitled ‘Unlocking the Digital Single Market An Instrument for 21st Century Europe’.

Project presentation at the ELI 2015 Annual Conference in Vienna, Austria  
Date: 3 September 2015  
Topics Discussed: overview of the project.

## ELI Instrument on “Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law”

---

This ELI project aims at developing a new legal framework for the prevention and resolution of situations where various States have legitimate jurisdiction over the same case.

The Working Group of this project has carried out a comparative study of different national provisions concerning conflicts of law in EU Member States. Based on the results of this work the Group conducts an analysis of the existing means by which conflicts of jurisdiction are prevented and resolved. The project will then move onto the second, developmental stage in which a new legal framework will be elaborated.

While exploring the solutions to the problem of conflicts of jurisdictions in criminal law, the Group will give due consideration to the principles already used in that regard in the field of international private law.

A coherent solution for conflicts of jurisdiction should avoid that *ne bis in idem* remains the only rule to resolve jurisdictional conflicts, ensure non-arbitrary choice of jurisdiction, avoid parallel prosecutions, and ensure the choice of the best forum.

### Meetings of the Project Team

Project Team met in Luxembourg  
Date: 12-13 March 2015

Topics Discussed: refinement of project methodology and discussion of practical problems.

Reporters met in Vienna, Austria  
Date: 1-2 September 2015

Topics Discussed: comparison with International Private Law, analysis of the perspective of the defendant and the victim.

Project presentation at the ELI 2015 Annual Conference in Vienna, Austria  
Date: 4 September 2015  
Topics Discussed: overview of the project.

Reporters met in Luxembourg  
Date: 2 December 2015  
Topics Discussed: refinement of the drafts.

## ELI Feasibility Study with the US Uniform Law Commission on Fiduciary Access to Digital Assets

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The ELI Feasibility study with the US Uniform Law Commission (ULC) on Fiduciary Access to Digital Assets focuses on the digital world, specifically on digital assets. The Working Group, composed of ELI experts and experts from the ULC, will prepare a feasibility study to see whether the US Uniform Fiduciary Access to Digital Assets Act (UFADAA) could be redrafted as an European model law.

The Working Group Members are Radim Polčák, Jos Uitdehaag and representatives of the US and Canadian Uniform Law Commissions. The Reporter for this project is Sjef van Erp.

### Major Milestones

- On February 2015, Commissioner Jourová showed her interest in this idea in her meeting with ELI representatives in Brussels
- On July 2015, Sjef van Erp met Harriet Lansing and other ULC representatives at the US ULC Annual Conference



Harriet Lansing, Former President of the ULC speaking at the ELI 2015 Annual Conference about the Fiduciary Access to Digital Assets

## New Projects in 2015

### ELI Instrument on ‘Empowering European Families - Towards More Party Autonomy in European Family and Succession Law’

---

In its decision 2015/8 of 3 September 2015, the ELI Council adopted the proposal for this joint project of the ELI, the University of Vienna and the University of Utrecht to be carried out under the auspices of the ELI.

Despite the fact that EU legislation has achieved far-reaching unification of the rules concerning applicable law, jurisdiction, recognition and enforcement in family and succession law, international couples are still facing a number of obstacles. These have their roots in habitual residence as the dominant connecting factor, but also in the fact that existing EU conflict rules tend to encourage forum shopping and a ‘rush to court’. More notably still, there is often a patchwork of two or three forums and applicable laws even in standard cross-border divorce or separation cases, and the approaches taken by the various laws involved, are often incompatible with each other.

The project aims at reducing obstacles faced by international families and at facilitating free movement of citizens by providing better certainty and predictability of results and reducing the costs of litigation in matters of family and succession law. It also aims at promoting the use of family mediation in the EU.

Christiane Wendehorst, Professor at the University of Vienna; Katharina Boele-Woelki, Chair of the Commission on European Family Law and Wendy Schrama, Professor at the University of Utrecht and member of the Commission on European Family Law were appointed as leaders of the project.

The Project was presented at the ELI 2015 Annual Conference in Vienna, Austria

Date: 4 September 2015

Topics Discussed: strategies on how to help reduce obstacles faced by international families and facilitate free movement of citizens by enhancing party autonomy in matters of family and succession law.

## ELI Statement on “Detention of Asylum Seekers and Irregular Migrants and the Rule of Law”

---

The Treaty on European Union establishes that the rule of law is one of the values on which the EU is founded and one of the principles which the EU is bound to promote in its relations with third countries.

The Commission adopted the European Agenda on Migration (COM(2015) 240 final) in May 2015, which sets several policy tools in the field of asylum. The sources of EU secondary law (Reception Conditions Directive 2013/33/EU (recast), Return Directive 2008/115/EC and Dublin III Regulation) in the same field provide the rules on detention of asylum seekers and third country nationals (TCN).

Both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have developed extensive case-law with regard to detention of TCN and asylum seekers. Numerous principles established therein and the norms offered by EU legislation in place, may pose a challenge to the harmonised application of common standards in detention cases for the national judges across the EU Member States.

The ELI’s project focuses on identifying all due process standards and material law including conditions for detention, and on enhancing the implementation of existing EU law in this field.

The project aims to contribute to an effective implementation of due process standards and material conditions for detention based on an integrated approach in respect of EU secondary law, case-law of the CJEU and case-law of the ECtHR in judicial practices of the Member States (first indent of Article 3(2) of the Association).

The final product of this project will be a user-friendly and well-referenced checklist of all due process standards and material law on detention for the competent judges.

The Working Group Members are Marc Clément, María-Teresa Gil-Bazo, Sergo Mananashvili, Pamela Mc Cormick, Samuel Boutruche Zarevac, Saša Sever and Mark Clough QC.

The Project Team is headed by Boštjan Zalar, Senior High Court Judge of the Administrative Court of the Republic of Slovenia and Vice-President of the European Chapter of the International Association of Refugee Law Judges and *ad hoc* judge at the ECtHR.

The Project was presented at the ELI 2015 Annual Conference in Vienna, Austria

Date: 4 September 2015

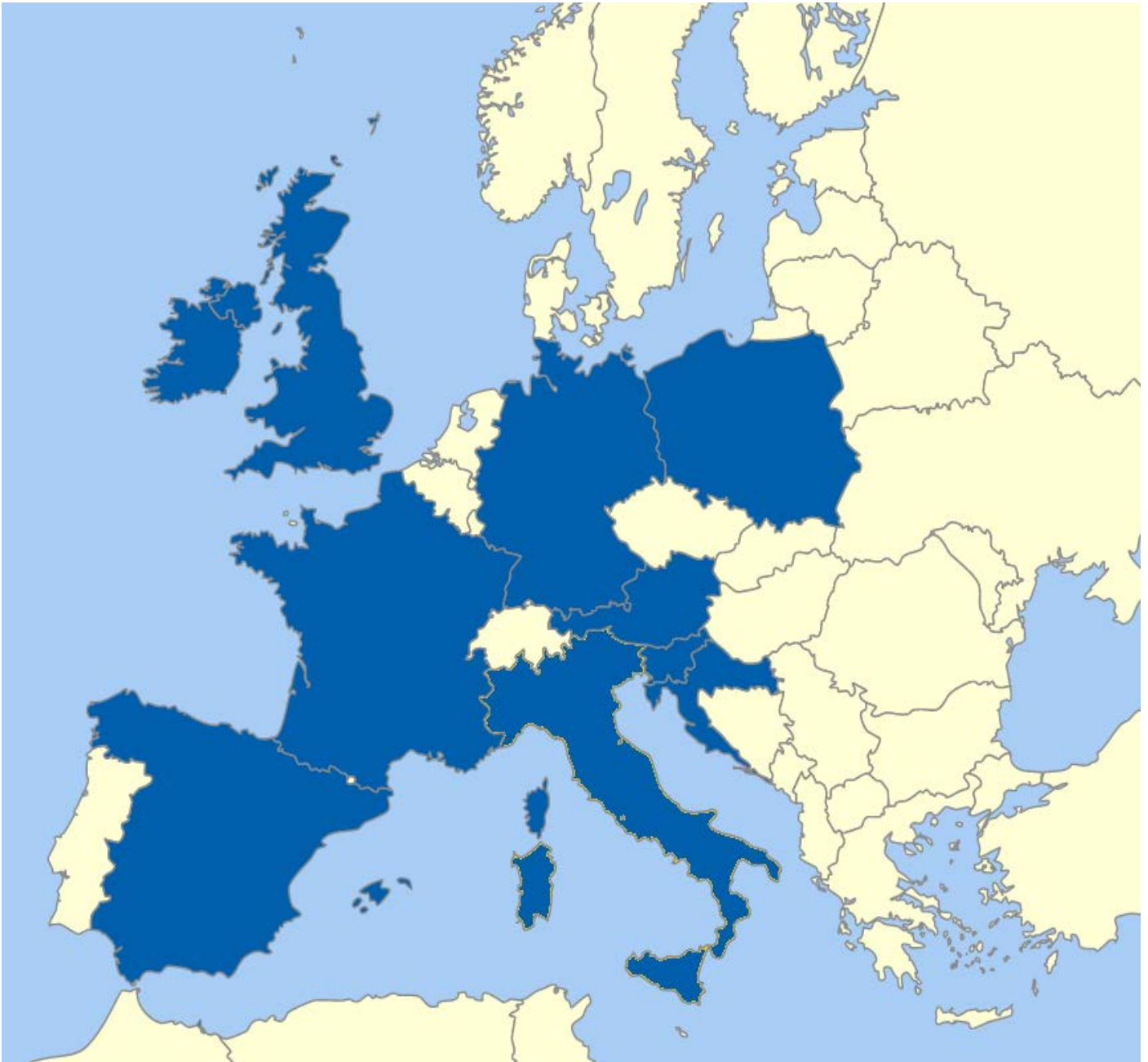
Topics Discussed: creating a practical tool for the judiciary that would aim at identifying all due process standards and material law on detention and enhancing the implementation of existing law



Panel on “Detention of Asylum Seekers and Irregular Migrants and the Rule of Law” at the ELI 2015 Annual Conference in Vienna, Austria

Post Annual Conference, contact with the European Network of Councils for the Judiciary (ENCJ) was initiated for a particular project on Alternative Dispute Resolution (ADR). Many ELI Members and externals have demonstrated an interest in proposing a project concerning ADR.

# Hubs and SIGs



## Hubs

### General information

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Hubs are national networks which have been established for members to facilitate discussion, share and monitor legal developments and stimulate project proposals. These groups enable ELI members to form connections with other practitioners who share their expertise and create an interactive forum for discussion.

The number of ELI Hubs is steadily growing. In February 2015, the Polish Hub was formally launched, joining the seven existing national Hubs in Austria, Croatia, France, Germany, Slovenia and the UK. Many Hub events took place in 2015, organised by the Austrian, Polish and German Hubs, among others.

### Launch of the Polish Hub

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The ELI celebrated the opening of its Polish Hub on 16 February 2015. ELI President, Diana Wallis, spoke about the mission of the ELI and marked the official beginning of the ELI's newest Hub. Several eminent Polish lawyers attended the ceremony, which was held at the Polish Council of Legal Councillors in Warsaw.

Attendees heard from Ms Maria Ślężak, Vice-President of the Polish Bar, and the President of the Council of Bars and Law Societies of Europe (CCBE), Mr Marek Safjan, Judge at the Court of Justice of the EU, Mr Maciej Szpunar, Attorney General at the Court of Justice of the EU and Mr Arkadiusz Bereza, Vice-President of the Bar Association.



Left to right: Arkadiusz Bereza, Maciej Szpunar, Diana Wallis, Marek Wierzbowski and Maria Ślężak

Marek Wierzbowski, Professor of Law at the University of Warsaw and ELI Council member, reported on the opening of the newest ELI Hub in Poland:

*"Polish members of the ELI discussed the issue of setting up a Polish Hub a long time ago, during the 2013 ELI General Assembly in Vienna. It took us some time to select the institution with which we would associate our organisation in order to avoid expenses for new premises, secretariat, etc.*

*Initially, since many members are academics, we were only taking universities or research institutions into consideration. Ultimately, we decided for cooperation with the National Chamber of Legal Councillors- one of two national bar associations. Associating the ELI Polska (the name of the Polish Hub) with the bar association should enable very easy communication with the largest group of practicing lawyers in Poland, as well as with advocates, notaries, judges, public prosecutors and civil servants.*

*Our activities will not be much different from those of other ELI hubs. It is our intention to take steps to broaden knowledge of European law among practicing lawyers in Poland and to serve as the communication channel between them and the ELI. We hope to bring more Polish lawyers to the ELI, both as members and as people involved in ELI projects."*



Both members and non-members of the ELI were welcome at the event in Warsaw

## Members of Austrian Hub Participate in Austrian Chamber of Notaries Event

On 19 February, representatives of the ELI Austrian Hub participated in an event on “European Marriage and Partnership Contracts”. The event is part of the NOTARIONxp forum organised by the Austrian Chamber of Notaries. The President of the Chamber, Ludwig Bittner, opened the evening with a welcome to the guests and a short introduction to its ongoing projects.

ELI Vice-President Christiane Wendehorst then gave a presentation entitled “Model Dispositions in European Family and Succession Law.” She took the opportunity to draw attention to the difficulties that European citizens, who start an international family or who move to a different country, face: a patchwork of laws, some of them unfamiliar or of questionable applicability, when they face any number of common family situations, ranging from the enforcement of pre-nuptial agreements, the determination of rights of inheritance, or decisions relating to parental responsibility. As a remedy, she suggests that European model agreements on substantive family issues be developed and made enforceable by all EU Member States.

This presentation set the tone for a contribution by Rudolf Kaindl, Honorary President of the Council of Notariats of the European Union (an Institutional Observer of the ELI). Two experts in the field, Prof Katharina Boele-Woelki (University of Utrecht and President of the Commission on European Family Law, another ELI Institutional Observer) and Dr Robert Fucik (Leading Public Prosecutor of the Austrian Ministry of Justice) then joined the panel for a discussion moderated by Michael Umfahrer (President of the Austrian Notary Academy).



From left to right: Ludwig Bittner, Robert Fucik, Katharina Boele-Woelki, Christiane Wendehorst, Rudolf Kaindl and Michael Umfahrer

## Austrian Hub Organises Event on Secured Transactions with UNCITRAL and BWG

On 6 March, the Austrian Hub of the ELI, along with UNCITRAL and the Österreichische Bankwissenschaftliche Gesellschaft (BWG) hosted an event entitled “Secured Transactions in the Work of UNCITRAL” at the Faculty of Law of the University of Vienna, organised by Christiane Wendehorst, Professor of law at the University of Vienna and Vice-President of the ELI.

August Reinisch, Vice-Dean of the Law Faculty, welcomed participants to the top floor of the Juridicum of the University of Vienna and introduced Spyridon Bazinas, Senior Legal Officer at UNCITRAL (United Nations Commission on International Trade Law), who opened the Conference with a presentation about key trends and characteristics of modern and efficient secured transactions laws.

This provided much of the background for the draft model law from UNCITRAL. The presentation focused on the objectives of secured transaction law, which generally aims to promote the availability and the lowering of the cost of credit by reducing the risk of debtor default and insolvency. A summary of current international legal thought on secured transactions, efficient registration systems and enforcement mechanisms concluded the discussion.

Bea Verschraegen, Professor at the University of Vienna, Sjef van Erp, ELI Executive Committee member and Professor at the University of Maastricht, continued with presentations. Subsequently, Otto Lucius of the BWG introduced the lunch time seminar delivered by Spyridon Bazinas. Raimund Bollenberger of the Vienna University of Economics and Business moderated the seminar and the ensuing discussion. A lunch reception concluded the day's events.



From left to right: Spyridon Bazinas, Sjef van Erp and Bea Verschraegen

# SIGs

## General information

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SIGs were established by Council Decision 2015/1 of February 2015, as subject-specific hubs where ELI Members who are experts in one specific field work together to scrutinise the latest legal developments, identify ideas for projects and identify those aspects of the law that could benefit from a contribution of the ELI.

The size of SIGs is growing steadily. SIGs have great potential to become a forum for experts to come together and provide guidance to the ELI in their respective fields.

Communication of SIGs with the ELI Secretariat and with ELI bodies is of essence. SIGs are asked to provide reports on their activities to the ELI Council and regular updates to the Secretariat.

Communication within the SIGs is mainly electronic, to enable participation from geographically diverse Members, SIG members are encouraged to use their exclusive section of the MyELI platform to post comments and suggestions and to interact with each other.

The SIGs keep their area under on-going critical scrutiny, noting and discussing current developments and, where relevant, drawing the attention of the ELI Executive Committee to any issue that could properly call for a response by the ELI.

There are currently 11 SIGs:

- Administrative law
- Business and Financial law
- Civil law
- Competition law
- Contract, tort and property law
- Digital law
- Dispute resolution
- European Union law
- Family and succession law
- Fundamental Rights law
- Intellectual Property law

## Events

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### Digital Law SIG

The Digital Law SIG had a meeting in Münster, Germany, on 2 October 2015. The meeting of the SIG, chaired by Council members Reiner Schulze and Christiane Wendehorst, showed how dynamic and productive the newly formed SIGs can be.

Among the issues addressed were the free flow of data, the Internet of Things and online platforms - topical aspects of digital law, where the ELI could provide guidance and assistance in steering legislative work in the right direction. This fruitful working session resulted in plans to further work on four distinct fields that the participants found of particular interest. It was agreed that the work will focus on the free flow of data, robotics, the Internet of Things and user self-protection on the internet.

### How to Join

SIGs are open to all ELI Members at any time. If you have an interest in participating, please contact the ELI Secretariat. If you do not find a SIG in the field of law that interests you, please notify us. The SIGs should reflect the interests of the ELI membership, so as soon as there is a strong interest in other areas, new groups could be set up.



Christiane Wendehorst and Reiner Schulze at the Digital Law SIG meeting in Münster, Germany

# ELI Annual Conference 2015





## Overview

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One of the most important events of the year for the ELI was its Annual Conference, which took place in Vienna from 2-4 September. The Conference gathered more than 240 experts from different legal and geographical backgrounds and provided a forum for lively discussions on law, policy and the role the ELI has to play in improving European law.

Harriet Lansing, Former President of the U.S. Uniform Law Commission and Senior Judge on the Minnesota Court of Appeals, gave a keynote lecture during the opening ceremony, in which she highlighted the similarities and opportunities for cooperation between the ELI and the ULC. According to her, the ULC and the ELI have similar processes, projects and ultimate goals.

Věra Jourová, the EU Commissioner for Justice, Consumers and Gender Equality, gave an inspiring keynote lecture on 4 September, and expressed her gratitude towards the ELI for its work. She underlined that, since its founding, the ELI has worked to strengthen and inspire the development of European law and that the ELI's work has already provided the European Commission with invaluable advice.

Panel sessions were held during the Conference, focusing on diverse fields of law, such as EU Administrative Law, the Digital Single Market, European Rules of Civil Procedure and the Fiduciary Access to Digital Assets, Empowering European Families, Rescue of Business in Insolvency, and the Rule of Law and Migration.

The Opening Ceremony took place on 2 September 2015, at the Faculty of Law of the University of Vienna. Guests were welcomed by the ELI President, Diana Wallis, joined by Heinz Faßmann, Vice-Rector of the University of Vienna. Vice-Rector Faßmann encouraged participants to use the upcoming Conference as an opportunity to reflect on the importance of the implementation of existing European law.

Paul Oberhammer, the Dean of the Faculty of Law of the University of Vienna, welcomed the guests to the Faculty's premises and highlighted the great contribution of the ELI to the development and improvement of the quality of law in Europe.

This successful event encouraged ELI bodies and the ELI Secretariat to continue working hard in the organisation of the ELI 2016 Annual Conference.

### Panel Discussions at the Conference:

- The Future EU Administrative Procedure Law: Issues of Content and Scope
- From CESL to the Digital Single Market
- From Transnational Principles to European Rules of Civil Procedure
- Fiduciary Access to Digital Assets
- Empowering European Families: Towards More Party Autonomy in European Family and Succession Law
- Rescue of Business in Insolvency Law
- Rule of Law and Migration



Participants at the ELI 2015 Annual Conference's Opening Ceremony at the Law Faculty of the University of Vienna

# Representation



## Introduction

In its fifth year, the ELI has consolidated its position in the European legal environment and is permanently working to establish fruitful cooperation with many European and international institutions and organisations.

External engagements undertaken by the ELI Executive Committee, especially by ELI President Diana Wallis, serve to emphasise the ELI's role in Europe and beyond. The ELI is proud to have participated in the following events at EU Institutions, other international organisations and Institutional Observers of the ELI:

## European Union

ELI presentation at JURI (European Parliaments Committee on Legal Affairs) in Brussels, Belgium  
Date: 19 February 2015

Topics Discussed: general overview of the ELI and its role as an independent organisation working toward the betterment of European law.

ELI-UNIDROIT joint meeting and JURI Committee presentation in Brussels, Belgium  
Date: 16 April 2015

Topics Discussed: reporters discussed the progress of the project: "From Transnational Principles to European Rules of Civil Procedure" and presentation of the project at the European Parliament.

ELI-UNIDROIT project presentation at the JURI Committee in Brussels, Belgium  
Date: 15 June 2015

Topics Discussed: project presentation.



From left to right: ELI President Diana Wallis, Eva Storskrubb, UNIDROIT Deputy Secretary General Anna Veneziano, Gilles Cuniberti and Fernando Gascón Inchausti at the JURI Committee

## Other

General Meeting of ALI, Washington DC, USA

Date: 18-20 May 2015

Topics discussed: future enhanced cooperation between ELI and ALI.

Annual meeting of the US Uniform Law Commission (ULC), Williamsburg, Virginia, USA

Date: 10-16 July 2015

Topics Discussed: exploratory project whether the Uniform Fiduciary Access to Digital Assets Act (UFADAA) could be used as a basis for European (model) legislation.

Eurasian Women's Forum, St. Petersburg, Russia

Date 24-25 September 2015

Topics Discussed: Presentation of ELI projects.

Second Ferrara Forum on European Consumer and Contract Law, Department of Law of the University of Ferrara, Italy

Date: 8-9 October 2015

Topics Discussed: assessment of results of the diverse implementation of the Directive 2005/29/EC on Unfair Commercial Practices by the EU Member States.

## ELI Institutional Observers

Plenary session of the Council of Bars and Law Societies of Europe (CCBE) in Brussels, Belgium

Date: 26 June 2015

Topics Discussed: strengthening of the cooperation between the ELI and CCBE

22nd International Congress of the Union Internationale des Huissiers de Justice (UIHJ) in Madrid, Spain

Date: 2-5 June 2015

Topics Discussed: exchanging information, strengthening existing relations and exploring possibilities of future cooperation

ELI at Rule of Law Event at the British Institute of International and Comparative Law (BIICL) in London, UK

Date: 18 June 2015

Topics Discussed: the rule of law as viewed from inside the EU.

# European Law Institute

- Pan-European, democratic, membership based organisation
- Uniting prominent jurists of all legal professions
- Aiming to improve the law in Europe
- Carrying out projects with immediate practical application

Members of the ELI can contribute to its projects and gain access to an international network of jurists. Apart from various other activities, the ELI organises its Annual Conference and General Assembly, as well as several social functions – bringing together some of Europe's leading experts in the field of law.

## Join ELI

- Fill in an application at [www.europeanlawinstitute.eu/membership](http://www.europeanlawinstitute.eu/membership)
- Submit two references from amongst the current members
- Applications are subject to Council's approval
- Membership is subject to annual fee

## ELI in Vienna

The Secretariat of the ELI, which is hosted by the University of Vienna, is located in the heart of the Austrian capital, close to the main building of the University, the representation of the European Commission in Austria as well as the information office of the European Parliament.

We cordially invite you to visit us whenever you are in Vienna.



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