



ELI

EUROPEAN
LAW
INSTITUTE

ELI Updates

March 2014



WELCOME FROM DIANA WALLIS, PRESIDENT OF THE EUROPEAN LAW INSTITUTE

Dear Colleagues & Friends of ELI,

I write opening remarks for this newsletter as we embark on an exciting but challenging few months for the ELI. Over the next few weeks I will be attending a number of engagements on your behalf, including the Slovenian Hub launch in Ljubljana and a meeting at UNIDROIT in Rome on the civil procedure project.

Also on my agenda are some follow up meetings at the European Parliament, which has recently joined the ELI as an Institutional Observer. These meetings will, I hope, provide opportunities to meet with representatives from other EU Institutions as we start to identify new areas for ELI projects. This is an opportune moment as the Commission has just published its Communication on the future of justice following the Assises de la Justice held last November. Projects are the main reason for the existence of the ELI and I encourage every Member to be forthcoming with any input. Please do not be shy about coming forward with project ideas, directly to me or via the Secretariat.

Of course I cannot write without referring to our recent Council meeting in Vienna at the end of February. Attendance was excellent and the attitude of Council members very enthusiastic, even in light of several challenges which the ELI is facing. The ELI is going through a period of growth. Although a reflection of our early success, such growth demands that our structures and procedures are made more nimble, transparent and affordable. The Executive Committee has taken some interim measures to control costs and I am grateful in this respect for the support of our wonderful Secretariat and my fellow Committee members. The Senate, several members of which were present at the Council meeting, has suggested that a five year plan is developed to help the ELI navigate the challenges and expectations of the immediate future. My colleagues and I will start to draft such a plan, which I hope to be able to share with you at the General Assembly in Zagreb.

I do hope as many of you as possible will be able to come to Zagreb on 25 and 26 September for the Projects Conference and General Assembly, which promises a wonderful few days in great venues and stimulating presentations and discussions. In mid-April I will go to Zagreb for a meeting with our hosts at the Law Faculty of the University of Zagreb, and I greatly look forward to discussing preparations with them in person.

More information about the Council meeting and other recent ELI events is included in this newsletter, which I hope you enjoy reading.

Best wishes,

Diana Wallis, ELI President

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The Executive Committee and Council Committees meet in Vienna

On 27 February 2014 meetings of the Membership and Executive Committees were held in Vienna. All members of the Executive Committee were present. The Committee was able to give detailed attention to matters such as strategies for international relations, projects, funding and the future location of the ELI Secretariat, before discussing these issues in a broader sense with the rest of the Council the following day.

Membership Committee chair Walter Doralt was joined by eight members of the Committee for a very productive meeting, where the recruitment of new Institutional Observers was the main focus of discussion. Those present were informed of the latest membership statistics, so that under-represented areas could be clearly identified. As well as regularly reviewing new applicants, the Committee works to selectively increase individual membership, always directed by the aim of building up a community of members which is diverse in terms of nationality, areas of expertise and professional experience.



The Executive Committee met at the Secretariat.



Walter Doralt chaired the Membership Committee meeting.

The Senate gathers for its first Meeting of 2014

Six members of the Senate met in Vienna on 27 February 2014 for a half-day meeting, with several members joining the Council meeting on 28 February to provide further input to the discussions. Irmgard Griss, Francis Jacobs, Jonathan Mance, Jan Ramberg, Eddy Wymeersch, and Reinhard Zimmermann attended the Senate meeting. During the meeting, the Senate reflected on the main goals achieved by the ELI since it was created, and examined various aspects of the ELI's current work, such as strategy for projects, the functioning of ELI Bodies, and financial matters.

The main conclusions of the Senate meeting were presented to the Council on 28 February by Senate Speaker Irmgard Griss. The Council received the Senate's report with interest, its contents fuelling a lively debate on the strategies which the Institute should adopt during the coming years.

In her speech, Irmgard Griss passed on the Senate's congratulations to the ELI Bodies for the substantial tasks that have successfully been accomplished since the founding of the ELI in 2011. Reflecting on the structure of the ELI Bodies, the Senate pleaded for a leaner administration. With respect to projects, the Senate members proposed some ideas for future endeavours, including a project which would examine the relationship between national courts and the Court of Justice of the European Union. Another idea presented was the assessment of the difficulties faced by the European Court of Human Rights, *inter alia* dealing with the interpretation of the Convention. The Senate also proposed a new strategy for initiating and developing ELI projects; namely the creation of expert working groups for different topics, which could continuously monitor developments in specific areas, and highlight any potential projects which might arise. The Senate emphasised the importance of quality control and identified the Advisory Committees as playing a crucial role. However, to ensure the highest standards, the Senate would also not hesitate to establish an ad hoc peer review mechanism if needed.

Work of the International Relations Committee

The members of the International Relations Committee (IRC) held a short meeting in the early morning of 28 February, before joining their colleagues for the Council meeting. Those present voted Sjef van Erp to chair the IRC and take a leading role in co-ordinating its work. As well as providing an opportunity for members of the Committee to get to know each other, the meeting allowed time for reflection on the aims and purpose of the IRC, with the members identifying priorities for current and future work.

A representative from UNCITRAL, Caroline Nicholas, was able to join the meeting and discuss the existing links between the ELI and UNCITRAL. This cooperation, as well as those with the American Law Institute and UNIDROIT were identified as the main focus of international relations at the moment. A list of organisations with which relations could be fostered in the future was also compiled.

Sjef van Erp also informed the Committee of his previous and upcoming engagements in the United States of America, where his participation at the World Bank's Law, Justice and Development Week has given the ELI some exposure on a global scale. Later this year he will speak at the US Uniform Law Commission's annual meeting.

The IRC plans to arrange its next meeting to coincide with the 2014 General Assembly in Zagreb.

Council Meeting Report

The first Council meeting of the year, held in Vienna on 28 February 2014, was attended by over 50 Council members. Chaired by President Diana Wallis, the full-day meeting was held in the Senatssaal of the University of Vienna. Senate members Irmgard Griss, Francis Jacobs, Jonathan Mance and Reinhard Zimmermann also joined the meeting, providing the Council with feedback on its current work and making recommendations for the future activities of the Institute. A representative of the European Commission (Directorate General for Justice, Fundamental Rights and Citizenship), Emmanuelle Cretin-Magand, was also present to observe the proceedings.

President Diana Wallis opened the meeting by expressing her gratitude that so many Council members had made the effort to attend, and the overall atmosphere of the meeting was one of enthusiasm for the Institute's immediate plans and conviction in its ability to adapt to new challenges. Alongside hearing reports from the chairs of the Council's Standing Committees, Council members made some concrete decisions regarding upcoming and current projects, as well as its own organisation. The Council expressed a great deal of support for the joint ELI-UNIDROIT project on Civil Procedure, and voted in favour of signing a Memorandum of Understanding with UNIDROIT. President Diana Wallis and Vice-President Christiane Wendehorst signed the agreement during the meeting.

MORE ABOUT CIVIL PROCEDURE PROJECT

In 2013, the ELI and UNIDROIT agreed to work together in order to adapt the American Law Institute/UNIDROIT 'Principles of Transnational Civil Procedure' from a European perspective and develop European Rules of Civil Procedure. In October 2013 an exploratory workshop was held in Vienna, gathering expert speakers in the field of Civil Procedure to analyse a series of topics and reflect on the best way to approach this ambitious project. Following the workshop, representatives from the ELI and UNIDROIT devised a project plan and nominated Reporters. In order to formalise the cooperation between the two Institutes, a Memorandum of Understanding between the ELI and UNIDROIT has been signed. A meeting at the headquarters of UNIDROIT in Rome in May should see the next most important steps of the project defined.



The recently completed Statement “Response to the European Commission’s Public Consultation on the review of the EU copyright rules” was also presented to the Council, who approved its publication. The Council also had words of praise for its authors, who worked under extreme time pressure to produce the document. For more information on this document, please see pages 5-6.

Further decisions which concern current ELI projects were the approval of the Advisory Committee for the ELI-ReNEUAL project “Towards Restatement and Best Practices Guidelines on EU Administrative Procedural Law” and the addition of three further members to the AC for the ELI Instrument on “Rescue of Business in Insolvency Law”. Please [click here](#) for more information on these projects.

The Council members also decided to dissolve the Council Composition Committee, which had originally been established to draft a procedure for conducting the first ELI Council elections, but whose role was now deemed redundant.

As well as the reports and decisions, members of the Council discussed a set of draft guidelines intended to help define the nature and work of ELI hubs. The Council had many constructive comments about the draft, which the Executive Committee will take into account when drawing up a final version which will be voted on in the coming months.

MORE ABOUT ELI HUBS

Although the official guidelines are yet to be formalised, there is much enthusiasm for ELI hubs across the continent. Soon joining the active hubs in France, the UK, Germany and Austria, will be a Slovenian Hub. Details of the launch of the Slovenian Hub can be found on page 9. Moreover, the Secretariat has been informed that Polish, Spanish and Croatian Hubs are in the very early stages of organisation.

The Council meeting also provided an opportunity for Council members to share ideas with their colleagues about the future activities which the Institute could undertake. In this respect, there was a lively discussion on the potential contribution that the ELI could make to legal education. Members of the Council were encouraged to continue developing their ideas on this matter and to discuss them on the MyELI platform. The topic will be on the agenda of the next Council meeting, scheduled to take place following the General Assembly in Zagreb on 26 September 2014.



The meeting was held in the Senatssaal of the University of Vienna.



The Council voted on several issues regarding ELI projects.

Response to the European Commission's Consultation: ELI Statement on EU Copyright Rules

by Axel Metzger

On 5 December 2013 the European Commission launched a [public consultation](#) as part of its on-going efforts to review and modernise EU copyright rules. This consultation builds on previous consultations and public hearings, but is broader in scope and raises questions of fundamental importance for the future development of EU copyright law.

Copyright has been harmonized since the early 1990ies by nine Directives of the EU. A tenth Directive on collective rights management and multi-territorial licensing of musical works for online use (Directive 2014/26/EU) has just been published in the Official Journal. In addition to the Directives, Recommendations and Green Papers, the ever growing body of case law of the European Court of Justice has to be taken into account as an essential part of European copyright law.

Additionally, copyright law is subject to a tight net of international conventions, especially the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Treaties and the WTO TRIPS Agreement. These conventions provide additional common ground for EU Member States. At the same time, the international framework restricts the leeway for EU institutions for future policy choices in the field of copyright.

This diversity of legal sources, many of which provide for minimum harmonisation or allow for different options for Member States, has led to frictions and incoherencies. Although subject to EU Directives, fundamental issues like copyright limitations and exceptions are not yet harmonised to an extent that would suffice for the establishment of a truly single market for copyright-protected works. Moreover, some of the core principles of copyright law have not been addressed until today by EU law. Moral rights have been spared so far in EU copyright law, which in the long run will undermine their importance.

Other areas almost untouched by the EU are contract law in the area of copyright, e.g. publishing or licensing contracts, and initial ownership in copyright, especially in employment relationships. Another intricate question concerns the possible creation of a unitary EU copyright title. Different from trade marks and designs (and in the future also patents), copyrights so far are only protected on a national level. It is therefore open for debate whether a EU copyright title should complement or even replace the current system of multiple European copyright directives and national copyright acts. The possibility of a future EU copyright title has been frequently mentioned in the latest official EU documents on copyright policy as a long-term vision. Such a legislative project would provide for an unprecedented opportunity to fundamentally rethink the current approach to protect works and right holders in Europe.

The European Law Institute's Working Party on Copyright Law, which was appointed by the Institute at the beginning of January 2014, has taken the opportunity given by the consultation to provide answers to some of the general questions raised by the Commission.



The Statement has been published in the publications section of the ELI website.

The Statement follows the order of questions of the consultation document. Questions addressing specific experiences of stakeholders have been omitted. As a response to a consultation questionnaire, the Statement's aim is not to develop a stand-alone draft or policy document for future EU legislation but to contribute to the current debate within the EU institutions.

People involved in the Project

Project Leaders



AXEL METZGER is Professor of Law at the Leibniz University of Hanover, Germany, where he teaches civil law, intellectual property and private international law. He graduated from the University of Hamburg and passed the

First and the Second State Examination at the Hamburg Court of Appeals. He received a “Doctor iuris” from the Universities of Munich and Paris II (Panthéon-Assas) for a thesis on German and French copyright law and an LL.M. from Harvard. From 2001-2008 he worked as a Research Fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg, where he finished his “Habilitation” in 2008 with a thesis on European private law. Professor Metzger has been visiting professor at University of Basel (2011) and Bucerius Law School (2012).



RETO HILTY is Director of the Max Planck Institute for Innovation and Competition, Munich, Full Professor at the University of Zurich and Honorary Professor at the University of Munich, Germany. He graduated from the

University of Zurich and received a “Doctor iuris” for a thesis on Swiss and European Patent Law. From 1994 to 1997 he acted as Head of Department and Member of Board of Directors at the Swiss Federal Institute of Intellectual Property (Patent and Trademark Office), Berne. Professor Hilty completed his “Habilitation” on licensing contracts in 2000; subsequently he became Full Professor for Technology and Information Law at the Swiss Federal Institute of Technology Zurich (ETH Zurich) before being appointed Scientific Member of the Max Planck Society in 2002.

Other Members of the Working Group

- **LIONEL BENTLY**, Herchel Smith Professor of Intellectual Property, Director of CIPIL at Cambridge University, UK
- **THOMAS DREIER**, Professor of Law at the Karlsruhe Institute of Technology (KIT), Karlsruhe, Germany
- **CHRISTOPHE GEIGER**, Associate Professor, Director General and Director of the Research Department of the Centre for International Intellectual Property Studies (CEIPI) at the University of Strasbourg, France
- **VYTAUTAS MIZARAS**, Advocate, partner at law firm “Lawin” and Professor at the Law Faculty of Vilnius University, Lithuania
- **MARCO RICOLFI**, Professor of Intellectual Property at the Turin Law School, co-director of the Nexa Center on Internet and Society of the Turin Polytechnic and Partner of the law firm Tosetto, Weigmann e Associati, Italy

Advisory Committee

- **GABRIELLA MUSCOLO**, Judge, Specialist Section for Intellectual Property and Competition Law at the District Court of Rome, Italy
- **RADIM POLČÁK**, Head of the Institute of Law and Technology at the Faculty of Law, Masaryk University, The Czech Republic
- **JAN ROSÉN**, Professor of Private Law at the Stockholm University, Sweden

President and Council Members at Trans Europe Experts Seminar in Paris

ELI President Diana Wallis spoke at a Trans Europe Experts forum held in the “Salle de la Commission des lois” of the French National Assembly on Friday 14 March. The forum focused on the main challenges that the new European Parliament will face following the elections at the end of May.

The meeting was opened by Professor Judith Rochfeld (Université Panthéon-Sorbonne, Paris I) and Professor Bénédicte Fauvarque-Cosson (Université Panthéon-Assas, Paris II), an ELI Fellow and a member of the ELI International Relations Committee and Council. In her talk, President Wallis, who shared the podium with Alain Lamassoure, Member of the European Parliament (MEP) and President of its Budgets Committee, addressed the current challenges faced by European democracy.



Two round tables followed the opening speeches. Moderated by Professor Mazeaud (Université Panthéon-Assas), one round table focused on migration and asylum issues. The criteria to determine what makes someone “European” and the management of European borders were some of the topics discussed by MEPs, journalists and academics. The second round table, moderated by Professor Rochfeld, focused on personal data protection.

The event was closed by Professor Carole Aubert de Vincelles (Université de Cergy-Pontoise, LEJEP), Secretary General of Trans Europe Experts and member of the ELI Council.

Projects Conference and General Assembly Update

Head of Secretariat Selma Povlakić and her colleague Mary Penman travelled to Zagreb this month to meet with the co-organisers of the 2014 ELI Projects Conference and General Assembly. Together with Dean Sikirić and Vice-Dean Baretić of the University of Zagreb’s Law Faculty, they discussed the logistics of the various events and visited the Conference venues. The Projects Conference and General Assembly will take place in the Croatian State Archives, a spectacular art-nouveau building in the centre of Zagreb. In the coming weeks Secretariat staff will be concentrating on the finalisation of the agenda for the event. **The event page and online registration system will be active by the end of April.**



EVENT OUTLINE

24 SEPTEMBER:
Opening Ceremony

25 SEPTEMBER:
Projects Conference

26 SEPTEMBER:
MCC Meetings
General Assembly
Council Meeting

ELI Austrian Hub co-organises lecture on EC Proposal for a Council Regulation on the Statute for a European Foundation

The ELI Austrian Hub, together with the University of Vienna Law Faculty's Department of European, International and Comparative Law organised a lecture on 27 March 2014 entitled "Do we need a European Foundation?". Invited to speak was Dr. Thomas von Hippel, a member of the Working Group of the ELI project on the European Foundation Statute. In his lecture he addressed the key features of the EC Proposal and reflected on its most innovative and controversial aspects.

Following the event, Verica Trstenjak, Professor at the University of Vienna and ELI Council member commented: *"The proposal for a European Foundation, striving to establish a supranational legal form, deserves more discussion both in theory and in practice, as the European regulatory framework affects all legal systems of the Member States. In this context common discussions of the ELI and law faculties can contribute to lead to a better quality of European legislation."*

The lecture is the first of a series of events to be organised under the auspices of the Austrian Hub of the ELI. The Austrian Hub, as other ELI hubs around Europe, are regional communication points allowing current ELI Members in the country where the hubs are located to keep closer relations with the Institute. They also provide a platform for exchange and facilitate recruitment of new members.



The lecture coincided with a meeting of the ELI European Foundation Working Group, which convened in Vienna on 27 and 28 March in order to finalise the ELI Statement.

ELI to be represented at International Contracts and Arbitration Conference

The Catholic University of Louvain, in cooperation with the University of Liège, will organise a one-day conference on international contracts and arbitration.

The event will take place in Louvain-la-Neuve on **25 April 2014** under the patronage of the ELI. The bilingual conference (French and English) will feature a morning and an afternoon session where harmonisation of international contract law and arbitration will be discussed by prominent experts in the field, many of them ELI Members. The ELI President Diana Wallis will deliver the welcome address.

[Here](#) you will find the programme. The conference fee is € 200 per person.

To register, please contact Mrs. Catherine Vanderlinden: catherine.vanderlinden@uclouvain.be.

COLLOQUE renseignements 25 AVRIL 2014 / 25 APRIL 2014

■ **LIEU / PLACE CONFERENCE**
Auditoire Montepiquet,
Place Montepiquet • 1348 Louvain-la-Neuve

■ **ACCES / ITINERAIRES**
De Bruxelles/Namur : Autoroute E411, direction Namur/
Bruxelles, sortie n° 8a, Louvain-la-Neuve
From Brussels/Namur: Motorway E411, direction Namur/Brussels, Exit
8a, Louvain-la-Neuve

Une signalisation est prévue à partir de la Nationale 4.
Further direction signs are provided from the Route Nationale 4.

Parkings Louvain-la-Neuve
Choisir le parking Grand Place. Les participants à la journée d'étude
recevront une carte de parking.
Parking lots Louvain-la-Neuve
Choose the Parking "Grand Place". All participants in the study day
will receive a parking ticket.

Plan de Louvain-la-Neuve / Map of Louvain-la-Neuve : <https://www.uclouvain.be/68206.html>

■ **INSCRIPTIONS ET INFORMATIONS / FOR REGISTRATION AND
FOR MORE INFORMATION**
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■ **FRAIS D'INSCRIPTION ET PAIEMENT / REGISTRATION FEE AND
PAYMENT**
200 € Le prix comprend: la documentation, l'ouvrage, le déjeuner et
le café.
Gratuit (étudiants, chercheurs et doctorants)
This price includes: the conference documentation, the book, lunch
and coffee.

Free of charge (students, researchers and PhD students)
Le paiement doit être effectué au compte suivant:
IBAN : BE69 0016 4220 8178 - BIC/SWIFT : GEBABEBB
Avec mention de la référence : Colloque - Contrats Internationaux et
arbitrage - 25 avril 2014 + et du nom et prénom du participant.
Payment should be made by bank transfer to the following account :
IBAN : BE69 0016 4220 8178 - BIC/SWIFT : GEBABEBB
With mention of the reference : "Conference - International contracts
and arbitration - 25 April 2014"
and of the first name and surname of the participant.

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Programme for the Slovenian Hub Launch available

The Slovenian hub will be launched in cooperation with the National Council of the Republic of Slovenia and the European Centre for Dispute Resolution (ECDR) on Monday, **14 April 2014** in Ljubljana.

The event will see many prominent speakers and panellists gather: the President of the Republic of Slovenia, Borut Pahor, the President of the National Council, Mitja Bervar and Marko Ilešič, Judge at the CJEU, to name only a few. The main topics of discussion will be the importance of the ELI for the development of European law and the implementation of European law in Slovenia.

The agenda for the event is available [here](#).

If you wish to attend the Slovenian hub launch, please register by sending an email to the ECDR: info@ecdr.si



The European Law Institute (ELI)
in cooperation with the National Council of the Republic of Slovenia
and the European Centre for Dispute Resolution (ECDR)
invites you

to the inaugural conference of the ELI Slovenian Hub

"The Activity of ELI in Slovenia
in light of its participation in the development of European law"

National Council of the Republic of Slovenia
Šubičeva 4, Ljubljana, Monday, 14 April 2014 (15.00 – 18.35)

Programme

1 st Part: The importance of the ELI for the development of European law	
15.00	Welcome address: President of the National Council Mr. Mitja Bervar
15.05 – 15.15	President of the Republic of Slovenia Mr. Borut Pahor
15.15 – 15.40	Prof. Dr. Marko Ilešič , Judge of the Court of Justice of the EU, "Slovenia and EU law"
15.40 – 16.05	Mrs. Diana Wallis , President of the ELI, Vice-President of the European Parliament (2009-2012), Honorary Professor at the University of Hull Law School: "The importance of the ELI for the development of European law and a general introduction to ELI's projects"
16.05 – 16.20	Break
2 nd Part: Continuation of the presentation of ELI's projects (proposals)	
16.20 – 16.40	Prof. Dr. Verica Trstenjak , founding member of the ELI, former Advocate General of the Court of Justice of the EU, elected member of the ELI Council: Presentation of projects: - Common European Sales Law (CESL), - European Foundation Statute, - European rules of civil procedure (joint project with UNIDROIT), - Collective redress/competition damages claims.



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Building on the wealth of diverse legal traditions, the European Law Institute's mission is the quest for better law-making in Europe and the enhancement of European legal integration. By its endeavours, the ELI seeks to contribute to the formation of a more vigorous European legal community, integrating the achievements of the various legal cultures, endorsing the value of comparative knowledge, and taking a genuinely pan-European perspective.