



ELI

EUROPEAN
LAW
INSTITUTE

ELI Updates

September-October 2015



GREETINGS FROM HEINZ W. ENGL, RECTOR OF THE UNIVERSITY OF VIENNA

Dear ELI Members and Friends,

I am especially pleased to contribute to the ELI's current newsletter in my capacity as Rector of the University of Vienna, since our alma mater this year not only celebrates its 650th anniversary, but is also proud to continue its partnership with the ELI for four more years.

In 2015, the ELI, represented by President Diana Wallis and Vice-President Christiane Wendehorst, and the University of Vienna agreed:

- that the seat of the ELI Secretariat, which has already been hosted by the University of Vienna since 2011, the year when the ELI was founded, will continue to be located at the University of Vienna as the ELI Secretariat's host institution up to 2019,

- and that the University of Vienna, notwithstanding full independence of the ELI, will continue its financial and in-kind support for running the ELI Secretariat for the next four-year period as before.

The University of Vienna is one of the largest universities in Europe, with a very international profile. Approximately 93,000 students are enrolled at the University of Vienna, of which 27,000 (or 29%) come from one of 141 different countries worldwide. With 9,700 employees, the University of Vienna offers a very wide range of scientific disciplines, ranging from natural sciences and life sciences to social sciences and the humanities. The events which took place during this year to celebrate the 650th anniversary of the University's foundation in 1365 highlighted the importance of research and teaching for the further development of our society and in particular for the qualification of future generations.

European integration is an important area of research at the University of Vienna, involving not only its Faculty of Law, but also other disciplines, such as social sciences and the humanities. This emphasis on European integration represents a high potential for fruitful cooperation between the University of Vienna (in particular its Faculty of Law) and the European Law Institute – today and in the future.

I am looking forward to continuing a successful cooperation and would be pleased to welcome you at one of the upcoming events organised by the ELI in Vienna!

Heinz W. Engl

Rector of the University of Vienna

Inside this issue:

Annual Conference and GA:
Report • 2

ELI bodies met in Vienna • 3

Council Elections • 4

From CESL to the DSM • 4

The future EU Administrative
Procedure Law • 5

European Rules of Civil
Procedure • 6

Fiduciary Access to Digital
Assets • 7

Empowering European
Families • 7

Rescue of Business in
Insolvency Law • 8

Rule of Law and Migration • 9

Progress Reports and MCC
Meetings • 9

Membership • 10

Special Interest Groups • 11

Criminal Law Project Team
meeting • 12

Update on events • 12

Upcoming events • 14

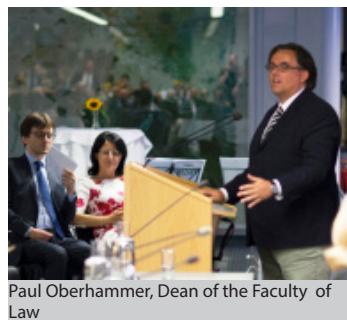
Institutional Observer • 15

2015 Annual Conference and General Assembly: A Report

The European Law Institute (ELI) held its Annual Conference and General Assembly in Vienna, from 2 to 4 September 2015. Over 200 participants, including EU Commissioner Věra Jourová and Immediate Past

President of the U.S. Uniform Law Commission (ULC) Harriet Lansing, gathered to discuss the achievements of the Institute, its challenges for the future and topical legal issues in diverse fields of law.

Opening Ceremony



Paul Oberhammer, Dean of the Faculty of Law

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, who expressed his gratitude that the ELI Secretariat will be hosted by the University of Vienna for another four years. Vice-Rector Faßman 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, 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. Harriet Lansing, Immediate Past President of the ULC, delivered a keynote lecture in which she highlighted the



Diana Wallis, Harriet Lansing and Heinz Faßmann

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 and therefore it is *"mutually worthwhile not only to exchange ideas and information but also to pursue opportunities to work together in specifically identified areas."*



Guests at the Opening ceremony

Keynote Lecture: Věra Jourová, EU Commissioner for Justice, Consumers and Gender Equality



Diana Wallis and Věra Jourová

Věra Jourová, EU Commissioner, delivered a keynote speech during the third day of the Conference. 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. Commissioner Jourová mentioned, among others, the recently published [2nd 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"](#), and the work done within the ELI project on ["Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law"](#). She expressed her gratitude for the ELI's decision to work on the project ["Empowering European Families: Towards more Party Autonomy in European Family and Succession Law"](#), as solving personal problems faced by EU citizens because of legal complexities in this field is high on the European Commission's agenda. Similarly, the ELI work on the ["Rescue of Business in Insolvency Law"](#) will be highly valuable for the European Commission, according to Jourová, who stressed that the ELI's work enhances the quality of EU law.

ELI bodies met in Vienna

The meetings of the Executive Committee and of the Senate

On 2 September, the ELI Executive Committee and Senate met in Vienna. The executive and advisory bodies of the ELI met separately and then held a joint meeting where the ELI strategy on projects, finances and other aspects of the functioning of the Institute were discussed.

ELI General Assembly, 3 September 2015

The ELI General Assembly began in the morning of 3 September, in the Austrian Academy of Sciences, where the Annual Conference took place. The meeting brought ELI Members together for the fifth time since the Institute's foundation in 2011. The event was opened by President Diana Wallis, who expressed her words of gratitude to all ELI Members and especially to the members of the Executive Committee for their work and contribution to the growth of the Institute. Following the President's address, Members were invited to take part in the elections of half of the current composition of the Council. More information about the elections can be found on [page 4 of this Newsletter](#).



Participants of the General Assembly

After the voting, the General Assembly continued with the approval of the minutes of the 2014 General Assembly and the presentation of reports. Diana Wallis presented the report from the President and Executive Committee, positively assessing the ELI's development and growth. The ELI accounts and budget forecast were presented by the Treasurer and Chair of the Fundraising Committee, Johan Gernandt, who expressed confidence in the Institute's financial situation for the upcoming year and called for an active engagement in fundraising efforts.

Parallel to this meeting, the Membership Committee gathered to discuss membership related issues and to prepare for the General Assembly that would take place the following day.

The ELI Vice-President, Christiane Wendehorst, delivered a report on projects and confirmed the commitment of the Executive Committee to continue working in the areas where the ELI has gained reputation in the last few years, while opening the Institute to new areas of expertise.



Speakers at the General Assembly

The report on the functioning and development of the ELI Special Interest Groups (SIGs), approved by [Council Decision 2015/1 of 13 February 2015](#), was presented by John Sorabji, member of the Executive Committee. He reported on the establishment of SIGs in diverse areas of law and responded to Members' questions about this new ELI structure. For more information about SIGs, please check the [ELI website](#) and [page 11 of this Newsletter](#).

Walter Doralt, Chair of the Membership Committee, presented promising trends concerning the growth of the ELI's membership. More details on this report are provided on [page 10](#).

The General Assembly concluded with President Diana Wallis expressing her gratitude to all the attendees for their participation in the 2015 General Assembly and Council elections, and inviting them to actively participate in the panel sessions. She also acknowledged the kind reception the ELI received from the Austrian Academy of Sciences.

Council and Executive Committee elections



Council elections

During the General Assembly, Dr Irmgard Griss, the Returning Officer for elections and Speaker of the Senate, encouraged ELI Members to take part in the Council elections, to decide on the [new composition](#) of this ELI body.

After the elections, the new Council celebrated its first meeting in the Sitzungszimmer of the Austrian Academy

of Sciences. The meeting started with the Executive Committee elections. The President, Vice-President, Treasurer and all other members of the Executive Committee were unanimously re-elected and confirmed in their positions.

During the meeting, different aspects of the ELI strategy on projects were discussed and a proposal for an ELI project on family law was approved by the Council. More information on this project can be found on the [ELI website](#) and on [page 7 of this Newsletter](#).

Panel I: From CESL to the Digital Single Market

The first panel of the Annual Conference could not have been more topical and relevant, since the very same day the European Commission closed its public consultation on contract rules for online purchases of digital content and tangible goods.

Lord John Thomas, Lord Chief Justice of England and Wales, chaired the panel session and remarked that the Digital Market is probably one of the biggest changes that society is undergoing and that it is essential for Europe's citizens to know how the law on the Digital Market is shaped. Lord Thomas noted that in this sense the Digital Single Market establishes the centrality of law to society, which is becoming ever more digitised and that the ongoing work on the Digital Single Market provides a real opportunity to take European contract law forward.

Christiane Wendehorst, Professor of Law at the University of Vienna, discussed the two main points of the public consultation: the supply of digital products on the one hand, and the online sale of tangible goods on the other. Regarding the online sale of tangible goods, Professor Wendehorst highlighted the risk that the instrument which is being prepared would come at a higher cost to national legal systems than what the CESL proposed, if the result would be a full harmonisation instrument. Regarding the supply of digital products, she reminded that any legislative action would have to be focused on the concerns of the users of digital products in the EU.

She presented a list of ten focal points of concern and debate, including issues of data privacy, a right to receive updates, a right to re-sell digital content, and rights and duties of platform providers. It would be difficult to capture all those concerns under the umbrella of 'quality' or 'conformity', because, even if defined broadly, 'conformity' is an issue mainly when the product falls short of what the supplier himself provided as a description and/or industry standards set by the big global players. Here again, what was needed were more specific and comprehensive solutions.



Panel I: From CESL to the Digital Single Market

Axel Metzger, Professor of Law at Humboldt University, observed that digital goods, which will be covered by the expected EU instrument, are now covered by IP law, and it would be interesting to try to bring such agreements under the umbrella of sales law, because sales law provides higher minimum rights to users. Professor Metzger discussed a number of issues that merit special attention in this regard. Firstly, there are different types of contracts that fall under the online purchase of digital content and the same rules would not necessarily fit them, such as contracts for digital goods and for digital

services. Secondly, he pointed out that the counter performance of the purchaser under these contracts can be very different and range from simple monetary payments to the customer handing over information or data. Thirdly, he noted that the Commission should consider the consumer's right of resale in the expected instrument, because at the moment different rules apply to that right, depending on the type of digital goods. Professor Metzger also emphasised the need to carefully consider interoperability issues and whether they should be addressed by establishing information requirements or as criteria for conformity and quality. Finally, he

mentioned portability and the need to cover it in an instrument in this field. According to Professor Metzger, all these issues could be hard to cover by a mere contract law scenario and the EU legislator should introduce a holistic approach that addresses real consumer concerns even if they are not contract concerns.

After fruitful discussions, Lord Thomas closed the panel, reminding the audience that the ELI's work in this field has to keep in mind that the benefits of any new instrument should be for the consumer.

Panel II: The Future EU Administrative Procedure Law: Issues of Content and Scope

This panel focused on the EU Administrative Procedure Law and was chaired by Jacques Ziller, Professor of European Union Law at the University of Pavia, joined by Heidi Hautala, Vice-Chair of the Group of the Greens/European Free Alliance of the European Parliament, Herwig Hofmann, Professor of European Law at the University of Luxembourg, Ian Harden, Honorary Professor at the University of Sheffield and Former Secretary-General of the European Ombudsman, and Marc Clément, Administrative Judge at the Administrative Court of Appeal of Lyon and Member of the ELI Executive Committee. The aim of the panel was to discuss the necessity of adopting an EU Administrative Procedure Law, as this law could guarantee the rights and regulate the duties of EU citizens in their relations with EU institutions, and the possibility for the ELI to work on some aspects of such a model law.

Heidi Hautala, a standing rapporteur at the Legal Affairs Committee of the European Parliament, said that a consistent and coherent Administrative Procedure Law will be beneficial for Europe. Since currently there are only principles that direct administrative procedures, according to Hautala, a law of the administrative procedure would make these principles more visible. In her view, administrative law would be "*a vessel that brings the constitutional values and general legal principles from*

the various sources into the everyday decision-making".

Herwig Hofmann then explained that the ReNEUAL group, with the help of the ELI since 2012, has been looking throughout policy areas in the EU and throughout Member States' examples of codification of administrative law to identify what the problems are and whether solutions could be found. The objections against codifying the EU Administrative Procedure Law are based on the fear that the codification would lead to further complication or over-juridification of the Administrative Procedure Law. But many of those fears



Panel II: The Future EU Administrative Procedure Law: Issues of Content and Scope

have shown to be unfounded.

Marc Clément emphasised that codification of the Administrative Procedure Law might be needed to consolidate the EU institutions and to restore the confidence of EU citizens in EU institutions. The question of the level to which the proposed regulation on Administrative Procedural Law should apply was

addressed by Ian Harden. According to him, since the regulation proposal is partly based on the general principles of EU law as set out in the case-law of the CJEU, these principles would continue to apply to the Member States' administrations after the enactment of the regulation. Panellists also discussed the desirability of defining 'administration' or 'administrative activity' in the future regulation, and agreed that - based on the experience of the European Ombudsman - it makes

more sense not to have a definition, as it might limit the scope of the regulation.

The ELI envisages continuing the work done in this field, in order to address those challenges, in cooperation with ReNEUAL and the European Parliament, and contributing with its work to the further development of EU Administrative Procedure Law.

Panel III: From Transnational Principles to European Rules of Civil Procedure (ELI - UNIDROIT joint project)

One year after the first working groups of the ELI-UNIDROIT joint project "From Transnational Principles to European Rules of Civil Procedure" were established, the project reporters met in Vienna to present their progress. The ELI-UNIDROIT panel discussion was one of the highlights of the first day of the ELI 2015 Annual Conference.



Panel III: From Transnational Principles to European Rules of Civil Procedure (ELI - UNIDROIT joint project)

The panel began with opening remarks from the two co-chairs: Diana Wallis, President of the ELI, and José Angelo Estrella Faria, Secretary-General of UNIDROIT. Ms Wallis welcomed the guests and expressed her sincere gratitude to the almost 30 working group members involved in the project and the development of draft procedural rules. Mr Estrella Faria emphasised the impact of civil procedure on the economy and the life of each citizen. He further pointed out that this project is focusing on the laws of Europe, but that the rules will inevitably have an impact on the development of civil procedure around the world.

Following the opening statements, reporters from the initial three working groups addressed the most controversial aspects of their work. Gilles Cuniberti, Professor of Private International Law and Comparative Law at the University of Luxembourg, addressed issues

regarding Provisional and Protective Measures; Eva Storskrubb, from Uppsala University, focused on Service and Due Notice of Proceedings; and Neil Andrews, Professor of Civil Justice and Private Law at the University of Cambridge, presented aspects of the work of the group on "Access to Information and Evidence".

Subsequently, Rolf Stürner, Professor at the University of Freiburg, who is a member of the project's Steering Committee and who was actively involved in the creation of the ALI-UNIDROIT Principles of Transnational Civil Procedure, discussed the project's history, methodology and aims. He observed that the current state of European legislation, which has developed in a "step-by-step patchwork manner", provides an opportunity for the ELI and UNIDROIT to present a useful guideline for European legislators.

Michael Shotter, Head of the Civil Justice Policy Unit at the Directorate General of Justice and Consumers of the European Commission, discussed the working groups' progress. Mr Shotter stressed that the European Commission is following this project with great interest and how he is confident that its final product will contribute to the establishment of minimum standards.

Following the presentations, participants at the Annual Conference took the opportunity to exchange their views with the reporters. The upcoming Conference that ELI and UNIDROIT are organising, in cooperation with the Academy of European Law (ERA), for 26-27 November in Trier will provide another invaluable opportunity to continue the discussion. For more information about this event see the [ELI website](#) and [page 14](#) of this Newsletter.

Panel IV: Fiduciary Access to Digital Assets (feasibility study with ULC)

The panel on Fiduciary Access to Digital Assets focused on the transfer of property and information at death or incapacity in a digital age. It was notable for the contribution of its outstanding panellists, representing both law and technology. Discussions and contributions dealt with fascinating issues, such as the nature of digital property, the different paces of law and technology, the cross-border nature of the digital world, the possibility to seize digital assets or the need to protect consumers and specifically owners of digital assets in cases of death or disability.

The chair of the panel, Judge Harriet Lansing, Immediate Past President of the U.S. Uniform Law Commission (ULC) offered an overview on the Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA). This act creates a structure to apply effective laws on transfer of property to new types of property. The 2015 revised Act resolves some privacy issues that prevented the Act's previous enactment.



Panel IV: Fiduciary Access to Digital Assets (feasibility study with ULC)

The feasibility study that the ELI is developing with the U.S. ULC was then introduced by Sjef van Erp, Professor of Civil Law and European Private Law at the University of Maastricht and a member of the ELI Executive Committee.

The study aims to explore whether this instrument, the UFADAA, can be adapted to European Law. Since the digital world is cross-border, European and even global harmonisation is necessary. An approach that overarches legal traditions is needed and a consensus within the IT industry ought to be reached.



Harriet Lansing

Significant illustrations were provided by Radim Polčák, Head of the Institute of Law and Technology at the Faculty of Law of Masaryk University, who raised questions related to the

fraus in disponendo, the role of service providers and the transfer of intentionally hidden assets. Jos Uitdehaag, First Secretary at the Union Internationale des Huissiers de Justice, focused on the new means of enforcement of digital assets and concluded that legislation does not catch up with technologic developments. To wrap up such an interesting and relevant panel, Ernst Steigenga, Senior Advisor of Information Policy at the Ministry of Security and Justice of the Netherlands, elaborated on the instruments that are being provided to develop a European e-Justice portal, such as the e-CODEX.

Stimulating questions followed the presentations and contributed to this rewarding and enlightening panel. The main challenges that the ELI feasibility study will have to face were addressed, contributing to reducing the existing gap between law and technology. The materials of the panel are available on the [ELI website](#).

Panel V: Empowering European Families: Towards more Party Autonomy in European Family and Succession Law



Christiane Wendehorst

Chaired by Christiane Wendehorst, Professor of Law at the University of Vienna, this panel presented the ELI project "[Empowering European Families: Towards more Party Autonomy in European Family and Succession Law](#)". The project, adopted by [Council](#)

[Decision 2015/8](#), aims at reducing obstacles faced by international families in the EU, in particular at providing a higher degree of certainty and predictability of results, reducing the costs of litigation in matters of family and succession law, and promoting family mediation in the EU.

Christiane Wendehorst described different scenarios, explaining that international couples moving their

families abroad were *“flying blindly into a storm of unexpected legal effects”*. Ensuring the early choice of court and of applicable law within the framework of existing (and future) private international law instruments could avoid many of these. Professor Wendehorst called for the need to develop the European Model Dispositions concerning, in particular, choice of court and choice of law, as well as particular agreements concerning substantive family law.



Wendy Schrama

Wendy Schrama, Professor of Family Law at the University of Groningen, further explained that the ELI project would develop a model marriage agreement that would include private

international law clauses and conditions of substantive law. The project would also develop model cohabitation agreements on the rights and duties of informal partners. According to Professor Schrama, combining party autonomy in private international law and in substantive family law could have an empowering effect on families.

The topic of international family mediation was also

Panel VI: Rescue of Business in Insolvency Law

The ELI project on [“Rescue of Business in Insolvency Law”](#) was presented in the VI Panel. The project has been on-going since early 2014 and has made great progress. The panel was chaired by Bob Wessels, Professor of International Insolvency Law at the University of Leiden, who introduced the project and the other panel members.

Stephan Madaus, Professor of Civil Law, Civil Procedure and Insolvency Law at the Martin Luther University Halle-Wittenberg, discussed the options to resolve financial distress outside formal insolvency proceedings. Professor Madaus explored various options to further support an out-of-court rescue by making use of voluntary options. He noted that it was particularly challenging to find the balance between realising an out-of-court rescue and ensuring that secured and preferential creditors are not worse off than they would be in insolvency proceedings, because then they would not have an incentive to negotiate.

discussed during the panel. Kerstin Bartsch, legal expert and former family mediator, explained the advantages of mediation when compared to a lawsuit. According to Ms Bartsch, mediation should be encouraged, for instance by preparing a model agreement for mediation.

Richard Frimston, solicitor and notary public, provided another practitioner’s perspective and added insights into the UK’s approach to party autonomy in family law matters. In his view, preparing agreements on how to deal with potential future legal disputes in advance makes it easier to handle them once they occur. Therefore, party autonomy is crucial and needs to be encouraged. He stressed that any model dispositions the ELI project team will prepare would need to be simple and accessible.

Michael Shotter, Head of the Civil Justice Policy Unit at the Directorate General of Justice and Consumers of the European Commission, referred to divorces and pointed out that the cross-jurisdiction factor adds a level of complexity to an already painful situation. He emphasised that the European Commission is currently working on the revision of the Brussels IIa Regulation and the revised text is expected to include a possibility for the parties to choose the competent court.

Stephen Taylor, Partner at Isonomy, focused on the role of lawmakers and highlighted issues that, from his perspective, cause considerable confusion. He also discussed differences between financial



Bob Wessels

difficulties of small companies and larger enterprises. When small companies are financially distressed, the cause usually is a structural problem in their business model, while for enterprise groups the issue is often over-indebtedness. Different approaches are required for these different situations.

Paul Oberhammer, Dean and Professor at the Faculty of Law of the University of Vienna, emphasised that over the years many EU Member States have taken initiatives to improve their insolvency laws. He noted that when further improvements of insolvency laws are considered,

it had to be accepted that lawmakers cannot provide what is most needed, namely new capital. The lawmaker can, however, redistribute money among the parties involved. He also pointed out that insolvency law is an embedded law, intertwined with a number of other

laws. This provides challenges when harmonisation is attempted.

The project reporters plan to have their first drafts ready by spring 2016.

Panel VII: Rule of Law and Migration



Panel VII: Rule of Law and Migration

The final panel of the Conference focused on detention of asylum seekers and irregular migrants and the rule of law. The panel was chaired by Boštjan Zalar, Senior High Court Judge of the

Administrative Court of the Republic of Slovenia, Vice-President of the European Chapter of the International Association of Refugee Law Judges and an ELI Council Member. The panellists speaking at this session were: Killian O'Brien, from the European Asylum Support Office, Judge Hugo Storey, President of the European Chapter of the International Association of Refugee Law Judges (IARLJ), and Adriano Silvestri, Head of the Asylum and Migration Sector of the EU Agency for Fundamental Rights (FRA).

Adriano Silvestri took the floor first, introducing to the participants the work and the role the FRA plays in the field of asylum and migration. He welcomed the proposal for an ELI project on detention of irregular migrants and identified the three major challenges in relation to detention: (1) the use of alternatives to detention; (2) the need for an individualised approach to detention decisions in judicial proceedings; (3) immigration detention of children. Mr Silvestri assured that the ELI's

work in this field would be recognised and could be instrumental in helping apply the fundamental rights standards to the immigration detention proceedings across EU Member States.

Hugo Storey was the next to address the audience, stating that the IARLJ has always tried to address the practicalities of tackling the arising issues in the field of asylum, particularly by providing a set of tools ready to be implemented by the relevant judges. He stressed that a very complex picture still remains for those who apply asylum and migration law and agreed that the codification of a coherent set of tools of application of the relevant EU law would have a significant role for the judiciary.

Killian O'Brien stated that working towards a robust implementation of the EU asylum system is a crucial point in such unprecedented times. He added that an ELI project in the field could be of high relevance for the training EASO is coordinating with and on behalf of judges.

Concluding the session, Boštjan Zalar agreed with the panel speakers on the relevance and necessity of 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 in this field.

Progress Reports and MCC Meetings

On 4 September, the Members Consultative Committees (MCC) of the ELI projects on criminal law, civil procedure and rescue of business in insolvency law met in Vienna. During the MCC meeting of the ELI Project on ["Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law"](#), André Klip, Professor of Law at the University of Maastricht and one of the reporters,

discussed the state of play of the project with the members of the MCC. Professor Klip presented the main features and contents of the four scenarios elaborated by the Project Team and their level of impact and political feasibility. A debate with the participants followed and focused especially on the "Regulation on Territorial Jurisdiction in the Area of Freedom, Security and Justice"

and its ambitious set-up (restricting extraterritorial jurisdiction within the Area of Freedom, Security and Justice). More information on this project is provided on [page 12](#).

The MCC meeting on the ELI project "[From Transnational Principles to European Rules of Civil Procedure](#)" was chaired by Matthias Storme, Professor of Law at the KU University of Leuven, joined by Neil Andrews, Professor of Civil Justice and Private Law at the University of Cambridge and two Steering Committee members, Remo Caponi, Professor at the University of Florence and John Sorabji, Principal Legal Adviser to the Lord

Chief Justice and Master of the Rolls. The participants discussed the scope of the project and analysed some of the challenges the Project Team might face in the upcoming phases of the project.

The MCC meeting of the ELI project on "[Rescue of Business in Insolvency Law](#)" was chaired by Stephan Madaus and Bob Wessels, two of the project reporters. During the meeting, some aspects of the project were discussed, such as common characteristics of small and medium enterprises, and the situation of employees of distressed businesses.

ELI Membership: reflecting and maintaining the full diversity of lawyers in Europe and beyond

The ELI membership has grown significantly every year since its creation in 2011. Having started with 53 founding Members, the Institute has overcome the milestone of reaching more than 1,000 Members in 2014. Currently 53 nationalities are represented, marking the wide reach beyond Europe and EU Member States. More than 80 Institutional Observers have joined the ELI, including a number of Supreme Courts, supranational organisations and law firms. Maintaining diversity with regards to areas of expertise, nationalities and different professional backgrounds will be essential to keep the ELI a vibrant community of legal professionals, a unique meeting point for its Members and to add legitimacy of projects approved by this broad constituency:

"Where imbalances in our membership are perceived to arise, we will target them, a few at a time, ensuring diversity geographically, with regards to the areas of expertise of our Members and professional backgrounds", explained Walter Doralt, Chair of the Membership Committee. "We want to address imbalances early on and our focus will change about every six months. At this time, we hope to attract more lawyers with expertise in Criminal Law, Tax Law and Labour Law."

Doralt notes: *"This requires active help from our members: Our Members, in their professional environment, know who has particular expertise in these areas of the law and could*

be interested in joining the ELI. Suitable colleagues should therefore be encouraged to apply for membership. This is welcome in general and, now particularly, for those with expertise in Criminal Law, Tax Law and Labour Law."

Membership Focus - Next 6 Months:

- **Criminal Law**
- **Tax Law**
- **Labour Law**

All other applications of excellent lawyers are, as always, highly desirable too, irrespective of this current focus. Membership applications are made online, directly through the [ELI website](#). Detailed information on what the ELI currently does and stands for can be found on the [ELI website](#) as well.

Membership fee: if you have not yet paid your membership fee for 2015, please do so by bank transfer or [PayPal](#). Please contact the [Secretariat](#) with any questions arising in this context.

Become a member

Special Interest Groups (SIGs)

Promising first steps of SIGs

The last two months were very active for the ELI Special Interest Groups (SIGs). Most of the groups appointed their co-ordinators, which are to be responsible for organising the SIG's work and liaising with the ELI Secretariat, Executive Committee and Council. The Secretariat is pleased to note that some of the SIGs seized the opportunity to meet during the Annual Conference in September, where their members shared ideas and discussed the working procedure.

SIGs were established as subject-specific hubs where ELI Members who are experts in one specific field work together to scrutinise the latest developments, identify ideas for projects and identify those aspects of the law that could benefit from a contribution of the ELI. We are glad to see that the size of SIGs is growing steadily. The SIGs have a 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 will be 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, thus providing an active forum for debate and project development. SIG members are encouraged to use their exclusive section of the [MyELI platform](#) to post comments and suggestions and to interact with each other.

SIGs are open to all ELI Members at any time. If you have an interest in participating, please contact the [Secretariat](#). If you do not find a SIG in the field of law that interests you, you should 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.

The Digital Law SIG met in Münster - An inspiring start



The Digital Law SIG meeting in Münster

The Digital Law SIG had its second meeting in Münster, Germany, on 2 October 2015. The well attended event followed the Conference "Digital Revolution: Challenges for Contract Law in Practice",

co-organised by ELI Council member Professor Reiner Schulze. 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. It brought together academics, practitioners, policy makers and European Commission representatives, to discuss important issues of a new and emerging field of law.

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. The meeting also served to organise the future work of the group and provided an opportunity to have an open dialogue with experts from the European Commission in the respective topics.

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. The next meeting has already been scheduled for January 2016. In the meantime, all members of the ELI that are interested in digital law are kindly invited to join the SIG by contacting the ELI [Secretariat](#).

ELI Project on “Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law” - The Project Team met in Vienna on 1-2 September

The third meeting of the ELI Project Team on “[Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law](#)” (CJCL) was held in Vienna on 1 and 2 September with the financial and organisational support of the ELI. Following the conclusions of the 2nd meeting (March 2015), the Project Team streamlined the comparison with the field of Private International Law, analysed the perspective of the defendant and the victim, and discussed the Problem Scenario.

On the first day, Katalin Ligeti, Professor of European and International Criminal Law at the University of Luxembourg, Gilles Cuniberti, Professor of Comparative Law and Private International Law at the University of Luxembourg and Dr Pietro Ortolani of the Max Planck Institute Luxembourg, discussed the similarities between the principles of International Criminal Law and Private International Law, focusing on the concept of “substance neutrality” and its viability in the field of criminal justice. Professor Michiel Luchtman from the Utrecht University and Dr Michele Simonato from the University of Luxembourg presented the role and rights of the defendant and the victims in the settlement of conflicts of jurisdiction. The opportunity for an in-depth field research and interviews with defence lawyers were agreed with the European Criminal Bar Association (ECBA). Some recent developments on the system of case allocation in the current negotiations on the European Public Prosecutor’s Office (EPPO) were presented by Dr Hans-Holger Herrfeld of the German Federal Ministry

of Justice and Consumer Protection, focusing on the eventuality of potential conflicts of jurisdiction and their resolution within the future “single office”. Holger Matt from the ECBA, José Eduardo Guerra and Stephanie Bovensiepen from Eurojust, and Sue Patten from the Crown Prosecution Service of the United Kingdom (via conference-call) joined the meeting as external guests and provided their inputs and remarks to the discussion.

On 2 September, the Working Sessions of the meeting were dedicated to the Problem Scenario. As part of the innovative approach of the project, the Problem Scenario analysed four different policy options and laid down the conceptual basis and the essential contents for the development of different legal proposals on the issue of conflicts of jurisdiction in the Area of Freedom, Security and Justice. The four presented Scenarios were: the “Baseline scenario” (Scenario 0), the “State of Affairs plus” (Scenario 1), the “EU rules for the settlement of conflicts of jurisdiction in the Area of Freedom, Security and Justice” (Scenario 2), and the “Regulation on Territorial Jurisdiction in the Area of Freedom, Security and Justice” (Scenario 3). In the forthcoming months, the contents of the different Scenarios will be elaborated by the Project Team and framed into concrete legal drafts (especially Scenarios 2 and 3).

The fourth Meeting of the Project Team has been scheduled to be held on 18 and 19 February 2016 in Luxembourg.

The ELI President at the Eurasian Women’s Forum



Diana Wallis with Tsisana Shamlikashvili

ELI President, Diana Wallis, participated in the Eurasian Women’s Forum, which was organised in St. Petersburg on 24-25 September by the Federation Council of the Federal Assembly

of the Russian Federation and the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (IPA CIS).

President Wallis participated in the panel “Dialogue in the World, means peace in the World”, during which she presented the ELI and elaborated on the role of mediation in handling conflicts as well as on the need of dialogue in the contemporary world.

Her visit at the Forum was also an opportunity to meet Tsisana Shamlikashvili, the President of the [Scientific and Methodological Center for Mediation and Law](#), one of the ELI Institutional Observers. This was a great occasion to discuss and explore possibilities to strengthen cooperation between the ELI and the Center.

The ELI President participated in the 2nd Ferrara Forum on European Consumer and Contract Law

Diana Wallis, the ELI President, participated in the 2nd Ferrara Forum on European Consumer and Contract Law entitled “Unfair Commercial Practices and Private Law of EU Member States. The impact of Directive 2005/29/EC on National Contract and Tort Law.” The Forum was organised by Professor Giovanni De Cristofaro and Dr Alberto De Franceschi from the Department of Law of the University of Ferrara and took place on 8-9 October 2015.

The aim of the Conference was to critically assess the results of the diverse implementation of the Directive 2005/29/EC on Unfair Commercial Practices by the EU Member States. Participants were also discussing the need for full harmonisation of private law consequences

of violations of the prohibition of unfair commercial practices.

Diana Wallis addressed the participants with her speech on the “European Consumer and – Contract Law – New Challenges and the Role of the ELI”. The event was an opportunity to exchange views before the 2016 ELI Annual Conference, which will take place in Ferrara from 7 to 9 September 2016.



Participants at the Forum

The ELI Polish Hub supported an International Conference on Damages for violations of Human Rights

On 22-23 October, an International Conference entitled “Damages for violations of Human Rights - domestic, comparative and international perspectives”, took place in Gdańsk (Poland), organised by ELI Fellow Ewa Bagińska, Professor of Law at the University of Gdańsk, in collaboration with the Nicholas Copernicus University of Toruń and with the support of the ELI Polish Hub. The Conference aimed at discussing compensation and reparation for human rights violations from the perspectives of civil, international and human rights law.



Participants of the panel

The first session, devoted to “Compensation for violations of human rights in domestic legal systems”, focused on four national examples. The Irish, Greek, Norwegian and Polish legal systems were presented by experts from the respective countries.

The second session focused on “The concept of damage in domestic and international law”. Elena Bargelli, Associate Professor of Private Law at the University of Pisa and an ELI Council Member, explained the concepts of damage and monetary remedies in Italian civil and constitutional law. Representatives of the University of Toruń analysed the concept from the Polish and international law perspectives. Renata Degener from the ECtHR Registry presented recent developments concerning the concept of damage and just satisfaction in the case-law of the European Court of Human Rights.

The last session of the Conference concerned the “Forms of reparations for violations of human rights – the perspective of public international law”. Panellists analysed the ECtHR approach to individual redress, the general regime of reparations under international law, and the responsibility of the EU for dealing with violations of fundamental rights.

The event was an opportunity for members of the ELI Polish Hub and other participants to discuss various issues concerning damages for violations of human rights. More information about the Conference can be found [here](#).

Upcoming ELI conferences

ELI-UNIDROIT Conference in cooperation with ERA: “Building European Rules of Civil Procedure” Trier, 26-27 November 2015

The ELI and UNIDROIT are organising a conference on their joint project “From Transnational Principles to European Rules of Civil Procedure”. The event is organised in cooperation with the Academy of European Law (ERA) and will take place in Trier (Germany) on 26-27 November. You can register for the Conference [here](#).

The ELI-UNIDROIT project is a cooperative venture that builds upon the Transnational Principles on Civil Procedure, established by the American Law Institute (ALI) and UNIDROIT. More information on the project is available on the [ELI website](#).



ELI Conference on “New Models for Contracts in the Digital Single Market” Vienna, 21-22 January 2016

The ELI is organising a conference entitled “New Models for Contracts in the Digital Single Market - User Money, User Data, User Lives”. The event will take place in Vienna on 21-22 January 2016 at the premises of the Austrian Ministry of Justice. More information will be provided in

due course on the [ELI website](#). Save the date and don’t miss this opportunity to join the most prominent legal experts in this topical field.

Upcoming ELI Hubs events

Polish Hub event on 21 November 2015 in Cracow

The ‘VII Jagiellonian Colloquium’ organised by the Civil Law Chair of the Jagiellonian University with the support of the ELI Polish Hub will take place on 21 November 2015. The event will be devoted to “The Influence of the Case Law of the Court of Justice of the EU on the Application of Polish Law”.

The first part of the Conference will examine substantive law cases, followed by a second part where procedural issues will be covered. Among participants are Marek Safjan, Judge of the Court of Justice of the EU, and Maciej Szpunar, Advocate General and an ELI Member. Many of the featured speakers are also ELI Members.

German Hub event on 4 March 2016 in Frankfurt am Main

The ELI German Hub is organising a colloquium together with the Ernst von Caemmer Foundation and the Goethe University Frankfurt am Main. The event will take place on 4 March 2016 and will focus on the harmonisation of sales

law from the European, international and comparative perspectives. For more information, please contact the [organisers](#).

New Institutional Observer

The Bar Association of Novi Sad joins the ELI as a new Institutional Observer

The Vojvodina Bar Association, then called the Bar Association of Novi Sad, was established in 1921. It has six branches and approximately 1,800 attorneys and 400 apprentices.



Advocating the principles of respect for human rights, constitutionality and legality since its founding, the Bar Association operates independently. It is the only Bar Association of former

Yugoslavia, not being a national bar, which is a member of the International Union of Lawyers (Union Internationale Des Avocats) and a Permanent Member of the Vienna

Conference of Bar Associations.

In addition to strictly professional issues, the Vojvodina Bar Association is also known for a scholarship programme for law students and is one of the founders of the fund for Scholarships for Gifted Students of the University of Novi Sad. It is also a publisher of important publications and books in the fields of law, sociology and economy and a sponsor of events related to law and legality.

One of the most important fields of its work is the Academy for Attorneys (2009), which is a venue for constant legal education of lawyers, apprentices and law offices administrative staff.

The Secretariat of the ELI is moving to a new location

The ELI Secretariat, based in Vienna, will soon be moving to its new premises, located very close to the current address. The new headquarters will be located at Wipplingerstraße 34, at the historic Börse building, where the Vienna Stock Exchange was located until 1998.

The ELI Secretariat team cordially invites you to visit its headquarters whenever you are in Vienna.



Börse building



The ELI mission

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.

Secretariat of the ELI

Schottenring 14
1010 Vienna
Austria

Phone: +43 (0)1 4277-221 01
Fax: +43 (0)1 4277-9221

secretariat@europeanlawinstitute.eu