



ELI

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ELI Updates

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MESSAGE FROM ENCARNACIÓN ROCA TRIAS, JUDGE AT THE SPANISH CONSTITUTIONAL COURT

Dear ELI Members and Friends,

At the moment, the European Union faces many challenges of different nature, some of them directly related to harmonisation of private law. In order to further advance in the road to legal integration, EU Member States' actions should follow the principle of trust. For building that trust, the role of judges is of great relevance, as is the role of legislators. As the American example shows, organising a plural system is possible, but trust is of essence to achieve that complex goal.

National judges play a key role in the application of European legislation and therefore on legal integration. Consumer law and the observance of the CJEU judgments in this field provide examples of the essential role of national judges in boosting domestic application of European law in a uniform way. The European legal landscape would therefore greatly benefit from further harmonisation of the methods of interpretation of European and domestic legislation applied by national judges.

As an organisation that gathers legal professionals from diverse legal backgrounds and jurisdictions working to improve the quality of law in Europe, the European Law Institute contributes to strengthening a community of well informed and trained national judges within the EU. The role of the national judge in Europe must be examined from two complementary perspectives: at the European level, through the use of preliminary rulings, and at a national level through the use of both official and private European texts as rules of interpretation to resolve domestic conflicts. These two approaches require well informed and trained judges that are well aware of their role.

National judges are faced with the challenge of uniform interpretation of EU law, which is essential for the harmonisation of European law. Directives of the EU have been considered as a tool for harmonising European private law and they have certainly introduced general criteria in specific fields, although with some difficulties. This is the case of Directives concerning for example, consumer law, sales of goods, or regulation of new technologies such as electronic commerce. The need to break with the traditional schemes of legal thought, due to the requirement of transposition of every Directive to domestic law, poses yet another obstacle.

The situation regarding the application of EU Directives differs notably from Member State to Member State. In some, domestic law subsists in the Civil and Commercial Codes, and transposition of the Directives is made through special laws, while this is not the case in others. Judges are key actors to ensure the effectiveness of European legislation, as the diverse application of Directives, proves. As an independent institution, with an extensive network, the ELI is especially well positioned to contribute to the consolidation of a strong community of national judges within Europe.

Encarna Roca Trias

2016 Annual Conference and General Assembly: A Report

The ELI Annual Conference and General Assembly was hosted this year by the Faculty of Law of the University of Ferrara. Some of the most prominent experts of the European legal community convened from 7 to 9 September in Italy in order to discuss the current challenges that Europe faces and to provide concrete solutions, by way of presenting the ELI projects and their outputs. This unprecedentedly well attended event gathered over 350 participants and featured a keynote speech by Koen Lenaerts, President of the Court of Justice of the European Union and Marta Cartabia, Vice-President of the Italian Constitutional Court.



The meeting of the ELI Council

Discussions about the significant growth of the ELI during the General Assembly as well as at the meetings of the ELI Council and of the Executive Committee with the Senate, proved that the Institute

has already a good standing in the European legal landscape and a clear vision of further development. The effectiveness and relevance of the ELI's key activity – developing European law through directly applicable recommendations based on a thorough and comparative research – has been recognised by EU Institutions on numerous occasions.



The ELI Executive Committee and the Chair of the Membership Committee during the General Assembly

The broad programme of this year's ELI Annual Conference demonstrated the research and impact capacities of the Institute and the high calibre of its membership. During the two days, participants of the Conference deliberated on how to simplify the lives of people and enterprises through reducing differences and establishing standards in the field of, among others, civil procedural law, criminal law, insolvency law, family law, migration law and digital law.

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Participants of the Annual Conference

Opening Ceremony



Diana Wallis, ELI President

The Opening Ceremony took place at the Law Faculty of the University of Ferrara. Diana Wallis, President of the ELI, welcomed the participants and stressed that Europe is currently facing big challenges,

"Brexit may be an additional challenge but I am convinced that it is one that the European community of lawyers, both common lawyers and civilian lawyers, should meet together". The participants were also addressed by the Vice-

Keynote speech

Koen Lenaerts, President of the Court of Justice of the EU, honoured the participants of the ELI Annual Conference and joined the legal community in Ferrara. He stressed the extreme importance of the ELI, as a network of experts representing different legal traditions, which enables valuable exchange of experiences with each other about the strongest parts of our respective national systems and makes them work together. He highlighted the comparative law method as *"a valuable interpretative tool that serves to strike the dynamic balance"* between unity and diversity, and stressed that the CJEU will continue to be a steady partner of the ELI. You can find the full text of his keynote speech on the [ELI website](#).

Launch of the ELI Italian Hub



Panelists during the launch of the Italian Hub

The ELI Italian Hub was launched on 9 September, making it the 10th National ELI Hub. This unique event was held at the premises of the Faculty of Law of the University of Ferrara during the Annual

President of the Italian Constitutional Court, Marta Cartabia, who highlighted the relevance of the ELI's network and its working methods. She observed that *"Re-generating Europe is the demand of the young people of Europe: this requires the capacity to integrate and the capacity of dialogue also in the legal domain. It will entail an ongoing process, a road to be travelled on and on, where the aim is but a step towards a further problem and a further achievement."*



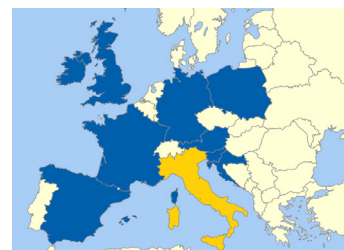
Marta Cartabia, Vice-President of the Italian Constitutional Court



Koen Lenaerts, President of the Court of Justice of the EU

Conference and gathered distinguished Italian jurists. The launch was chaired by the ELI President, Diana Wallis, who was joined by: Fabrizio Cafaggi, Remo Caponi, Mario Comba, Raffaele Sabato, Silvana Sciarra, Giovanni Mammone, Roberto Mastroianni, Guido Alpa, Paolo Pasqualis and Sabino Cassese.

The Italian Hub has already co-organised some activities. You can find more information about them [here](#).



A glimpse into Conference Panels

Rescue of Business in Insolvency Law



Panel: Rescue of Business in Insolvency Law

This was the third time that the ELI Project on “Rescue of Business in Insolvency Law” has been presented at an ELI Annual Conference. It was first introduced in Zagreb in 2014, where the methodology of the project, its organisation, aims and goals were described and discussed. In 2015, the project reporters provided a comprehensive status report and discussed some of the main themes of the project and their preliminary findings and views. Now in 2016, the project reporters have already mostly completed their work. In Ferrara, they provided tangible results and discussed selected recommendations from their draft report.

Bob Wessels, project reporter and Professor emeritus at the University of Leiden, focused on one of the most important aspects of any insolvency law – the administrators and trustees that are entrusted with managing estates (now generally referred to as Insolvency Practitioners (IPs) or Insolvency Office Holders (IOHs)). He was joined by Heinz Vallender, Managing Director of the Department for International and European Insolvency Law at Cologne University, and Arno Metzler, Vice-President of the European Economic and Social Committee. The three discussed the recommendations of the Project regarding the roles of IPs, their rights and obligations, how they should be appointed and how

Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law

The project on “Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law” is an ELI Instrument aimed at producing legislative recommendations on how to regulate a field of law that is almost uncharted ground. Prior to the Annual Conference, the project reporters

they should be supervised and regulated.

Stephan Madaus, project reporter and Professor at Martin Luther University of Halle-Wittenberg, led discussions about contractual debt restructuring, how it could be made efficient and how to incentivise stake-holders to negotiate work-outs. He touched upon many considerations that need to be taken into account, such as potential court involvement and various options for rescue-oriented insolvency frameworks. In this second part of the discussions,



Project Reporters

he was joined by co-panelists Heinz Vallender and Matthias Storme, Professor at the Catholic University of Leuven. The panel considered some of the recommendations of the project on how to address these important issues and how to promote the rescue of economically viable but distressed businesses instead of liquidating them.



This project is co-funded by the European Union

had disseminated a detailed draft report and were close to final legislative proposals. At the panel, the project reporters explained their three proposals in detail and provided examples and reasoning behind different policy approaches.

As the reporters explained, what sort of legislative

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Message



Panel: Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law

instrument will be considered by the Member States and institutions of the European Union depends on political choices. The project reporters chose to approach the matter from a legal point of view and instead of making indirect political choices and recommendations, designed three different legislative options that can provide guidance in a great variety of situations.

Katalin Ligeti, project reporter and Professor at the University of Luxembourg, explained the first option – a draft directive proposal that aims at settling conflicts of criminal jurisdiction by consultation between Member States. It is the least invasive option and calls for the least harmonisation of laws.

John Vervaele, project reporter and Professor at the University of Utrecht, discussed and elaborated on the second proposal – a draft regulation that goes a step further and envisages a mechanism for settling conflicts with a binding decision, if consultations fail.

Finally, André Klip, project reporter and Professor at Maastricht University, went through the third proposal – a draft regulation based on the principle of territorial jurisdiction. This draft goes the furthest by actually allocating the exercise of jurisdiction based on factors connected to territoriality.



Project Reporters

Aukje A.H. van Hoek, Professor at the University of Amsterdam discussed the three proposals and provided valuable insights from the point of view of a specialist in conflicts of law in Private International law. Frank Meyer, Professor at the University of Zurich commented on the recommendations as an independent expert of international criminal law.

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From Transnational Principles to European Rules of Civil Procedure



Panel: From Transnational Principles to European Rules of Civil Procedure

Similarly to the last year's ELI Annual Conference, this year the co-reporters of the Working Groups of the joint ELI-UNIDROIT Project 'From Transnational Principles to European Rules of Civil Procedure' Frédérique Ferrand, Alan Uzelac, Chiara Besso and Xandra Kramer presented their work on the European rules of civil procedure and talked about the future of civil procedure in Europe. In two panels chaired, respectively, by Diana Wallis and Anna

Veneziano, members of the Steering Committee of the project. Additionally, two esteemed speakers, Judge of the High Court of Dublin, Mr Paul Gilligan, and Judge of the Supreme Court of Italy, Mr Raffaele Sabato, shared their experience and perspective on the rules governing the civil process and gave an account of the draft sets of European rules in their respective domains ('*Res judicata* and *lis pendens*', and 'Obligations of parties, lawyers and judges').

The panel session was split into two parts with the first one devoted to the work of the Working Groups established after the launch of the project, in November 2014, and the second one featuring the presentations by Co-reporters of the two new Working Groups established in 2016.

The co-reporters of the Working Groups '*Res judicata* and *lis pendens*', and '*Obligations of parties, lawyers and judges*', Professor Frédérique Ferrand and Professor Alan Uzelac, respectively, gave an overview on the draft rules developed by their Working Groups. After presenting the Working Group, its composition, timeline and methodology applied, Professor Ferrand moved to the questions concerning the material and personal scope of *res judicata*; admissibility of the new claims in exceptional circumstances of the ongoing process; the extraordinary means of recourse and others. Professor Alan Uzelac from the Working Group '*Obligations of parties, lawyers and judges*' also presented the Working Group and its organisation, to later discuss, among others, such issues as who may (should) be considered as subjects of obligations in the civil process; what is the nature of obligations; what kind of terminology should be used to the notion of obligations; the application of the principle of procedural proportionality, etc.

The second part of the panel session was devoted to the discussion on the organisation of work of the new project Working Groups, '*Judgments*', and overarching group, '*Structure*'. The co-reporter of the '*Judgments*' group, Professor Chiara Besso, introduced the composition, the goals, the envisaged



Panel: From Transnational Principles to European Rules of Civil Procedure

timeline and the methodology of the Working Group. She also presented what the initially selected topics for the discussion by the group would be: default judgments, summary judgments, and consent judgments. Professor Xandra Kramer explained to the audience the idea behind the establishment of the horizontal Working Group '*Structure*' – its aim is to coordinate the emerging draft rules within a functional whole and oversee the linguistic issues in the compilation of all the final draft rules. Professor Kramer also presented the envisaged approach of the group, which will start from collecting and analysing the background documents, reports and rules by Working Groups; identifying divergences, overlaps, gaps, and preliminary language issues; assessing further coherence in scope, content, and presentation; securing uniform use of the language terminology; and finally, most probably, filling the gaps.



This project is co-funded by the European Union

Empowering European Families: Choice of Court and Choice of Law

The joint project of the ELI, University of Vienna and University of Utrecht "Empowering European Families: Choice of Court and Choice of Law" is a relatively new one, but has already produced outcomes in one of its three work-streams. The panel was devoted to presenting a progress report and discussing the draft agreement template that the team has prepared.

Christiane Wendehorst, project reporter and Professor at the University of Vienna, explained the background of the project and its aims. Families moving across borders are often faced with problems that they did not anticipate, caused by the non-harmonised family and succession laws in Europe. Often, international couples are faced with a patchwork of different applicable laws. This reduces certainty and predictability and often provides



Panel: Empowering European Families: Choice of Court and Choice of Law

an incentive to rush to court. The project aims at alleviating some of these difficulties by using party autonomy and the choice of law and court.

Maria Vilar Badia, Legislative Officer of the European Commission's Directorate-General for Justice, Consumers and Gender Equality, gave the next presentation. She expressed her hopes that the ELI would push the Commission forward in this field. She also described the next legislative efforts of the

Commission in the field of family law and explained its aims.

Christiane Wendehorst then went over the first set of sample template agreements that the project team had prepared with accompanying information sheets. Elena Bargelli, Professor at the University of Pisa and chair of the project's Members Consultative Committee (MCC) of this project provided some input on the draft, intended to reflect the views of the MCC. She was mainly positive towards the draft but also provided some constructive remarks regarding whether assistance by legal advisers should be necessary and whether more details on formal contract requirements would need to be provided.

Vulnerable Adults and the Conflicts of Laws

At the meeting of the ELI Council, Richard Frimston introduced a potential project on vulnerable adults and on Thursday 8 September, a panel at the Annual Conference was devoted to this interesting subject. Mr Frimston explained that everyone may at some point in time be a vulnerable adult and as such, have the need to grant someone the power and authority to handle their affairs. The current legal framework poses a lot of complicated issues when it comes to such private mandates. Also the way that common law and civil law jurisdictions handle such mandates is vastly different. On top of that, there are various conventions in place that affect the issue.



Panel: Vulnerable Adults and the Conflicts of Laws

Maja Groff, Senior Legal Officer at the Permanent Bureau of the Hague Conference on Private International Law, explained the main aspects of the 2000 Hague Convention on the International Protection of Adults and the status of ratification among EU Member States. Renate Schaub, Professor at Ruhr University Bochum, discussed the problems presented by the fragmented legislation and international conventions from the point of view of

Finally, Richard Frimston, partner and Head of Russel-Cooke LLP's Private Client Group, provided some recommendations from a succession perspective, reminding the audience of the fact that any agreement on property relations, maintenance or pension rights may, depending on the applicable law, also have certain effects upon the death of one of the spouses, and that there may be significant tax implications. While this would not lead him to the recommendation to include additional clauses in the model agreements themselves he would certainly urge practitioners to keep this in mind when advising couples.



This project is co-funded by the European Union



Panel: Vulnerable Adults and the Conflicts of Laws

German law. She explained in detail the difficulties that can arise with regard to jurisdiction, applicable law and recognition and enforcement. Frederik Swennen, Professor at the University of Antwerpen gave his in-depth analysis of the situation from the point of view of Belgian law. Finally, Pietro Franzina, Professor at the University of Ferrara, discussed what the European Union could and should do to address these issues and the different policy options available.

This potential ELI project could assist the Member States and the Institutions of the European Union in tackling these pertinent issues. Simplifying the process of granting a private mandate for a vulnerable adult and by ensuring that they are enforceable and recognised cross-border could remove a lot of obstacles to the free movement of European citizens across borders. The aim of the ELI project would be to produce a draft legislation that could achieve those goals.

Digital Single Market: Discussion Draft of a Directive on Online Intermediary Platforms



Panel on Discussion Draft of a Directive on Online Intermediary Platforms

Over the past few years, a new model for transaction on the Internet has emerged. Platforms that connect sellers of goods and providers of services to customers have quickly gained market share and are increasingly shaping the digital economy. The regulatory framework at EU level seems to be ill-prepared to deal with this new business model and its many innovative features. On 7 September, the ELI Council decided to adopt the project on Online Intermediary Platforms. Two panels were devoted to explaining the background of this new project, the work that has already been done and the biggest challenges that legislation in this field will need to overcome.



Prof. Hans Schulte-Nölke

Giovanni De Cristofaro, Dean of the Faculty of Law of the University of Ferrara, chaired the first panel presentations and discussions. First, Hans Schulte-Nölke, project reporter and Professor

at the University of Osnabrück, presented the main aspects of an academic, draft EU legislation that the project team has already prepared and published. He explained that the draft is far away from the aimed results of the ELI project and was only one of the starting points for discussion. He stressed that the value of the draft was more in identifying the issues that need to be addressed, than in the actual concrete rules which would all need to be discussed. One of the points that required particular

attention is that the EU consumer protection legislation is based on a chain-of-distribution model and the rules do not fit comfortably to platforms. The second presentation was made by Fryderyk Zoll, project reporter and Professor at the University of Osnabrück. He focused on the platform operator and how his liability should be defined in different circumstances. He explained that the general principle of the draft was that the platform operator was not liable for the performance of the contract between the supplier and customer, but that there could be exemptions. For example, if the platform does not remove misleading information, has a predominant influence on suppliers, gives misleading statements and when the operator gives guarantees. There were some lively discussions on the topic and the question of liability of the platform operator sparked particular interest among the audience.



Panel on Discussion Draft of a Directive on Online Intermediary Platforms

The second panel was chaired by Reiner Schulze, Professor at the University of Münster. First, Christoph Busch, project reporter and Professor at the University of Osnabrück discussed one of the most innovative features of intermediary-platforms: the reputation systems. They are crucial elements in the architecture of most platforms and can, if they are well maintained and defined, compliment consumer protection, but can also be harmful. He explained the ideas behind the rules on reputation systems that are contained in the draft. The second presentation was made by Samuel Laurinkari who heads eBay's work on EU policies. He provided some very positive remarks and constructive criticism and presented some of the views of one of the industry leaders of the platform economy.

The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution

The increased number of cross border legal disputes poses calls for the need to explore alternatives to formal justice. The ELI is keen on supporting these efforts and is working on a project aimed at scrutinizing the different types of Alternative Dispute Resolution (ADR) mechanisms in Europe, and at helping to bring them together in a seamless and harmonious manner where alternative and traditional justice can complement each other and serve European citizens better. A new ELI-ENCJ joint project in this field, entitled 'The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution', which was launched in February 2016, was presented during the second day of the Conference to the ELI public by the Members of the Project Team, Diana Wallis, the ELI President, Geoffrey Vos, Judge of the Court of Appeal of England and Wales, Christopher Hodges, Professor of Justice Systems at the University of Oxford, and Aleš Zalar, President of the European Centre for Dispute Resolution.



After having presented the background of the project by providing a vivid example from an everyday-life situation, the Chair of the panel, Ms Wallis explained what goals the project is pursuing. The aim is to analyse whether ADR schemes are voluntary, sufficiently visible and transparent, of sufficient quality in procedure and dispute resolution, and whether they develop throughout the EU Member

States consistently with a proper and principled approach to access to the courts. The project will proceed by analysing the national reports, and conducting the research by the members of the Project Team.

Geoffrey Vos, Aleš Zalar, and Christopher Hodges presented the views on the use of forms of alternative dispute resolution from three different perspectives. Geoffrey Vos introduced the judicial perspective of



Panel: The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution

use of the alternative tools, which in some cases are being developed in a manner that is improperly intruding on the legitimate ambit of the judicial branch of a state or a government. Aleš Zalar showed how this issue might be seen by policy-makers and spoke about the interactions between mediation and litigation, and various forms of mediation. Christopher Hodges explained how the issue of the use of ADR might be considered from a systemic perspective and drew attention to an example of the role of Ombudsmen in solving disputes.

The panel session has triggered an interesting discussion with numerous questions and interventions from the audience. In the following months, the ELI-ENCJ Project Team will continue working on the ELI Statement, the goal of which is to assess whether concrete steps should be taken to improve the consistency of the use of ADR across Member States and secure a proper and principled approach to access to the courts.



The Tools of the Digital Age in the Service of More Accessible Justice

Another panel session related to the digital world and the work of legal professionals also took place on the second day of the Conference. The chair, Sjef van Erp, Professor of Civil Law and European Private Law at Maastricht University, and the participants of this panel, Natalie Nickel, project technical coordinator of the e-CODEX project at the Ministry of Justice of North Rhine-Westphalia, Jaana Pohjanmäki, Principal Administrator in charge of e-Justice issues, Directorate General for Justice and Home Affairs



Panel: The Tools of the Digital Age in the Service of More Accessible Justice

of the Council of the EU, Carsten Schmidt, Deputy Head of the information technology and e-Justice division at the Ministry of Justice of North Rhine-Westphalia, Ernst Steigenga, Senior IT policy officer of the Dutch Ministry of Justice, and Jacques Vos, Registrar at the Netherlands Cadastre Land Registry and Mapping Agency discussed the topic of digital access to justice and the legal services as such.

On behalf of the DG for Justice and Home Affairs of the Council, Jaana Pohjanmäki presented to the audience the concept and the role of 'Tools of the Digital Age in the Service of More Accessible Justice'.

Digital Single Market: European Developments after the Withdrawal of the CESL Proposal

Just two days before the panel, the ELI Council approved the 'ELI Statement on the European Commission's proposed Directive on the Supply of Digital Content to Consumers'. The panel was therefore devoted to discussing the key conclusions of the Statement and explaining its most important results.

[Download the Statement](#)

Lord John Thomas of Cwmgiedd, project reporter and Lord Chief Justice of England and Wales, chaired

She explained the notion of 'e-Justice' and shared the view on how the use of technology, information and communication can improve access to justice and effective judicial action. Next, the members of the 'e-CODEX' ('e-Justice Communication via Online Data Exchange') project, Natalie Nickel, Carsten Schmidt and Ernst Steigenga, presented the ongoing project, its scope, aims and the timeline of activities. They provided multiple examples of how the project has already contributed to the idea of building a European digital infrastructure for secure trans-border communication in the field of justice and informed about the plans within the project concerning its extension to further Member States, next wave of pilots and sustainability.



Panel: The Tools of the Digital Age in the Service of More Accessible Justice

The final presentation was made by Jacques Vos, who demonstrated an example of applying digital solutions in the work of the public administration authorities, the Dutch Kadaster. He informed the attendees of the session about the current achievements and the progress made in this direction, and spoke about the current challenges and a future perspective of the functioning of such systems in other EU countries.

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the panel. The first presentation was by Hugh Beale, project reporter and Professor at the University of Warwick. He explained the suggestions of the project team and the clarifications and revisions that are proposed in the ELI Statement. Many of the concerns are related to embedded Digital Content and goods that require a continuing supply and updates of its Digital Content. Christiane Wendehorst, project reporter and Professor at the University of Vienna explained some of the recommendations that the ELI Statement makes to



Panel: Digital Single Market: European Developments after the Withdrawal of the CESL Proposal

Detention of Asylum Seekers and Irregular Migrants and the Rule of Law

One of the final panels of the 2016 Conference was devoted to the ongoing ELI Project “Detention of Asylum Seekers and Irregular Migrants and the Rule of Law”. The panel was chaired by Boštjan Zalar, High Court Judge of the Administrative Court of the Republic of Slovenia, ad hoc Judge of the European Court of Human Rights and ELI Council Member. The other participants of the panel were Marc Clément (Judge at the Administrative Court of Appeal of Lyon), Fabrizio Cafaggi (Professor of Comparative Regulation at the Italian National School of Administration), and Nuala Mole (founder of the AIRE Centre).

Marc Clément made a presentation explaining what is the Project’s objective, structure, scope, potential addressees and the plan concerning the dissemination of the end product, which will be an ELI Statement on “Detention of Asylum Seekers and Irregular Migrants and the Rule of Law”. He also mentioned what in his opinion, as a judge adjudicating in numerous cases related to detention, would be the added value of such a Statement. He said that the check-lists, which would form a significant part of the Statement, have the potential to simplify the work and the proceedings in courts by providing a clear-cut set of standards and rules based on EU primary and secondary law (Dublin III Regulation, Returns Directive and Reception Directive) and corresponding case-law of the CJEU and case-law of the ECtHR in relation to Article 5 and 3 of the ECHR.

Fabrizio Cafaggi, who is also a member of the project’s Advisory Committee, explained to the audience the innovativeness of the project, and in particular, how this ELI Statement will be distinct from others, published in the past. He mentioned

try to improve the Commission draft. She also raised some of the most pertinent issues of privacy and Data Protection that the Commission draft presents.

At the end of the panel, all present applauded Lord Thomas and thanked him for his leadership and role in the work of the ELI on the CESL and on the Digital Single Market.

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that the Instrument, which has as its primary aim to be a ‘tool for judges’, has been much specialised and its innovative aspect lies in the methodological layer. The project builds upon case-law and legislation, trying to combine the interpretation of current legislation with its use in the courtrooms. Fabrizio Cafaggi noted that the innovation, however, goes beyond that, because the Project Team devoted one of the sections of the Statement to judicial dialogue between CJEU, ECtHR and national courts, allowing for a dynamic reading of the entire Statement.



Panel: Detention of Asylum Seekers and Irregular Migrants and the Rule of Law

Nuala Mole then shared her perspective on the issues pertaining to detention and the rule of law through the prism of long-time experience in the field. She provided several examples from her practice and beyond, in which such fundamental principles as effective legal protection and the rule of law were not taken into account or violated.

“It is therefore absolutely essential to reach the judges, who have to review the situation of the imposition of detention, and therefore the way, in which the ELI Statement brings together all the standards that should be applied into the check-lists is very welcomed”, she said.

Concluding the session, Boštjan Zalar thanked all the participants for the fruitful discussion and exchange of views on the ongoing project.

New ELI Projects!

At the last ELI Council meeting in Ferrara, Italy, two new project proposals were approved, one in the field of tax law and one concerned with online intermediary platforms.

Professor Georges Cavalier presented a proposal that he and a team of **tax law** specialists have been working on. The proposed project aims at considering the question whether research and development (R&D) incentives in Europe should be harmonised and coordinated and if so, how. Research and development is one of the main objectives of the European Union. One of the five targets of the European Commission for the EU in 2020 is that expenditure in R&D amounts to 3% of the EU's GDP. This is a significant increase that will require innovative solutions to reach. A vast majority of studies conclude that R&D tax incentives stimulate investment in R&D and could be an important means to reach this goal. However, the R&D incentives that are in place in Europe today cause many difficulties.

The tax incentives that some countries provide for expenses incurred from and income generated by R&D have opened new possibilities for profit shifting within multinational firms. Studies from the United States have found that such tax incentives attract R&D from other states, while the overall amount of R&D is not affected. This seems to indicate that, while jurisdictions fight each other over revenue, the net effect on R&D is zero. Currently, 11 EU Member States offer so-called "Patent box" regimes that are quite controversial. From the outset, Member States designed their tax incentives without coordinating their domestic regimes with other Member States' regimes, which can result in 'double dips' for a single R&D activity.

The globalisation of business models and the need for economic growth require the EU to tackle this issue. An articulated approach to R&D tax incentives could also help reach the 2020 goals of the EU, and when appropriate, a harmonisation. This project is intended to provide guidance for such coordination. That will require substantial research into the current legislative schemes in different Member States and will have to take into account different policy options. The target outcome of the project

is an ELI Statement comparing and evaluating the different options available for coordinated R&D tax incentives and proposing a coherent approach that best matches the objectives of the EU.



The ELI Council meeting in Ferrara, 7 September 2016

The ELI has never before had a project in this field. The Council welcomed the proposal and the opportunity to increase the scope of the ELI's impact to a new sphere of European legislation. The project proposal was approved and the Project Team has already started organising its work.

Professor Hans Schulte-Nölke presented a proposal for a project on **Online Intermediary Platforms**. Such platforms are increasingly shaping the digital economy, but their dynamics can be difficult to reconcile with the currently existing regulatory framework at EU level. The applicable law only regulates bilateral consumer-producer relations. Platforms on the other hand are often triangular-based business models that require the customer and supplier not only to make an agreement between each other, but also that they each conclude an agreement with a platform operator. The result is that in many situations consumers that conclude contracts through online platforms are left without effective consumer protection. Some governments have tried to influence the European Commission to avoid any regulation of this triangular context.

It is also clear that platforms are vastly different and any regulation will have to provide for different measures depending on whether a platform is merely a 'facilitator' or is actually the supplier, or presents itself as such.

The Project Team will analyse the need for adjusting

EU consumer contract law, private international law, data protection law and IP law to take into account the changing market structure caused by the rise of the platform economy and for closing gaps of consumer protection

The aim of the project is to thoroughly develop a model law on online intermediary platforms that sets out a balance between conflicting policy

ELI President's and Vice-President's Activities

Launch of the Centre of Mediation of the Notarial Association of Catalonia

Diana Wallis delivered a keynote speech during the launch of the Centre of Mediation of the Notarial Association of Catalonia on 20 October. The ELI President spoke about 'the necessary consolidation

options, and demonstrates what such regulation could look like.

The Council approved the project proposal. This project will no doubt help cement the ELI status as a key independent expert in the field of Digital Law and Sales Law even further.

ELI President, Diana Wallis, at the Münster Colloquia on EU Law and the Digital Economy

Ms Wallis spoke at the Second Münster Colloquium on EU law and the Digital Economy, organised by the University of Münster on 27-28 October. The event focused on Contracts for the Supply of Digital Content: Regulatory Challenges and Gaps with respect to the "Commission proposal for a Directive on certain aspects concerning Contracts for the Supply of Digital Content" (COM (2015) 634 final).

of mediation in European citizenship: the win-win pedagogy'. This topic is closely related to the new ELI-ENCJ Project on ADR, which is presented on the [ELI website](#).



Diana Wallis at the Münster Colloquium



Ms Wallis outlined the broader policy issues surrounding the digital economy from the perspective of the ELI and contributed to the colloquium's discussions on conclusion and execution of contracts, remedies, copyright and data protection. The Colloquium was a great

occasion to share with the audience the work of the ELI in this area. With the Digital Single Market proposal, the European Commission introduced a first material step towards a modern contract law regime for digital content and online sales across the EU. The ELI has been scrutinising these developments and published recently its Statement on the Digital Content Directive.

Further information about the Münster Colloquia is available [here](#).

ELI Vice-President, Christiane Wendehorst, at ALI Council meeting in October

Christiane Wendehorst, the ELI Vice-President, met with representatives of the American Law Institute, ELI's counterpart in the USA, during her mission between 18 and 20 October. Ms Wendehorst

participated, among others, in the meeting of the ALI Council, where a potential ELI-ALI Project on "Data as assets and tradable items in the 21st century" was presented.

Upcoming events

ELI Conference on Rescue of Business in Insolvency Law in Leiden

On 16 and 17 November an ELI Conference on Rescue of Business in Insolvency Law will be hosted by the University of Leiden, with the support of the EU. The event will be chaired by Prof. em. Bob Wessels and Prof. Stephan Madaus, project reporters. During this two-day Conference, the national insolvency and

restructuring regimes, modifications of restructuring plans as well as actors in insolvency and restructuring proceedings, among other topical issues, will be discussed.

More information about this event will be available on the [ELI website](#).

ELI-UNIDROIT Joint Project on Civil Procedure: Meeting of the Steering Committee with Reporters, Advisers and Observers

On 21-22 November, a joint meeting of the ELI-UNIDROIT Steering Committee with the Reporters, Advisers and Observers of the Project will take place in Vienna. This meeting will essentially focus on the discussion of the draft rules of civil procedure

developed by the Working Groups on 'Access to information and evidence', 'Provisional and protective measures', and 'Service and due notice of proceedings'.

Meeting of the Project Team of the ELI-ENCJ Joint Project on the Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution

The Project Team of the ELI-ENCJ joint project on "The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution" will hold a meeting on 28 November in

Vienna. After successful discussions during the ELI Annual Conference, as well as in a previous meeting in Brussels (12 September), the group will continue its work on the interim statement.

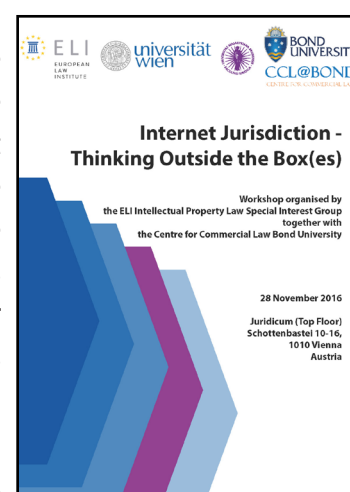
SIG Event: Internet Jurisdiction - Thinking Outside the Box(es) - workshop

On 28 November, the ELI Special Interest Group on Intellectual Property Law, together with the Centre for Commercial Law of the Bond University, Australia, organises a workshop on the topical issue of 'Internet Jurisdiction'. Esteemed experts will gather in Vienna to discuss ways forward and solutions to the paradox of the territoriality as a principle ruling 'borderless' Internet.

The workshop will be organised around 4 thematic sessions. The first one, about the territorial scope of data privacy law online, will aim at discussing the consequences of 'extraterritorial' reach of data privacy laws introduced by more and more countries. A second session on cross-border law enforcement online will focus on finding a balance between different interests in cases of cybercrime. The future of geo-location and the question whether

geo-location should be regulated will be discussed during the third session. The last session will analyse the consequences of online activities – participants will examine whether being exposed to various laws and jurisdictional claims, while engaging in online activities, undermines the rule of law.

More information about the event and the agenda can be found on the [ELI website](#). To register, please click [here](#).



Updates from the ELI Hubs and SIGs

Conference on registral public faith organised by the ELI Spanish Hub



Panel at the Conference

The ELI Spanish Hub co-organised a conference on “The function of registral public faith – ‘title by registration’- in the transmission system of immovable property right”. The event took place on 27 October at the premises of the Universidad Carlos III de Madrid. You can find more information about this conference [here](#).

Conference on International Commercial Contracts and Arbitration Clauses

The first Conference co-organised by the ELI Italian Hub and the Istituto Universitario di Studi Europei – IUSE (one of the ELI Institutional Observers) was held in Turin on 23 September 2016 and focused on “International Commercial Contracts and Arbitration Clauses”.

Distinguished lecturers and discussants took part in the Conference, namely Filip de Ly, Professor at the Erasmus University Rotterdam, Chairman or member of the tribunal in numerous international and domestic arbitration proceedings; Philippe Marchandise, company lawyer and Vice-President of Public Affairs in Total, Lecturer at the University of Liège; Aldo Frignani, Professor of Comparative Law and EU Private Law at the University of Turin; Marina Motta, lawyer with a significant experience in international contracts; Cristina Poncibò, Professor of Comparative Private Law (International Contracts) at the University of Turin.



Panel at the Conference

The main topics of the Conference were the interpretation of international contracts, including essential requirements for well-drafted clauses and the importance of governing law and language and drafting arbitration clauses: essential elements, different types of arbitration, place and language, costs and applicable law to arbitration.

Participants at the Conference were mainly lawyers, researchers and professionals dealing with international transactions.

Another step forward in the development of the ELI SIGs

This year’s ELI Annual Conference was a great opportunity for the Special Interest Groups to hold physical meetings and discuss the ways forward.

A special time slot was devoted for the parallel meetings of all 11 ELI’s SIGs on 8 September.

Groups indeed used that chance and vividly discussed their respective scopes of activities. Some groups also planned further meetings.

Members of the SIGs are encouraged to continuously scrutinize the developments in their respective fields. The aim of such activity is to work together, share knowledge and experience as well as propose new projects for the ELI.

The ELI Annual Conference 2017 will provide another chance for the Groups to meet and share their achievements, gained throughout 2017, with other ELI members.

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

The ELI membership has grown continuously every year since its creation. Starting with 53 founding members in 2011, the ELI now has over **1,200 individual members** representing 52 nationalities. Another milestone has been completed this year, when the ELI welcomed its **100th Institutional Observer**. Among the institutional members are a number of Supreme Courts, supranational organisations such as UNIDROIT or UNCITRAL, law firms, universities, think tanks and professional organisations.

Balancing diversity with regards to areas of expertise, nationalities and different professional backgrounds will be essential to maintain the vibrant community of lawyers and the unique meeting point the ELI now is. The unique membership of the ELI gives its projects the increased legitimacy of a backing and approval by its very broad constituency:

“The ELI is becoming known not only for its projects but also for its diverse and representative community of legal professionals from all over Europe and beyond”, as Walter Doralt, Chair of the Membership Committee, underlined in his report to the General Assembly in 2016.

The goal is and always has been to attract excellent and interested lawyers from any profession and any

EU Member State – and beyond, not to maximise the membership numbers. An active role to attract suitable new members should also be taken by the ELI Special Interest Groups.

*“Our efforts now require **active help** from our **members**: It is them who know best in their professional environment who has a particular expertise and could be interested in joining the ELI. Suitable colleagues should be encouraged to apply for membership. We would particularly welcome applications from persons with **expertise in Administrative and Constitutional Law, from Notaries or Judges**” as Walter Doralt further noted in his report.*

All membership applications by suitable candidates are welcome. At this time, a particular focus will be:

Administrative Law
Constitutional Law

Judges
Notaries

Membership applications can be submitted online through the ELI [website](#).

More information on what the ELI does and stands is available on the ELI website and in the membership [brochure](#).

Membership fee: if you have not yet paid your membership fee for 2016, please do so by bank transfer or [PayPal](#) or via SEPA/direct debit. Please contact the [Secretariat](#) with any questions arising in this context.

The ELI Secretariat is pleased to offer the possibility to pay membership fees via SEPA Direct Debit. The ELI remains aware of the busy schedules members keep, which is why this payment option is particularly convenient as it will allow automated payments. More information on this option can be found [online](#) and in the invoice for 2016. Kindly fill in the mandate and send it back to the Secretariat signed, via mail or as a scanned copy via [email](#).

New Institutional Observers

Supreme Court of Singapore



The Supreme Court is the highest judicial court in Singapore. The Supreme Court consists of the Court of Appeal and the High Court. The Singapore International Commercial Court and the Family Justice Courts are also part of the Supreme Court.

- The Court of Appeal hears appeals of civil and criminal cases from the High Court. The High Court exercises original and appellate jurisdiction in civil and criminal cases. It hears cases in the first instance as well as cases on appeal from the State Courts.
- The Singapore International Commercial Court was set up in 2015 as part of the Supreme Court to hear transnational commercial disputes.

- The Family Justice Courts was set up in 2014 as a specialised body of courts to centralise the administration of family-related court proceedings in order to better address the needs of youths and families in distress.

As a public institution dedicated to the administration of justice, the Supreme Court promotes accessibility by ensuring that its services meet the needs of court users. It maintains integrity and transparency of its processes through court decisions that are fair and independent, and court records that are accurate and reliable. The Supreme Court's work is underpinned by the following values:

- Fairness
- Accessibility
- Independence, Integrity and Impartiality
- Responsiveness

EFTA Surveillance Authority



The EFTA Surveillance Authority (ESA) monitors compliance with the Agreement on the European Economic Area (EEA Agreement) in Iceland, Liechtenstein and Norway, enabling those States to participate in the Internal Market of the European Union.

ESA is independent of the States and safeguards the rights of individuals and undertakings under the EEA Agreement, ensuring free movement, fair competition and control of state aid. ESA's work helps remove barriers to trade and open up new

opportunities to over 500 million Europeans, creating jobs and growth and adding to the international competitiveness of the States.

The Authority seeks to protect the rights of individuals and market participants who find their rights infringed by rules or practices of the EFTA States or companies within those states. Such rules or practices may, for example, be discriminatory, impose unnecessary burdens on commercial activity, or constitute unlawful state aid. The Authority may in such cases initiate proceedings against the EEA EFTA State at the EFTA Court, seeking a change in the relevant rules or practices.

The Authority is based in Brussels. It currently has a staff of 70 officials, within which 16 nationalities are represented.

Institute für Europäische Mediation und Schiedsgerichtsbarkeit



The Institute of European Mediation and Arbitration (Institut für Europäische Mediation und Schiedsgerichtsbarkeit / IEMS e.V.) specialises in various forms of out-of-court settlements, so called alternative or appropriate dispute resolution (ADR).

The Institute offers individual and strategy consultations regarding ADR, costs-and-benefit-analysis of court proceedings in comparison to ADR, contract drafting with consideration of ADR as well as post-negotiation assistance in order to avoid

dispute escalation. Furthermore, the Institute offers mediation proceedings concerning almost any sphere of life and legal issue, also in international / cross-border cases and cases involving inter-cultural issues, and arbitration in suitable legal spheres.

These options are being provided by experienced and specialised mediators and lawyer's, carefully selected by the Institute.

In addition, the Institute organises (in-house) seminars and offers individual coaching as well as further training in ADR.

Academic research, monitoring and support are at the core of the Institute's work.

Instituto Jurídico Portucalense



The Portucalense Institute for Legal Research (IJP – Instituto Jurídico Portucalense) was established in 1987 as the Institute for Legal Research of the Universidade Portucalense. All the Law Department activities were implemented through this Institute, including the Centro de Estudos Judiciários (CEJ) Admission Preparatory Course, the editing and publishing of a scientific journal (Revista Jurídica) and several postgraduate and specialisation courses, conferences and debates.

In 2007, the Institute was reformed in order to fulfill the legal requirements demanded by the Legal Framework of Higher Education Institutions. The Institute was then renamed Portucalense Institute for Legal Research.

Objectives of the Institute:

- Promote knowledge and development through basic and applied scientific research;
- Planning and conducting additional training, professional and postgraduate;
- Organizing conferences, seminars and activities;

- Publication of monographs, journals, collections of laws and other research;
- Promotion and integration of students of 1st, 2nd and 3rd cycle in research activities;
- Preparation of studies at the request of public or private institutions in the field of their expertise;
- Cooperation with other public or private, national, European or foreign entities;
- Establishment and development of an institute of documentation;

Carrying out other activities that contribute to the development of scientific research and knowledge within the Legal Sciences.

The IJP welcomes and embraces the Vision of an European Research Area as laid out in the European Commission 2007 Green Paper (COM(2007) 161 final). IJP sees itself as an active player in building a European Research Area where opportunities and challenges brought by globalisation are welcomed, business R&D investment is attracted, embedding knowledge in society and freeing Europe's knowledge potential in all its dimensions.

Message from Diana Wallis, the ELI President

Dear Members and Friends of the ELI,

Dear Colleagues,

I am very sorry to have to inform you that Rosana has recently advised us that she will be leaving the ELI as Secretary General. She has rather unexpectedly been offered a post with the European Union Agency for Fundamental Rights. After some deliberation, she has decided to accept this proposal. I suppose this was always a risk, as we knew we had someone really good and clearly others thought so too! She will be leaving us in mid-November.

I am sure that you will join me in thanking her for her work with ELI in this last year as our first Secretary General and previously in the role of project officer. She has undoubtedly contributed in many ways to our growing success. We wish her well in her new ventures.

Steps are already underway to appoint a successor but necessarily this will take some time and even under the best timeline, we would not expect to have someone in the post until the New Year. This will place a heavier demand on the rest of the team in Vienna and in this respect I ask for your understanding. In the short term, Christiane will be more present in overseeing the work of the Secretariat, and tasks have already been reallocated amongst the remainder of the team.

The advertisement for Rosanna's successor will be published through the University of Vienna in the next few days; should there be anyone whom you know who might be a suitable applicant, please do encourage them to apply and indeed as appropriate advise myself or other members of the Executive.

With best wishes,

Diana Wallis

ELI President

Vacancy for PR Officer at the ELI Secretariat

The European Law Institute (ELI) Secretariat is currently looking for a full-time PR Officer to join the team.

The PR Officer will be responsible, together with the Secretary General, for the further development of the ELI strategy for public relations. He/she will also be in charge of the ELI Newsletter and website and of any other PR related tasks. We are offering flexible working hours, as well as an international and creative working environment.

The candidate must hold a very good command of English and German. Knowledge of other foreign

languages is of advantage. Experience in project coordination and event management would be an asset, as is work experience at international organisations. Experience in Journalism and/or PR is required.

An initial contract would be signed for 1 year with the possibility of extension until 30 September 2019. The salary corresponds to category IIIa of the [University of Vienna Collective Agreement](#). If you are interested in the position, please apply online following [this link](#), by no later than 17 November 2016. May you have any questions, send an email to secretariat@europeanlawinstitute.eu.

Save the date!

NOV 2016

- **7-8 November, Utrecht:** Meeting of the Working Group of the Empowering European Families Project
- **16-17 November, Leiden:** Meeting on ELI Project on Rescue of Business in Insolvency Law.
- **21-22 November, Vienna:** Meeting of ELI-UNIDROIT Joint Project on Civil Procedure.
- **28 November, Vienna:** Meeting of the ADR Project Team
- **28 November, Vienna:** Workshop on Internet Jurisdiction

DEC 2016

- **15-16 December, Utrecht:** Meeting of the Working Group of the Empowering European Families Project

MAR 2017

- **30-31 March, Hull:** Conference on Digitalisation of Law.

SEP 2017

- **6-8 September, Vienna:** ELI 2017 Annual Conference and General Assembly



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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.