

THE EUROPEAN LAW INSTITUTE (ELI)

ELI PROJECT GUIDELINES

of 27 August 2020 established by Council Decision 2020/18 and repealing ELI Project Guidelines of 21 November 2018 (as amended by Council Decision 2019/11 of 26 June 2019, Council Decision 2020/6 of 20 February 2020)

These Guidelines for the selection, management and approval of projects carried out under the auspices of ELI (the Guidelines) are issued as a Byelaw of ELI in accordance with Article 13(5) of ELI's Articles of Association (the Statute).

Article 1: Scope	2
Article 2: Types of ELI projects.....	2
Article 3: Project selection.....	2
Article 4: Composition of Teams	3
Article 5: Project funding.....	3
Article 6: Project proposal and feasibility study.....	4
Article 7: Adoption of an ELI project.....	4
Article 8: Project execution and monitoring	5
Article 9: Approval of the result of the project	5
Article 10: Publication.....	6
Article 11: Intellectual property rights	6
Article 12: Dissemination and public relations.....	7
Article 13: Dispute settlement.....	7
Article 14: Mandate and transitory provisions.....	7

Article 1: Scope

- (1) The Guidelines apply to all ELI projects, including feasibility studies for ELI projects.
- (2) Nothing in the Guidelines shall prevent ELI from embarking on activities within the fields outlined in Article 3 of the Statute that are not projects. This includes channels of interaction between the ELI and the European public which allow a more timely reaction of the ELI to current legal developments than ELI projects may provide.
- (3) The Council authorises the Executive Committee to adapt these Guidelines for specific projects as appropriate. In particular, the Executive Committee is authorised to adapt these Guidelines as far as required for projects that the ELI conducts together with other organisations (joint projects) or that receive third party funding. In such cases, ELI will make efforts to conclude an agreement with the relevant organisation which should, at least, include terms as to funding, the approval process, intellectual property rights and publication rights. In case of such adaptation, the Executive Committee will inform the Council.

Article 2: Types of ELI projects

- (1) ELI projects aim at output that can be subsumed under one of four broad categories:
 - (a) Draft legislative proposals;
 - (b) Model laws, model rules, statements of principles;
 - (c) Checklists, other practical guidance; and
 - (d) Position papers.
- (2) The ‘operative part’, which is the legislative proposal, model law, set of principles, checklist etc itself, should occupy centre stage of each project. It should be accompanied by an executive summary, introduction, comments and/or notes. These should, in relation to the ‘operative part’, be of ancillary nature, ie be as short and concise as is consistent with explaining fully the underlying reasoning and policy choices made, drafted with a view to facilitating the understanding and/or use of the operative part, and be in plain and intelligible language that is immediately understandable to lawyers who are not specialists in the relevant field.
- (3) Background materials that do not fulfil these requirements (such as country reports, conference papers or in-depth doctrinal analysis) may, with the ELI’s consent, be published in the ELI book series under the Reporters’ own names, but they are not part of what is submitted for approval to the ELI’s Council and Membership. ELI should not embark on projects where the production of such background materials and scholarly analysis is the primary focus, even where such analysis may result in concrete proposals.

Article 3: Project selection

- (1) The Executive Committee, on its own initiative or on the basis of project ideas suggested to the ELI, is responsible for identifying potential ELI projects according to the selection criteria set out in the following paragraphs and for proposing them to the Council. The Executive Committee may from time to time host meetings with experts from within and outside ELI whose mission it is to select/identify and flesh out the most promising topics in a defined target area. It will, where appropriate, consult the Senate and relevant stakeholders.
- (2) In deciding whether the ELI should embark on a particular project the ELI bodies may wish to consider, in particular, the following:
 - (a) Whether and to what extent the output will be a major reference text in the relevant field, which everyone dealing with the issues at stake has to take into account;

- (b) Whether it is possible to explain in simple language, understandable by a general audience, why the output would make a material difference for the benefit of citizens, companies or professionals in Europe;
- (c) Whether the issue is so topical and central for the development of society and law in Europe that ELI is rightly expected to raise its voice and ELI's contribution to the debate will receive material public attention.

Generally speaking, at least two of the questions (a) to (c) should be answered in the affirmative.

- (3) There is a range of other considerations, which ELI bodies may wish to take into account when deciding on whether to embark on a project, including the desire to have a good balance in its project portfolio, to have a sufficient but manageable number of projects at any one point in time, to ensure continuity, and to build a good relationship with other organisations.

Article 4: Composition of Teams

- (1) Projects must have one or more Reporters who will be primarily responsible for conducting the work and for the delivery of the agreed final output. The Reporter(s) and, where applicable, other members together form the Project Team. They must fulfil the following criteria:
 - (a) The Team must meet the criteria of excellence and diversity, including vocational backgrounds, as enshrined in the ELI Statute;
 - (b) There must be (at least) one 'person with the file' (PWF) who is able and prepared to invest significant working time into high quality drafting, making sure visions and collective expertise translate into consistent and homogeneous written output;
 - (c) The Team must be familiar and sufficiently well connected with relevant developments and related initiatives in the field; and
 - (d) The Team must be sufficiently familiar with and committed to ELI procedures and make sure the work will be conducted in accordance with the ELI Statute and Project Guidelines and in the overall spirit of the ELI.
- (2) Each project is also composed of a group of advisors (the Advisory Committee, AC) to support the work of the Project Team. The AC consists of a limited number of high-ranking experts that are regularly consulted by the Reporters and that comment on work-in-progress. AC members need not be ELI members. Upon appointment, AC members must submit the signed declaration set out in Annex III.
- (3) Two or three AC members drawn from the Council take the role of Assessors who will act in the capacity of peer reviewers and auditors of quality. Their task is to:
 - (a) keep themselves informed on the project, closely monitor the quality of the work being carried out and be prepared to report to the ELI bodies at any time; and
 - (b) to provide a separate report on the project when the results are submitted for approval.
- (4) Additionally, projects are normally supported by a Members Consultative Committee (MCC). All ELI members are invited to join an MCC. The MCC should generally appoint a chairperson.
- (5) All persons involved in carrying out ELI projects are bound by the Conflicts of Interest rules set out in Article 16 of the Statute and any Code of Conduct issued by the Council.

Article 5: Project funding

- (1) ELI projects will typically be financed from independent external sources or by ELI or a combination of these. ELI will only accept external funding if it is provided freely and independently of any condition concerning the results of project work.

- (2) Funding from ELI itself is limited to reasonable travel and similar expenses. It does not encompass remuneration for project work or staff (such as a research assistant or post doc researcher) costs. The main benefit in taking part in an ELI project can therefore not lie in ELI's financial support but in the critical input received from an extremely broad and diverse constituency and in the enhanced impact and visibility that come with work that is conducted as an ELI feasibility study or project.
- (3) ELI will only exceptionally provide funding for feasibility studies. The ELI Secretariat can, however, provide assistance to prospective Reporter(s) during preparatory phases of feasibility studies or projects with the aim of securing external funding.

Article 6: Project proposal and feasibility study

- (1) Before the commencement of a project, a project proposal and a feasibility study must be prepared.
- (2) The project proposal must demonstrate how the project satisfies the selection criteria set out in Article 3 and should be prepared using the form in Annex I.
- (3) The feasibility study must include at least:
 - (a) a synopsis of the topic, its legal background and relevance, the aims of the project and an explanation of the methodology to be used; and
 - (b) at least a representative sample of what might comprise the operative part (such as some representative draft model rules – though their content will, of course, usually change later in the light of further research) as well as a meaningful outline of the whole operative part (such as a list of potential chapters).

If the feasibility study comes to the conclusion that an ELI project is feasible and should be put to the Council for adoption it must be accompanied by:

- (c) a complete proposal indicating those involved in the project and their functions (if contributors are not all agreed upon, there should be details on what type of individuals are expected), a complete timeline and a complete funding plan (note that applications for external funding may, at this point in time, still be pending);
 - (d) signed declarations from all relevant individuals involved that they will adhere to the Project Guidelines and assign to the ELI rights as foreseen by the ELI's intellectual property policy in the form set out in Annex II.
- (4) If a project proposal has been submitted without a feasibility study having been undertaken, the Council will not adopt the project. Instead, the Council may, at its discretion, give a mandate to one or several individual(s), who would later also act as Reporter(s), to develop and submit a feasibility study within an agreed period of up to one year. Article 7(1) applies accordingly to project proposals submitted without a feasibility study.

Article 7: Adoption of an ELI project

- (1) The Executive Committee will consider the project proposal and feasibility study, suggest revisions (where appropriate) and forward the project proposal and feasibility study together with a recommendation to the Council. The Council will ordinarily expect to hear a short oral presentation by the proposer and will ask questions or seek clarifications.
- (2) After consultation with the Senate, the Council may take one of the following decisions:
 - (a) adopt the project, if necessary with conditions, and project plan to be carried out on behalf of the ELI, specifying whether it will be conducted under the regular or accelerated procedure.

- (b) decide that the Reporter(s) should develop the project proposal and/or feasibility study further in light of comments made and resubmit it as soon as practicable or within not more than six additional months; or
- (c) conclude that the ELI should not carry out the proposed project.

With the approval of the authors the Council may also decide that the feasibility study be published as such on the ELI website under the name of the authors; the authors are deemed to have given their approval in advance where the ELI has exceptionally provided funding for conducting the feasibility study.

- (3) Reporters, other members of the Project Team, and advisors are appointed by the Council, which may delegate this task to the Executive Committee. After the commencement of a project, further Project Team and AC members can be added on the Executive Committee's approval. However, subject to Article 8(2), no members of the Project Team may be appointed without the Reporters' consent.
- (4) In respect of a project proposed to be conducted under the accelerated procedure the Council may, if the work submitted fulfils the criteria, proceed directly with approval under Article 9.

Article 8: Project execution and monitoring

- (1) The Reporter(s) must submit written progress reports at least twice per year, at least four weeks before every Council meeting. There must be strict compliance with this time requirement. A progress report should consist of:
 - (a) a Reporter(s)' memorandum of usually not more than one page, briefly setting out the main project activities undertaken since the last report and highlighting important policy choices made; and
 - (b) the current draft of the operative part of the project including explanatory comments and meaningful information about the status of any incomplete parts.
- (2) Progress reports will be sent to the AC, the MCC, the Council and the Senate, inviting comments (without prejudice to more frequent consultation of AC and MCC by the Reporters). Reporters and Assessors should be prepared to appear and report before Council in person. Where Reporters fail to comply with these duties, or where reports are found not to be satisfactory, the Council will take the decisions it deems appropriate, which may include discontinuation of the project as ultima ratio.
- (3) Revisions of the project plan after the approval by the Council must be notified to the Executive Committee which may ask the Project Team to reconsider the revision. Where a deviation from the project plan (or a later revision of the project plan) fundamentally affects the nature, funding or timing of completion of the project or might otherwise raise serious issues, the Executive Committee may ask the Council to reach a decision in consultation with the Senate.

Article 9: Approval of the result of the project

- (1) Taking into account all consultations and comments, the Reporter(s) shall then submit the draft which they consider as potentially complete and final (Council Draft) to the Executive Committee at least two months before the Council meeting at which it is to be considered
- (2) The Council Draft must be submitted with supporting signed statements, using the form at Annex IV, from each of those that formed the Project Team (other than the Reporter(s)) and the AC to signify that each has considered the result and either supports what is said or wishes to make a significant reservation. The Assessors and the chair of the MCC should also submit a report on the project and Council Draft in the same timescale. Assessors should be free to choose the form and style of their report, but the report should, at least, cover the issues addressed in Annex V.

- (3) Following consideration of the Council Draft, the Executive Committee will, either:
 - (a) forward it, any accompanying statements or reports and comments to the Council and the Senate; or
 - (b) send it back to the Reporter(s) with comments specifying how it considers the draft to require amendment.
- (4) The Council will determine at the meeting at which the draft is to be considered whether the Council Draft:
 - (a) should be approved by it, subject to the usual editorial prerogatives, and – except in the case of a project under the accelerated procedure – submitted to the Membership for approval; or
 - (b) should be remitted to the Reporter(s) in which case the Reporter(s) shall revise the draft in consultation with the AC and the MCC as soon as practicable or within a period specified by the Council; or
 - (c) should be rejected.
- (5) The Membership in determining whether to approve the draft – except in the case of a project under the accelerated procedure – may only approve or reject the draft.

Article 10: Publication

- (1) Completed projects may only be published as an official position of ELI after the approval of both the Council and the Membership. In the case of a project subject to the accelerated procedure Council approval is sufficient.
- (2) In the publication, ELI shall fully acknowledge all those who contributed to the ELI project as a member of the Project Team, AC, Assessors or MCC. The scope and format of the final publication are for the sole determination of ELI.
- (3) ELI will publish approved projects under its own name as editor. The Reporter(s) will have the status of author(s). Where the Reporter(s) and the ELI so agree, other members of the Project Team may have the status of secondary author(s), with the Reporter(s) then assuming the role of primary authors. As far as background materials are concerned, however, ELI and any individuals involved may agree on a different solution on the question of editorship.
- (4) No member of the Project Team, AC or MCC may publish the ELI project, any preparatory or other work carried out as part of the project, or any work that is likely to be confused with the ELI project or with parts or revised versions thereof, under their own name or grant others the right to do so under their name without the express consent of ELI.
- (5) Nothing in the Guidelines shall preclude a member of the Project Team, or any other person, from publishing in their own name ideas they have contributed to the ELI feasibility study or project unless such publication could potentially undermine the rule in paragraph (4). Where such ideas have been influenced by group work conducted under the auspices of ELI due acknowledgement must be made.
- (6) It is within the discretion of ELI when it will publish a revised edition of any ELI project, if at all. ELI shall approach the Reporter(s) before doing so and vice versa. If the Reporter(s) are not prepared to make any necessary revisions within the timeframe specified by ELI, ELI may entrust other individuals with this task.

Article 11: Intellectual property rights

- (1) The author(s) shall, unless expressly agreed otherwise, assign to ELI the exclusive worldwide rights to reproduce, communicate or otherwise make available to the public, and distribute by sale or otherwise, the content published by ELI or translations thereof, during the full term of copyright and all renewals thereof. The authors shall assign to ELI the worldwide rights for use by ELI, including the right to make translations, prepare other

versions, quote from or otherwise utilise the work or material based on the work, and ELI may grant permissions and licenses to third parties to do the same.

- (2) Unless expressly agreed otherwise, the authors shall get no remuneration from ELI for their work. Where, however, ELI at its discretion decides to sell publications and insofar as ELI is editor in accordance with Article 10(3), the authors will receive half of the net proceeds.
- (3) Where a feasibility study is published on the ELI website under the name of the authors (cf. Article 7(2)) the authors shall grant ELI a non-exclusive right to the extent described in paragraph (1).

Article 12: Dissemination and public relations

- (1) At any stage during a project's lifecycle, the ELI Secretariat and the Reporter(s) will jointly make best efforts to create visibility for the project and for ELI.
- (2) Members of a Project Team are, even prior to approval by the Council or Membership, encouraged to publicly communicate details of the project, including any preliminary results, in order to improve the results or enhance visibility. Such communication may, in particular, occur at conferences, in discussions with relevant institutions and stakeholders, or in law journals. Any such communication must, in a clear and prominent manner:
 - (a) unequivocally make clear that the work does not yet represent the position of ELI, and in the case of joint projects that of any partnering institution or body; and
 - (b) duly acknowledge that the work is being conducted on behalf of ELI, and in the case of joint projects that of any partnering institution or body.
- (3) As early as is appropriate, the ELI Secretariat will, together with the Reporter(s), draw up a project PR and dissemination plan. This plan will include, at least, the identification of:
 - (a) target audiences, consisting of institutions and/or individuals (including contact details), for whom the project and its results might be relevant;
 - (a) target events (ELI events or other conferences convening experts in a particular area where the project might be presented or project flyers and other PR materials disseminated);
 - (b) target channels (such as academic journals, blogs, SSRN, YouTube, social media); and
 - (c) details as to who will take over which activity.

Implementation of the plan requires monitoring by the Secretariat, and the plan has to be updated and adapted at regular intervals, also for a reasonable period of time after the final outcome has been published.

Article 13: Dispute settlement

Any disputes arising out of the selection, identification, drafting process, approval or publication of ELI feasibility studies and projects under the Guidelines shall be settled by the Arbitral Tribunal of ELI under Article 17 of the Statute, irrespective of whether or not the persons involved are members of ELI.

Article 14: Mandate and transitory provisions

- (1) The forms referred to as Annexes I to V will be prepared by the ELI Secretariat and approved by the Executive Committee. They may be changed from time to time and adapted as appropriate in individual cases.
- (2) These Guidelines enter into force on 27 August 2020. They apply to projects adopted by the ELI Council after this date. Projects adopted before this date may be conducted under these Guidelines with the Reporters' consent.

Annex I: Project Proposal Form

Annex II: Declaration by Project Team Members of Adherence to the Guidelines and Assignment of IP Rights

Annex III: Declaration by Members of the AC

Annex IV: Evaluation of Council Draft by Project Team/Advisors/MCC

Annex V: Evaluation of Council Draft by Assessors

The Annexes are available on the [ELI website](#).