

## SECOND SELF-EVALUATION REPORT

2022

### INTRODUCTION

#### A. Requirement for Self-Evaluation

1. Under Article 13(6) of its Statute, 'The Association's activities, including the Association's projects, shall be subject to self-evaluation every four years. The self-evaluation report shall be made public.'
2. It has been eleven years since the Association's (ELI) Founding Members established the Institute in Paris in June 2011 with the aim of improving the law in Europe through research, recommendations and practical guidance. ELI's first self-evaluation was carried out in August 2018. This is its second. The Appendix to this self-evaluation sets out the extent to which the issues raised in the first self-evaluation were implemented.

#### B. Aims of ELI

3. The aims of ELI, a not for profit organisation, as set out in Article 3 and of its Statute, are to:
  - (a) evaluate and stimulate the development of EU law, legal policy, and practice, and in particular make proposals for the further development of the *acquis* and for the enhancement of EU law implementation by the Member States;
  - (b) identify and analyse legal developments in areas within the competence of Member States which are relevant at the EU level;
  - (c) study EU approaches regarding international law and enhance the role EU law could play globally, for instance in drafting international instruments or model rules;
  - (d) conduct and facilitate pan-European research, in particular draft, evaluate or improve principles and rules which are common to the European legal systems; and
  - (e) provide a forum, for discussion and cooperation, of jurists irrespective of their vocation or occupation, *inter alia* academics, judges, lawyers and other legal professionals, who take an active interest in European legal development and together represent a broad range of legal traditions.
4. This self-evaluation, following the approach of the first self-evaluation report, seeks to measure ELI's performance against those aims.

#### C. Establishment of ELI

5. ELI celebrated its Decennial on 1 June 2021 in an event attended by several important figures including Koen Lenaerts (President of the Court of Justice of the European Union (CJEU)), Robert Spano (President of the European Court of Human Rights), Věra Jourová (European Commission Vice-President for Values and Transparency), Didier Reynders (European Commissioner for Justice) and Anna Joubin-Bret (Secretary of the United Nations Commission

on International Trade Law (UNCITRAL)). Heinz W Engl (now former Rector of the University of Vienna) also attended. The event was an occasion to look back at ELI's many achievements and to reflect on its potential.

6. Vienna was chosen in 2011 as the seat of the Secretariat following discussions within ELI and after an agreement was reached with the University of Vienna to assist with the funding of the Secretariat. The Secretariat established under that agreement was continued after the initial period until 2023. On 28 March 2022, representatives of ELI and the University of Vienna signed a further extension of their Framework Cooperation Agreement, guaranteeing ELI's seat in Vienna for a further four-year-term until 2027.
7. Elections for the governing bodies of ELI have been held and meetings have taken place in accordance with the Statute each year. A conference on the work of ELI has been held each year at a time that has coincided with the meeting of the Membership. Since 2020, as a result of the COVID-19 pandemic, meetings and other events have taken place online. Hybrid and in person events are slowly beginning to take place again. The 2022 Annual Conference and Meetings was the first large-scale hybrid event ELI has held since the start of the pandemic.
8. This self-evaluation is organised under six headings:
  - I Projects and other work
  - II Hubs and Special Interest Groups
  - III Membership and governance
  - IV Finances and fundraising
  - V Communication, publicity, public relations and the Young Lawyers Award
  - VI Conclusion

## PROJECTS AND OTHER WORK

9. The core function of ELI is its project work and a number of steps have been taken to improve and expand ELI's performance of this core function.
  - A. Scope and methodology of projects undertaken**  
*Project strategy, development and control over quality and timeliness*
10. The first self-evaluation report recommended a rolling five-year strategy. A project strategy has been agreed and implemented. As a result, the scope of projects has widened and about 20 initiatives are at various stages of project development.
11. ELI's project portfolio now benefits from three focus areas or umbrellas:
  - (a) Rule of Law and the Convergence of Legal Systems in the 21st Century;
  - (b) Law and Governance for the Digital Age; and
  - (c) Sustainable Life and Society.

12. Discussions led to the broadening the first title (formerly, 'Rule of Law in the 21st Century') to reflect more accurately the topics subsumed under it and to allow further leeway as ELI considers other topics on which to embark.
13. High Level Expert Groups (HLEGs) have been convened *ad hoc* to identify the most pressing topics on which to embark either in general or in a particular field of law. HLEGs have proved instrumental in the design of projects.
14. The Presidency and Secretary General have embarked on extensive consultations with heads of Institutional ELI members and external organisations, as part of representational activities, to seek their views as to current and future projects that might assist the development of law in Europe.
15. Following some proposals set out in the first self-evaluation report, several new and more extensive mechanisms for the control of quality and timeliness have been introduced, including a two-step adoption procedure for new projects (with a mandatory feasibility study). Procedures have also been simplified and streamlined. The progress of projects and their development is closely monitored by the Scientific Director and Secretariat in close cooperation with the Executive Committee. More emphasis has been placed on the importance of dissemination, with enhanced efforts being made to present ELI's work to the public. Best practice models in terms of project design (such as the size and composition of Project Teams, diversity, and the role of the wider Project Team as compared with Advisory Committee and MCC) will be drafted and presented to the Council in the coming months; it is hoped these will improve the design of new projects.
16. New types of publications have been launched since 2021, including Innovation Papers and responses to European Commission public consultations.

#### *The appointment of a Scientific Director*

17. Following several years of discussion within the various ELI bodies and upon the strong recommendation of the current President and Executive Committee, the position of Scientific Director was created in September 2021. Prof Dr Christiane Wendehorst was designated as the first Scientific Director. She has been actively involved in ELI from its very conception through to its establishment and beyond, taking on various roles as the first ELI Treasurer (2011 to September 2013), the Vice-President (September 2013 to September 2017), President (September 2019 to September 2021) as well as Reporter, inter alia, of the project carried out jointly with the American Law Institute (ALI) on Principles for a Data Economy. She brings to the position not only institutional knowledge, but also the expertise of a scholar who is acknowledged worldwide. Under the supervision of the Executive Committee, her work includes close liaison with and guidance to those working on the many projects which ELI is undertaking. She is also engaged in the identification of topics of future interest for consideration by ELI.

### *Project Guidelines*

18. ELI has made significant revisions to its Project Guidelines. The first revisions followed the recommendations in the first self-evaluation; further major revisions were made in the light of experience. The last revision took place in 2020 with a view to simplifying procedures and strengthening coherence, timeliness and impact. Assessors have been appointed for each project, following a recommendation in the first self-evaluation to ensure the closer involvement of the Council in the monitoring, development and quality control of ELI Projects. Specific provision is made for dissemination and public relations. The changes are proving effective. Further proposals are currently being developed, with more emphasis being placed on guidance to drafters of project proposals to encourage greater awareness and informed choice. The documentation will be consolidated into Revised Guidelines; these will also refer to dissemination and implementation strategy to ensure that ELI's publications are not only circulated among stakeholders but that a collaborative effort is also made for their use and implementation.

### *Approval of projects*

19. To facilitate approval of projects by the Council, the latter adopted at its meeting of 1 September 2021 a procedure known as the *Phillipe Motion* (named after the former ELI Treasurer, Prof Denis Philippe). This procedure was modelled on a similar procedure used for some years by the ALI according to which a project's draft report is approved, subject to any requested changes to which the Reporters have agreed, to any motions that were passed during the course of the Council meeting, as well as to any general, non-substantive edits to the commentary, illustrations or the black-letter principles/rules that might be required before publication. The procedure has proved beneficial and has been applied on several occasions. The Council increasingly tries to make clear the scope of the Reporters' discretion under the *Phillipe Motion* to ensure it serves its purpose but provides for the necessary flexibility for effective finalisation of the project.

### *Completed Projects*

20. The following twelve projects were completed after the first self-evaluation report; this is an average three projects/year.

#### **(a) Rule of Law and the Convergence of Legal Systems in the 21st Century**

- (1) ELI Report on Freedom of Expression as a Common Constitutional Tradition in Europe (2022)
- (2) For a European Approach to R&D Tax Incentive(s) (2021)
- (3) ELI-UNIDROIT Model European Rules of Civil Procedure (2021)
- (4) Empowering European Families: Towards More Party Autonomy in European Family and Succession Law (2019)

**(b) Law and Governance for the Digital Age**

- (5) ELI Principles on Blockchain Technology, Smart Contracts and Consumer Protection (2022) – in copyediting
- (6) ELI Draft of a Revised Product Liability Directive (2022)
- (7) ELI Principles on the Use of Digital Assets as Security (2022)
- (8) ELI Model Rules on Impact Assessment of Algorithmic Decision-Making Systems Used by Public Administration (2022)
- (9) ALI-ELI Principles for a Data Economy: Data Transactions and Data Rights (2021)
- (10) Model Rules on Online Platforms (2020)

**(c) Sustainable Life and Society**

- (11) Business and Human Rights: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights, FRA) (2022)
- (12) The Protection of Adults in International Situations (2020)

*Current Projects*

21. The following eleven projects are current and are due for completion as shown.

**(a) Rule of Law and the Convergence of Legal Systems in the 21st Century**

- (1) Admissibility of E-Evidence in Criminal Proceedings in the EU (Dec 2022)
- (2) ELI-Mount Scopus European Standards of Judicial Independence (Apr 2023)
- (3) Fundamental Constitutional Principles (Feb 2023)
- (4) The Concept and the Role of Courts in Family and Succession Matters (Apr 2025)
- (5) Third Party Funding of Litigation (Sep 2024)

**(b) Law and Governance for the Digital Age**

- (6) Access to Digital Assets (Dec 2022)
- (7) Guiding Principles and Model Rules on Algorithmic Contracts (2024/2025)
- (8) Guiding Principles on Implementing Workers' Right to Disconnect (2023)

**(c) Sustainable Life and Society**

- (9) Guidance on Company Capital and Financial Accounting for Corporate Sustainability (Sep 2022)
- (10) Climate Justice – New Challenges for Law and Judges (2023)
- (11) Ecocide (Dec 2022)

*Prospective Projects*

22. The following nine projects have been identified by the Executive Committee to commence soon or as having potential to proceed to Council for adoption in 2022/2023:

- (a) Rule of Law and the Convergence of Legal Systems in the 21st Century**
    - (1) Corporate Criminal Liability
    - (2) EU Conflict of Laws for Companies: The Acquis and Beyond
    - (3) Recognition of Agreements Resulting from Mediation
    - (4) Charitable and Other Long Term Foundations in Europe
  
  - (b) Law and Governance for the Digital Age**
    - (5) Digitalisation of Justice Systems
    - (6) Biometric Techniques
    - (7) Digital Inheritance
  
  - (c) Sustainable Life and Society**
    - (8) Judicial Cooperation Mechanisms and the Risks of Gender Discrimination
    - (9) Nudges as Enablers of Sustainable Living
23. At least eight other prospective projects are in development phase. As with current and previous ELI projects, many of these were developed in consultation with ELI's HLEGs, its Institutional Observers and and/or with other stakeholders. The Executive Committee is working at great speed to ensure that at least one further major ELI project is added to the portfolio.
- B. Other work**
24. In addition to its project work, ELI also undertakes shorter-term work and initiatives, often under the provisions for accelerated procedures. Membership consultations are built into the approval process, time-permitting.
25. Other work and initiatives since the first self-evaluation include:
- (a) The Council's Resolution on Ukraine (2022)*

A Resolution on Ukraine was adopted by the Council on the very day of the deployment of Russian armed forces into Ukraine. In it, the Council summarised three fundamental legal principles and reiterated its unwavering support for Ukraine and its people.
  
  - (b) ELI's COVID-19 Principles (2020–2021)*

The outbreak of COVID-19 brought immense suffering and death to a considerable number of people around the world. It also impacted fundamentally the functioning of States, their democratic institutions and legal systems and their economies. ELI's 17 Principles for the COVID-19 Crisis were published in 2020 and supplemented in 2021. They address some of the most important legal issues arising in relation to the crisis and offer guidance to European States, EU institutions and other bodies.

(c) *ELI's Innovation Paper Series*

Launched in 2020, the aim of ELI's Innovation Paper Series is to enable ELI members to propose pioneering legal or multidisciplinary ideas that deserve the attention of the European legal community and aim at improving European law. The paper may resemble ELI projects (such as draft legislation, model rules, principles, checklists or position papers), but can be briefer. To date, two Innovation Papers have been completed:

- (i) Guiding Principles for Algorithmic Decision-Making in the EU (2022)
- (ii) Guiding Principles for Updating the EU Product Liability Directive for the Digital Age (2021)

(d) *Responses to EU Public Consultations*

ELI has been increasingly active in responding to European Commission public consultations. This marks a change from previous practice where Teams issued responses in their own names. Since 2018, the following responses have been issued in ELI's name:

- (i) Response to the European Commission's Public Consultation on Sustainable Consumption of Goods (2022)
- (ii) Response to the European Commission's Public Consultation on the Initiative on the Cross-Border Protection of Vulnerable Adults (2022)
- (iii) Response to the European Commission's Public Consultation on Civil Liability (Product Liability and Liability for AI) (2022)
- (iv) Response to the European Commission's Public Consultation on Data Act (2021)

26. The decision has been taken not to draft guidelines for these initiatives. The Executive Committee will continue to monitor matters and review the need for guidelines with the benefit of further experience.

**C. Means of publication**

27. ELI's reports, papers and other materials are published on its website. They are also published in hard copy in house. Improvements were made in 2021 to the style of publication to provide for a stronger identity in the cover sheet and uniformity of formatting. A copyeditor has also been engaged.

28. Where available, background materials are published, alongside ELI Reports, by Oxford University Press (OUP). Publication under OUP's ELI Series ensures broader dissemination. So far, the following projects have been published with OUP:

- (d) Preventing and Resolving Conflicts of Jurisdiction in EU Criminal Law (Dec 2018)
- (e) Rescue of Business in Europe (Mar 2020)

(f) ELI-UNIDROIT Model European Rules of Civil Procedure (Aug 2021)

29. With several projects drawing to an end in 2022, a number of other proposals have been submitted to OUP.
30. ELI intends to provide Style Guidelines to Project Teams at the outset of each project. It is essential that these are not too bureaucratic; they should follow very closely the style guidelines of major publishers, particularly if OUP is to continue its series of hard copy publications.

#### **D. Translations**

31. Since 2018, an increasing number of requests have been made to ELI to translate its work. Publications are or will soon be available in a number of languages including in Chinese, French, German, Italian, Japanese, Korean, Polish, Russian, Spanish, Ukrainian and Farsi. Quality control measures have been put in place, including a peer-review process initiated in 2022, to ensure translations are as accurate as possible. In addition to translation agreements, a Protocol has been drafted to facilitate smooth cooperation for joint projects.
32. A concerted effort is being made to secure translations by ELI Hubs and other ELI members. Hub members (other than the English and Irish) are invited to consider translation into their respective languages when ELI work is published.

#### **E. Dissemination and implementation**

33. The Secretariat has now put in place a dissemination strategy which provides for press releases to media outlets across Europe, letters to various stakeholders with an invitation to bilateral meetings, promotion on social media and via other ELI channels, as well as publication on SSRN.
34. Webinars were launched as part of ELI's dissemination strategy during the pandemic. They have proved valuable and will be continued for the long term. So far, ELI has held 31 webinars which are available on its [YouTube](#) channel.
35. Project proposal templates are to be amended to require those wishing to conduct projects consider carefully the need for dissemination and implementation in advance and integrate these into their project plans. The revised template will provide for a period of two years from publication for dissemination and implementation to ensure that project proposals include these activities as an integral part of the commitment to conducting projects. Further, they will require an individual within the Project Team to be designated as the primary person in charge of dissemination.



36. Projects would benefit more from greater dissemination and discussion on implementation during the course of their life cycle. Presently, the Annual Conferences serve as the main conduit for this.
37. As part of ELI's implementation strategy, discussions on an invitation only basis will be launched with the aim of ensuring that leading stakeholders are not only informed of ELI's work, but participate in a dialogue on translating ELI's proposals into practice.

#### **F. Impact**

38. There is much general evidence to suggest that ELI's work has fulfilled several of the aims set out in Article 3 of the Statute. While it is difficult for impact to be seen in tangible and in accurate statistical terms, it is clear that many of the projects have stimulated the development of EU law, policy and practice and progressed the analysis of areas within the competence of states and other bodies. By way of example:
  - (a) The project undertaken with the ALI on the *Principles for a Data Economy* influenced discussions internationally (including work done by the European Commission, the United Nations Commission on International Trade Law (UNCITRAL), the German Data Ethics Commission and the Data Governance Working Group of the Global Partnership on Artificial Intelligence (GPAI), among others). Among other examples, the 'concept of co-generated data' coined by the Project Team has been picked up by academics, government experts and EU officials.
  - (b) ELI's jointly drafted *Model European Rules of Civil Procedure* (with the International Institute for the Unification of Private Law, UNIDROIT) attracted the interest of EU institutions such as the European Commission and was subject to in-depth analysis, inter alia, in working documents drafted by the Committee on Legal Affairs of the European Parliament (JURI) and the Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament. The study influenced JURI's stance on the need for common minimum standards of civil procedure in the EU, as evidenced in its report to the Commission.
  - (c) The *ELI Model Rules on Online Platforms* have been referred to by several stakeholders in the current debate about the proposal for a Digital Services Act (DSA) and the Digital Markets Act (DMA). Moreover, some of the amendments to the DSA proposal that were suggested by the European Parliament seem to have been inspired by ELI's Model Rules, with background documents quoting the Rules *verbatim*.
  - (d) Several aspects of our *Rescue of Business in Insolvency Law* report were reflected in the Restructuring Directive and have been referred to by national courts, eg in Lithuania, and national legislatures, including that in the UK.
39. While no external assessment has been made of the impact of the projects undertaken and the statements published, an internal report of 2020 assessed the impact of ELI's work in relation to the work of the European Commission. The main conclusion was that informal exchanges and the uptake of ELI ideas at Head of Unit or Policy Officer level have continuously

grown. Acknowledgments in official documents remain below what is expected, despite the fact that there are clear links and influences. As a result, discussions have been held to ensure that whenever ELI's work is used either directly or as inspiration, due reference is made to it.

40. The Decennial festivities were a good opportunity to underline to the highest EU officials the impact of ELI's work. Responses to Public Consultations and the attendance by EU representatives of specific ELI conferences/webinars also enhance the perception to the outside world of our close interaction, as do contributions to ELI's Newsletters by high ranking EU officials. All in all, it is evident that ELI's work has had an impact on legislative proposals and has had an influence in the development of policy at national and regional level, the most recent evidence of which is the endorsement of the ELI Principles for the Covid-19 Crisis by an Advocate General of the CJEU.<sup>1</sup> As observed in the first self-evaluation, however, it may well be desirable to consider further work on impact.

#### **G. The effect of the pandemic on Projects**

41. One consequence of the pandemic was to demonstrate that online meetings work well and are effective. While in person meetings from time to time are necessary, ELI will continue to encourage Reporters and Project Teams to take advantage of its facilities for online meetings. In person gatherings should generally be encouraged for kick off and final meetings, or other key stages of a project, as well as broader dissemination events.

#### **H. Project funding**

42. ELI is not a funding organisation. This is made clear in its Project Guidelines. More should be done by those proposing projects to secure project funding. Applications to national science foundations and other organisations should be encouraged.

#### **I. Conclusion on project work**

43. Significant improvements have been made to the way in which ELI projects and its other work are carried out. The full impact will only be evident when the new wave of ELI projects draws to a close. ELI cannot afford to be complacent. The Executive Committee therefore, while it is currently in the process of initiating further changes for consideration by the Council must continue this essential task over the next four years as it learns from experience as to what works best or does not work well.

---

<sup>1</sup> Opinion of the AG Medina, *Union fédérale des consommateurs – Que choisir (UFC – Que choisir), Consommation, logement et cadre de vie (CLCV) v Premier ministre, Ministre de l'Économie, des Finances et de la Relance*, Case C 407/21, in support of Principle 13(3) on Force Majeure and Hardship.

## HUBS AND SPECIAL INTEREST GROUPS

44. Hubs were established as a practical means through which ELI members could meet closer to home, communicate in their native language, discuss current or upcoming projects and generate ideas for future ELI activities. They are of fundamental importance to ELI's success. They play an important role in making the existence of ELI known across Europe and in the recruitment of new members. In 2019, the Hungarian and Belgio-Luxembourg Hubs were launched. In 2022, the Ukrainian and Turkish Hubs were established, bringing the total number of ELI Hubs to 14. Discussions on the launch of Asia-Pacific, Cypriot, Dutch, Greek, Nordic, Portuguese, Romanian, Serbian and Swiss Hubs are underway.
45. Following Council Decision 2015/1 of February 2015 it was decided that SIGs would be formed to create subject specific ELI Hubs. SIGs exist on subjects varying from digital law to competition law. To date 11 SIGs have been set up, the most recent being the Insurance Law SIG and Environmental Law SIG which were established at the end of 2018 and 2020 respectively. In addition, several subgroups have been established. There are proposals for the establishment of further SIGs. This is to be encouraged. The size of SIGs varies significantly; the Digital Law SIG, the largest, has 147 members; the Insurance Law SIG, the smallest, has 30.
46. Guidance was given as to the running of Hubs on 18 July 2014 and SIGs on 23 June 2015. This was not followed in every case. As recommended in the first self-evaluation, the Secretariat sought to address this by issuing revised Guidelines for Hubs and SIGs, which were adopted by the Council in January 2019. The 2019 Guidelines seem to work well.
47. There has been considerable improvement in communication between most Hubs and SIGs and the Secretariat. In addition to hosting events and issuing publications, some SIGs also launch projects; in some cases, these were eventually taken up as ELI projects. It has generally been encouraging to see how active most Hubs and SIGs have been, despite the pandemic.
48. In line with the revised Guidelines, annual evaluations are conducted in June of each year. These are carefully considered and a report made by the Executive Committee to the Council and Membership. The Guidelines also now provide that Hubs and SIGs are established for a duration of three years and may in extreme cases be dissolved. The Executive Committee has not had to terminate any Hubs or SIGs to date. Rather, Hubs and SIGs have been encouraged to be more active now that COVID-19 restrictions have eased.
49. To ensure consistency and transparency the Secretariat elaborated on the above Guidelines to outline the procedure for establishing Hubs and SIGs, including the method of appointing chairs. The internal document is provided to those interested in establishing such groups and has proved helpful.

50. At the Secretariat's initiative, in 2019 the Hub and SIG of the Year Awards were launched, encouraging innovative action and thinking among ELI's various groups.
51. Despite reference to the need for Hubs and SIGs to be financially self-sufficient, an annual fund of EUR 5,000 is made available for Hubs and SIGs to apply for, with a view to supporting their events. Awards have been made since 2020 but were not put to use in 2021 as a consequence of the pandemic. These have proved a pragmatic way of assisting the progress made by Hubs and SIGs in undertaking innovative activities.
52. Efforts are being made by the Secretariat, in light of the introduction of improved technology, to ensure that invitations for Hub events are not limited to just that Hub but are circulated to members of other Hubs that share the same language. The Secretariat is working on better systematising that practice.
53. Hubs and SIGs were invited on several occasions to consider promoting ELI's publications and other work at their events and, as has been mentioned above, to translate ELI materials. The uptake has been very slow.

## **MEMBERSHIP AND GOVERNANCE**

54. The governance of ELI is complex with five distinct bodies and rules as to the length of time persons can be members of the bodies or hold office. Some changes have been made since the first self-evaluation. However, at this stage of ELI's development, it is again considered inappropriate to review the need for such complexity, though such a review should be considered, probably before the next self-evaluation.

### **A. Membership**

#### *The increase*

55. ELI's network of members from different legal systems and professions has grown from 589 in September 2012 to 1,649 in September 2022. During the same period the number of Institutional Members has grown from 18 to 130. This is a very substantial achievement and significant credit and thanks are due to the Membership Committee. Much effort has also been invested in developing and strengthening ties with international organisations, European bodies and Supreme Courts and in improving dialogue.
56. Extensive efforts are made to balance ELI's Membership base. Of particular importance going forward is the need to work more closely with Ministries of Justices, at whom much of ELI's work is aimed at national level, whether by inviting them to join projects as Observers, to speak in webinars or to join ELI as Fellows or Observers, in addition to the current practice of circulating ELI output to them.

#### *Admission as a Fellow or Observer*

57. Consideration has been given to altering the approach to admissions as a Fellow or Observer. One proposal was to adopt the approach of the ALI. A review undertaken of the mechanism set out in the Statute concluded that the process was sufficiently rigorous. Each application has to be supported by two Fellows. In addition, the Secretariat has over the past four years followed through with more systematic checks. However, the process needs to be kept under review. There are occasions when the Membership Committee has admitted an individual candidate where the candidate is supported by only one Fellow; the Committee has only done so where it is otherwise satisfied of the standing and reputation of the candidate.

#### *Revisions to the Statute*

58. 2019 saw a change to the collective term given to the Fellows and Observers. The term 'Membership' replaced 'General Assembly', with the Council from thereon being the 'General Assembly', within the meaning of Article 10(5) of the 2019 Belgian Code on Companies and Associations. The changes were necessary by amendments to Belgian law which would have made it very difficult for ELI's full body of members, which meets in September each year, to approve accounts and the budget and appoint the auditor so late in the year. The Council now appoints the auditor at its February meeting each year and approves the accounts at its July meeting.
59. In the course of revising the Statute in 2019 the category of 'Institutional Fellow' was introduced, entitling those Institutional members that wished to do so to vote on matters brought before the Membership. 38 institutions have opted for that Membership category, with the remaining members preferring to opt for 'Observer' status on the basis that this demonstrates their independence.

#### *Enhancing Membership benefits*

60. Efforts have been made to enhance ELI Membership benefits and to gain and retain ELI's committed Membership base. A strategy was drafted in February 2019 and implementation has started with the publication on the website of an infographic outlining Membership benefits; printed copies of ELI's Annual Activity Report are sent to Institutional and Sustaining Members; Sustaining Members are listed as such in the Newsletter and a short profile of such Members is published on the website; newly admitted Individual and Institutional Members receive Membership certificates. An annual Institutional Members' Dinner was launched to coincide with Annual Conference. The first took place in 2019 but the second was prevented by the pandemic. It will resume again fully in 2023. Exit questionnaires are now sent to Individual and Institutional Members prior to Membership termination, providing the Secretariat with valuable feedback. However, it is clear that more needs to be done to engage existing members. In 2022 the Executive Committee considered various suggestions put forward by the Membership Committee. Given ELI's limited resources, some of these will be rolled out gradually.

61. ELI has also sought to enhance Membership benefits through the introduction of a comprehensive database which is intended to assist in the management of applications for Fellowship, events, voting, invoicing and payment of Membership dues, budgets, documentation, calendar control and other aspects of ELI's work. As can be anticipated in the roll out of such an all-encompassing software (MyELI), there have been serious delays in enabling the project to go live. Work on the platform is progressing, but the delay is a matter of considerable concern. This is a matter which the Executive Committee and the Council must vigorously continue to support the Secretariat in addressing.
62. The combined Annual Conference and Meetings has been the principal means through which the fifth aim set out in Article 3(2) of the Statute has been achieved.

*Impact of the pandemic on members*

63. As a result of the pandemic (which had a huge personal impact on members and their families), the annual meeting of the Membership, which has traditionally alternated between a meeting in Vienna and a meeting in a city that has generously agreed to host the meeting, was suspended. In 2020 and 2021, therefore, the Membership meeting took place online and in 2022 a hybrid meeting was held, the in person aspect of which was hosted by Universidad Carlos III de Madrid in Spain. Though the annual meeting has been largely formal in nature, it has been accompanied by successful conferences with a combination of distinguished speakers. Steps are being taken to reshape the meeting in light of changes to the role of the Membership after the Statute was amended in 2019 (see no 58). Attendance has increased year on year with 550 participants gathering for the Annual Conference and Meetings in 2021, in part owing to the online mode of the event. In 2022, over 200 participants gathered in Madrid and nearly 200 more remote registrants were secured.

*Ole Lando Memorial Lecture*

64. In 2020 the *Ole Lando Memorial Lecture* was added as a feature of the ELI Annual Conference as a tribute to one of its Founding Members and a leading private international lawyer, Prof Ole Lando (1922–2019). Among many achievements of his long and varied career were the 'Principles of European Contract Law', which have been highly influential in the development of both EU and national contract laws. The first four lectures have been given by Prof Hugh Beale, Prof Christian von Bar and Professor Hector MacQueen and by Prof Christina Ramberg, who nominated Prof Anna Veneziano as the next speaker.
65. The lectures have been one of the ways ELI provides a forum for discussion and cooperation of jurists on topics other than those of its projects (as set out in the fifth aim of Article 3(2) of the Statute).

## **B. The Officers and the Executive Committee**

66. The running of an organisation of the size of ELI is a substantial task. It has four principal components:
- (a) Administration: the organisation of the meetings of the Executive Committee, Council and Membership, collecting fees and paying expenses etc;
  - (b) Finance: securing funding, setting the budget, controlling the budget and approving the budget;
  - (c) The supervision and support of projects; and
  - (d) External relations, including dealing with EU and State institutions and media.
67. The general supervision of these four tasks is in practice the responsibility of the Executive Committee under Article 12 of the Statute, though the budget and accounts (as well as the appointment of auditors) is the responsibility of the Council. The Secretariat, a small team of 5.5 full time equivalents, is generally responsible for the execution of the tasks under the direction of the Secretary General.
68. The way in which the above four principal tasks have been discharged over the years since the foundation of ELI has varied. Some changes have been made as outlined above in the course of changes to the Statute in 2019 (see no 58).
69. In the light of the growth of ELI, the substantial project work now undertaken and the appointment of a Scientific Director in 2021, several changes have been made to the way the Officers, Executive Committee and the Secretariat distribute and discharge those ever increasing responsibilities. The new procedures were reflected in the revised Internal Guidelines for the Executive Committee and Secretariat, which will of course be kept under review in light of the experience gained.
70. ELI introduced a system in which incoming nominate members of the Executive Committee are elected several months before they take office to ensure a seamless handover of responsibilities. It was applied for the first time in 2021. Progress in diversity was demonstrated by the Executive Committee elected in 2021 having a majority of women.
71. The Executive Committee met online from the start of the pandemic, holding up to 13 meetings, up from four, a year. It held its first in person meeting since then in February 2022. It has continued to meet online as this has proved essential to deal with its responsibilities. It will also meet from time to time in person.

## **C. The Council**

72. The Council consists of at least seven and a maximum of 56 members, elected by the Membership from among the Individual Fellows. The President, the two Vice-Presidents and the Treasurer are ex-officio members of the Council from the moment they take office. Before the changes to the ELI Statute and Election Bylaw in 2019, 60 members sat in the

Council. Although this is large, the size has worked in practice because only somewhere between 66% and 85% of the recently composed Council (62% and 80% when *ex officio* members are taken into account) attended any given meeting since September 2021. This attendance record is, however, not satisfactory, particularly in the light of the fact that some do not stay for the whole meeting. The first self-evaluation suggested that there was a powerful case for considering making the Council a size where all members committed themselves to attendance for the entire meeting, unless there were compelling reasons for absence. This needs consideration. In the meantime, steps are being taken to encourage attendance.

73. While the composition of the Council should adequately take into account general principles within the meaning of Article 2 of the ELI Statute, including diversity, this is not entirely the case, with certain jurisdictions and vocations dominating. This imbalance may have been exacerbated by the fact that the elections were held online; however, it is necessary for this imbalance to be addressed. The Executive Committee is considering several potential measures for discussion by the Council.
74. The Council has met online since the start of the pandemic, holding four meetings, in place of two, a year. It met in person for the first time since then in September 2022. Four meetings a year has been a very valuable change; with the return to in person meetings, it would not be cost effective to have more than two meetings in person.
75. As was observed in the first self-evaluation the Council needed to devote the greater part of its meetings to projects. The success of this was evident in the meeting in February 2018. Over the ensuing period, the focus of the work of the Council has been on its role in relation to projects, but more needed to be done to ensure that the role of the Council is made more effective; for example, those reporting to the Council now keep their remarks to a strictly time limited presentation which includes questions for the Council on difficult issues encountered in drafting or anticipated in implementation. This enables the Council to make its views known on the detailed provisions of the project report it was considering.

#### **D. The Senate**

76. The Senate has continued to play an important part in the development of ELI and an informal advisory role in the maintenance of continuity in the officeholders and Executive Committee where succession planning is of real importance. Succession planning has to take account of Articles 11(2) of the Statute (which sets the length of terms of members of the Council) and 12(5) (which sets the length of the terms of the Officers and the Executive Committee).
77. The ELI Senate met online from the start of the pandemic and will continue to do so until further notice. It is hoped this will not diminish the valuable role it plays in providing advice on important issues.



#### **E. The Secretariat**

78. Arrangements were put in place to cover the running of the Secretariat whilst the Secretary General was on maternity leave. On her return, improvements have been made to the general functioning of the Secretariat particularly as a result of external coaching for the entire Secretariat (which the President and Scientific Director attended), the leadership shown by the Secretary General and the commitment of the entire staff.
79. It would be advantageous if the Secretariat could be expanded, but the ability to do so is severely constrained by the resources available to ELI. It is also important that a long-term strategy for the Secretariat is developed; this should include long-term planning for career development, succession and recruitment.

### **FINANCES AND FUNDRAISING**

#### **A. Sources**

##### *General*

80. There are three main sources of funding.
- (1) Membership fees constitute a cornerstone for ELI funding. They are ELI's second biggest source of income. Since the introduction of the Sustaining Membership scheme in 2018, over 97 ELI members have signed up, donating an additional EUR 60 a year above their Membership fees. Steps are being taken to enhance benefits offered to this group.
  - (2) Generous support provided by the University of Vienna constitutes the biggest source of funding and has been essential to the establishment and functioning of ELI. It is provided under a four-year Framework Cooperation Agreement, which came into existence in 2011 on the acceptance of the University of Vienna's bid to host the Secretariat. The funds are solely for the running of the Secretariat, including rent, staff and Secretariat office supplies. There have been two extensions signed in 2015 and 2018 respectively, with the current agreement running until September 2023. As mentioned above, a further four-year extension (2023–2027) was signed recently by the now former Rector of the University of Vienna.
  - (3) The third major source of funding has been the significant operating grants made by the EU which have enabled ELI to increase the number of projects it has undertaken.
  - (4) ELI has also been the beneficiary of funding from the City of Vienna and of project-specific grants from several Foundations.
81. Attempts to raise further funds through the Fundraising Committee continue but experience has shown that this is a very difficult exercise. Lawyers in Europe do not appear to be as generous or forthcoming as lawyers in the United States who have been generous in their support of the ALI. Special thanks are due to this Committee which has worked hard. An additional task of the Committee is to raise funds for the annual ELI Young Lawyers Award, which it has done successfully (see below).

#### *Membership fees*

82. The accumulation of outstanding Membership fees continues to be a source of concern. ELI has sought to overcome this by promoting the use of SEPA Direct Debit. Over 246 members (both individual and institutional) have already signed up, but more willingness needs to come from the Membership for the scheme to succeed. Steps are being taken to encourage members to sign up to SEPA and similar schemes.
83. At some point in the past, there were discussions about raising the current annual Membership fee of EUR 60, as noted in the first self-evaluation report. It was recommended that although this should be kept under review, it is important that the fee set did not discourage those of more limited means from joining. In fact, in light of the pandemic, the Council approved a Membership Reduction Fee scheme in 2021, opening the path to ELI Individual Members from lower income countries to apply for such reductions. To date, 25 members have joined the scheme. Given the effects of the pandemic, discussions on a rise in fees were postponed but rises in inflation have meant that this issue has to be revisited again now.

#### *Financing for the longer term*

84. It is clear that for the longer term, the finances of ELI need very considerable strengthening, particularly in the light of inflationary pressures. Efforts are being made to secure fundraising from more diverse income streams, but the raising of further funds is a major and urgent task for the Council and Executive Committee.

### **B. Financial Management**

85. Deloitte Austria replaced Grant Thornton as a bookkeeping service provider in 2018. It also provides payroll and tax services, as well as ELI's financial statements, which serve as a basis for ELI's annual audits and obligatory reporting to Belgian and Austrian authorities.
86. Provision for liabilities was first created in 2018 to ensure that ELI could meet its future contractual liabilities, given the then financial position in which ELI found itself. Since 2018 the amount of the provision has increased and is today considered by the Executive Committee to have reached an acceptable level under the current financial position of ELI and the present worldwide economic uncertainties. As a result of the change in 2018, Deloitte Austria's review of the Statute in 2021 resulted in the separation of ELI's aims from its sources of funding and more detailed clarification of how assets will be applied in the event of the dissolution of ELI.

## **COMMUNICATIONS, PUBLIC RELATIONS AND YOUNG LAWERS AWARD**

#### *Communications and public relations*

87. Communications, publicity and public relations comprise at least two distinct activities: (a) collection of information and communication with the Membership; and (b) making the

profile and activities of ELI more widely known through the media, social media and conversations with public institutions, publications bearing ELI's imprint, etc.

88. Much has been done in relation to the first activity – ensuring that information about ELI's activities are collated and distributed to the Membership in regular newsletters and through the website. PR materials such as the Membership brochure have been redesigned and they undergo regular updates. A two-page version was recently created and has been uploaded online. Thus the first aspect of communications, as noted in the first evaluation, has seen real progress and continues to improve.
89. However, despite the considerable achievements by ELI, the recognition of that achievement by those familiar with the work of ELI, the efforts undertaken to promote that work through speeches, articles, seminars, meetings, and publication under ELI's imprint, and the exertions of the publicity officer, the second aspect of communications needs much more improvement to ensure that the achievements of ELI are as widely known as they should be. For example, resources must be put into the simplification of ELI's website and into making it more accessible to users.
90. In addition, the Executive Committee feels that more must be done to fulfil the fifth aim set of Article 3(2) of the Statute which provides that one of ELI's aims is the provision of a forum for discussion and cooperation of jurists. So far, the forum which includes the Annual Conference, webinars, conferences, etc, have focused mainly on ELI's projects and other initiatives. True it is that the Ole Lando lecture is more encompassing and Hubs and SIGs take on a huge variety of topics, but efforts will continue to be made for broader discussions on topics outside ELI's radar.

#### *Young Lawyers Award*

91. The ELI Young Lawyers Award was officially launched at the 2016 Annual Conference and General Assembly. The goal of this award is to provide the young European legal community with a mechanism to propose practical suggestions for the improvement of European law, as a way of giving voice to future European legal experts and to helping ELI fulfil its core mission of improving the quality of European law. The award is supported by ELI and other appropriate participating institutions. Considerable thanks are due to Interleges for sponsoring the award since 2018.
92. While there has been some interest in the award, much more needs to be done to entice young scholars to take part in the competition. Ways in which this should happen have been identified by the Executive Committee and Secretariat and are due to be implemented shortly; these include the provision of an internship with a law firm for a short period and publication of a summary of the winning essay in ELI's newsletter. Steps are also being taken to encourage communication between jury members and to circulate news of the competition more broadly.

## CONCLUSION

93. Much has been achieved since the self-evaluation of 2018, as exemplified in this Report. ELI must continue to be self-critical, to adapt to changing environments and concerns and to take difficult and hard decisions. Despite the concerns over finance and fundraising, ELI's second decade should, given the considerable growth in the scale of its project work and the tightening of its governance, be one which sees the steady expansion of its work and its community of jurists. It can be said with some confidence that its impact on the law in Europe and worldwide should continue to grow.

Executive Committee and Secretariat  
(10 October 2022)

## APPENDIX

### Implementation of Recommendations in the First Self-Evaluation Report

First SE Report No	Recommendation	Implemented		Implementation Notes	Second SE Report No
<b>Projects</b>					
10	Hard copy publications	✓		<ul style="list-style-type: none"> <li>All ELI publications have always been available in hard copy, in addition to electronic format</li> <li>Finalised Framework Agreement with OUP in 2017; first book published in 2018</li> </ul>	27 27–29
11	Assessment of potential impact when adopting ELI projects	✓		<ul style="list-style-type: none"> <li>Question integrated into revised Project Guidelines and considered at adoption stage</li> </ul>	18
11	Assessment of impact of ELI outputs	✓	x	<ul style="list-style-type: none"> <li>Internal assessment conducted</li> </ul>	38–40
<b>Management</b>					
16, 19	Need to review management of projects to improve standards and quality	✓		<ul style="list-style-type: none"> <li>Project Guidelines and supporting documents revised</li> <li>More rigorous vetting of project ideas</li> <li>Scientific Director appointed</li> <li>Copyeditor engaged</li> <li>Stronger identity in the cover sheet and uniformity of formatting</li> </ul>	15, 18 14, 15 15, 17 27 27
15, 18 (a)	Need for project type to be identified and used from conception to completion	✓		<ul style="list-style-type: none"> <li>Project Guidelines revised</li> <li>Project Proposal template requires project type to be identified and once done it is used from conception to completion</li> </ul>	15, 18
18	Additional measures to improve quality, support adherence to	✓		<ul style="list-style-type: none"> <li>Project Guidelines revised and simplified</li> <li>Project Guidelines revised to require explanation as to the wider</li> </ul>	15, 18

	project timelines/their amendment and simplify procedures			<p>social and economic benefit of the project</p> <ul style="list-style-type: none"> <li>• Provisions on intellectual property in revised Project Guidelines and Declaration forms improved</li> <li>• Project plan template in Project Guidelines improved</li> <li>• The Executive Committee gives oral report to the Council on the potential feasibility of each project</li> <li>• Council meetings structured to ensure that proposers present their prospective project to the Council, which is advised by the Scientific Director, where needed</li> <li>• Project Guidelines revised to incorporate the role of Assessors to provide the Council with detailed scrutiny of project work</li> <li>• Scientific Director does so too, where needed</li> <li>• (Selected) progress reports tabled on all Council agendas</li> <li>• Philippe Motion introduced to facilitate Council approval subject to conditions</li> <li>• More detailed guidance to proposers of projects underway</li> </ul>	19
18(h)	Plan to deal with project	✓		<ul style="list-style-type: none"> <li>• The Council meets four times a year instead of twice year now</li> <li>• While the February meeting is reserved for the review of all projects, the other meetings focus on selected projects. Given increase in frequency of meetings, there is no need to split the Council, as had initially been suggested</li> </ul>	74–75
<i>Planning for Future Projects</i>					
20	Increase number of projects	✓		<ul style="list-style-type: none"> <li>• 11 current projects</li> <li>• At least 20 at development stage</li> </ul>	21–23
20, 21	Systematic approach to	✓		<ul style="list-style-type: none"> <li>• High Level Expert Groups introduced</li> </ul>	13–23

	identifying projects			<ul style="list-style-type: none"> <li>• Broader consultation with some ELI Institutional Members and external organisations</li> <li>• Scientific Director appointed</li> <li>• The Executive Committee considers list of potential projects with a commentary on suitability to take them on and on prioritisation</li> </ul>	17 15, 17
21	Five-year project topic identification period	✓	x	<ul style="list-style-type: none"> <li>• Long-term goal. A four-year period, linked to the Self-Evaluation, is considered more appropriate. Discussions are ongoing. For now, however, ELI needs to remain agile</li> <li>• Specific pillars under which ELI projects will be conducted have been agreed upon and are reviewed periodically</li> </ul>	10 11
<b>Hubs and SIGs</b>					
24–28, 35–37,	Guidance be given on running of Hubs and SIGs	✓		<ul style="list-style-type: none"> <li>• Revised guidelines oblige Hubs and SIGs to be self-sufficient, state that publications require approval of the Executive Committee and require their monitoring and review by the Executive Committee and Council through an annual report and evaluation, with dissolution being an ultimate option</li> <li>• Additional improvements made (award initiated; limited funding given)</li> </ul>	46–49 50–53
28	Guidance on establishment of Hubs and SIGs	✓		<ul style="list-style-type: none"> <li>• Internal guidelines drafted</li> </ul>	46
<b>Membership</b>					
31	Membership expansion	✓		<ul style="list-style-type: none"> <li>• Increased by about 12 % since 2018</li> </ul>	55, 60
31	Diversity	✓	x	<ul style="list-style-type: none"> <li>• Revised Statute and Project Guidelines expanded on diversity categories</li> <li>• Membership Committee sets targets</li> <li>• The Executive Committee is currently composed of a majority of women and is also diverse in terms of age</li> </ul>	15, 56, 70

				<ul style="list-style-type: none"> <li>Discussions underway on improving diversity of Membership, within projects and within ELI bodies, in particular the Council</li> </ul>	
32	Membership database	✓	x	<ul style="list-style-type: none"> <li>Comprehensive database purchased but delay in rolling this</li> </ul>	61
33	Late payment of Membership fees	✓	x	<ul style="list-style-type: none"> <li>Improved but still a persistent problem</li> <li>Steps to encourage SEPA and similar initiatives taken</li> </ul>	82 82
<b>Governance</b>					
38, 46	Review of ELI Governance	✓		<ul style="list-style-type: none"> <li>Council taken over some tasks initially delegated to Membership; the Executive Committee delegated some tasks initially delegated to Council</li> <li>Scientific Director appointed</li> <li>Guidelines for the Executive Committee and Secretariat drafted and revised and will be kept under review in light of the experience gained</li> </ul>	58, 68, 70, 72– 73, 75  69 69
41–42	Size and level of engagement of Council	✓	x	<ul style="list-style-type: none"> <li>Long-term consideration: discussions on size of the Council postponed to review recent changes outlined above</li> <li>Steps taken to ensure members attend, absent compelling circumstances</li> </ul>	72
<b>Funding</b>					
49	Discuss optimisation of funding with the European Commission	✓	x	<ul style="list-style-type: none"> <li>ELI benefits from more funding from the European Commission under its Operating Grant</li> <li>Further discussions on hold in light of pandemic</li> </ul>	80
51	Increase of Membership fees	✓		<ul style="list-style-type: none"> <li>Discussions were on hold in light of the pandemic. However, discussions have resumed in light of the need to expand the Secretariat and inflation.</li> </ul>	80, 83



				In the meantime, reduction fee introduced	
52	Funding strategy	✓	x	<ul style="list-style-type: none"> <li>Kept under continual review but advancements hampered as a result of pandemic</li> </ul>	42, 81, 84
<b>Communications, Publicity and Public Relations</b>					
53–56	Improving external communications, publicity and public relations	✓	x	<ul style="list-style-type: none"> <li>Members of Executive Committee and Secretary General engage in significantly more representational activities</li> <li>More emphasis placed on dissemination at the end of projects, with more webinars/conferences, press releases being sent to media outlets, Ministries of Justice, etc across Europe. In addition, letters are sent to various stakeholders inviting them to bilateral meetings, publications are promoted on social media and other channels, as well as published on SSRN</li> <li>Work increasingly translated</li> <li>Communications strategy drafted and is being implemented. It is kept under periodic review</li> <li>ELI’s social media presence has greatly improved and more steps to develop it are underway</li> <li>Implementation strategy to ensure that ELI’s work not only disseminated among stakeholders but that a collaborative effort is made to put them into effect is being rolled out</li> </ul>	14, 23  33–37  31–33 87–90  33–35  18, 35, 37, 90