

## **THE EUROPEAN LAW INSTITUTE (ELI)**

### **ELI PROJECT GUIDELINES**

of 13 December 2022 established under Council Decision 2022/23 and repealing ELI Project Guidelines of 27 August 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.....	4
Article 6: Project proposal and feasibility study.....	4
Article 7: Adoption of an ELI project.....	5
Article 8: Project execution and monitoring .....	5
Article 9: Final Consultation and Approval of the result of the project .....	6
Article 10: Publication.....	7
Article 11: Intellectual property rights .....	8
Article 12: Dissemination, impact strategy and public relations.....	8
Article 13: Dispute settlement.....	9
Article 14: Mandate and transitory provisions.....	9

### **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 from time to time in light of experience gained or for specific projects as appropriate. In the latter case 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 as well as illustrations to exemplify key provisions. 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 Fellows. 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 and prospective Reporters 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 Scientific Director, 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) The Project Team must be composed as follows:
  - (a) 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.
  - (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) (At least) one Reporter should be designated with the task of ensuring that the project is adequately disseminated throughout its lifecycle and following its completion. The same individual will be primarily tasked to monitor the project's impact on completion, make efforts to encourage the implementation of the project's output by key stakeholders, and keep the ELI Secretariat informed about the above.  
It is not ideal for a single individual to take on the above two roles.
- (2) The Project Team must fulfil the following criteria:
  - (a) It must meet the criteria of excellence and diversity, including legal traditions and vocational backgrounds, as enshrined in the ELI Statute;
  - (b) It must be familiar and sufficiently well connected with relevant developments and related initiatives in the field; and
  - (c) It 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.
- (3) 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.
- (4) 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 ELI bodies at any time; and
  - (b) provide a separate report on the project when the results are submitted for approval.

One of the above Assessors will be drawn from the Executive Committee and one will serve concurrently as chair of the Members Consultative Committee (MCC), where relevant.

- (5) Depending on the nature of the project, Project Reporters may assign further roles to others such as Observers, National Reporters and Project Assistants. Observers are representatives of key stakeholders which, unlike Advisory Committee members, do not speak on their own personal and professional convictions without regard to their interests.
- (6) Projects under the regular procedure are supported by MCCs which are automatically established on adoption of the project by the Council. While all ELI members are invited to join MCCs, it is the task of the chair of the MCC to recruit key members of ELI and externals to join ELI and the Committee, and to call and chair meetings of the MCC at which a draft output is to be discussed.
- (7) Upon appointment, the Project Team, AC members and the MCC chair must submit the signed declaration set out in Annexes II and III.
- (8) Assessors and Observers will usually be invited to Project Team meetings and will usually receive draft outputs for commenting on a more regular basis than other members of the AC or the MCC.
- (9) 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, in particular for kick-off and final meetings and dissemination events, meaning that distant communication should be used as much as possible. 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 and submitted to the ELI Secretariat. This should normally be done at least two months prior to the Council meeting at which it is due to be considered.
- (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. Applications for external funding may, at this point in time, still be pending.
- (3) The feasibility study, also to be added to Annex I, must include 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).

- (4) Among other things, in completing the proposal, Reporter(s) should consider whether they wish to conduct their project under the accelerated procedure, ie seek Council approval of the final outcome of the project within a year of its adoption, or under the regular procedure.

#### **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. These must be accompanied by signed declarations by the prospective Reporters confirming that they will adhere to the Project Guidelines and assigning to the ELI rights as foreseen by the ELI's intellectual property policy in the form set out in Annex II.
- (2) The Council will ordinarily expect to hear a short oral presentation by the proposer and will ask questions or seek clarifications.
- (3) If a project proposal has been submitted without a feasibility study having been undertaken, the Council may decide not to adopt the project. Instead, the Council may 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.
- (4) Where a project proposal has been submitted with a feasibility study, the Council may take one of the following decisions after consultation with the Senate:
  - (a) adopt the project proposal and feasibility study, if necessary with conditions, on behalf of the ELI;
  - (b) decide that the Reporter(s) should develop the project proposal and feasibility study further in light of comments made and resubmit it as soon as practicable or within six months; or
  - (c) conclude that the ELI should not carry out the proposed project.
- (5) With the approval of the author(s), the Council may also decide that the feasibility study should be published as such in ELI's name on the ELI website; the author(s) are deemed to have given their approval in advance where the ELI has exceptionally provided funding for conducting the feasibility study.
- (6) 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, AC members, Observers, and others can be added on the Executive Committee's approval. However, subject to Article 8(4), no members of the Project Team may be appointed without the Reporters' consent.
- (7) 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 Scientific Director will meet Reporters of ELI projects from time to time, on behalf and under the authority of the Executive Committee, to monitor progress and guide Reporters on how to develop their work.
- (2) The Reporter(s) must submit written progress reports at least twice per year, at least four weeks before the relevant Council meetings. 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.
- (3) Progress reports will be sent to the Scientific Director, the Executive Committee, the AC, the MCC, the Council and the Senate, inviting comments (without prejudice to more frequent consultation of the Scientific Director, the Executive Committee, the AC, MCC and Observers by the Reporters). MCC Chairs can call MCC meetings to discuss the draft.
- (4) 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.
- (5) 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: Final Consultation and Approval of the result of the project**

- (1) For projects conducted under the regular procedure, the final consultation and Council approval process normally takes several months. With the exception of paragraph (10), the timeframes specified below should be taken as indicative in nature. For projects conducted under the accelerated procedure, a more flexible procedure applies.
- (2) At least three months before the Council meeting at which the Penultimate Council Draft is to be discussed, the Reporter(s) shall submit a draft of their completed output to the Scientific Director, the entire Project Team, AC, Observers and MCC for consultation. The above shall be given a month to consider it, following which a meeting will be held at which the above draft is rigorously examined, provision-by-provision, and critical feedback provided.
- (3) Taking into account all consultations and comments, the Reporter(s) shall revise the draft and submit the Penultimate Council Draft to the Executive Committee. This should be done at least one month before the Council meeting at which it is to be discussed.
- (4) The submission should be accompanied by a form outlining any departures from significant recommendations given and concerns raised during earlier consultations, proving meaningful explanations for these.
- (5) The Executive Committee shall assess and then forward the Penultimate Council Draft and the form mentioned in paragraph (3) above to the Council and the Senate for consultation.
- (6) The Reporter(s) shall revise the Penultimate Council Draft within a period of two weeks of the Council meeting and submit it to the individuals mentioned in paragraph (2) above to evaluate the final draft (using the form at Annex IV) in the same timescale.
- (7) The Reporter(s) shall submit the Final Council Draft, ie a draft which they consider as potentially complete, and evaluations to the Executive Committee a month before the Council meeting at which it is to be considered. This should also be accompanied by the document mentioned in paragraph (4).
- (8) 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.
- (9) The Council will determine at the meeting at which the draft is to be considered whether the Final 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 Fellows for approval. The usual editorial prerogatives include any general non-substantive edits to the commentary, illustrations or the black-letter principles/rules that may be required before publication;
  - (b) should be approved by it, subject to the usual editorial prerogatives, and the Philippe Motion, and – except in the case of a project under the accelerated procedure – submitted to the Fellows for approval. Projects are accepted under the Philippe Motion subject to any requested changes to which the Reporters have agreed and/or to any motions that passed during the course of the relevant Council meeting;
  - (c) 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
  - (d) should be rejected.
- (10) The Fellows 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. They shall be given no less than three weeks to vote.
- (11) Where a project was adopted under the accelerated procedure but develops in the pace of a regular project, approval of the Fellows is also required.

#### **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 Fellows. Without prejudice to Article 9(10), in the case of projects conducted under the accelerated procedure, Council approval is sufficient.
- (2) In the publication, ELI shall fully acknowledge all those who contributed to the ELI project, including members of the Project Team, AC, Observers 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 author(s). 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 author(s) 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 author(s) 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 author(s) will receive half of the net proceeds.
- (3) Where a feasibility study under Article 7(5) is published on the ELI website, the author(s) shall grant ELI a non-exclusive right to the extent described in paragraph (1).

### **Article 12: Dissemination, impact strategy and public relations**

- (1) At any stage during a project's lifecycle, the ELI Secretariat and the Reporter(s), in particular the one designated to lead this aspect of a project's awareness-raising campaign, 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 Fellows, 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 be done in liaison with the ELI Secretariat. It must, in a clear and prominent manner:
  - (a) 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; and
  - (b) unequivocally specify 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.
- (3) As early as is appropriate, the ELI Secretariat will, together with the Reporter(s), draw up a strategy on dissemination, impact and public relations. This strategy, which is to extend for two years after a project is approved, 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;
  - (b) 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);
  - (c) target channels (such as academic journals, blogs, SSRN, YouTube, social media); and
  - (d) details as to who will take over which activity.
- (4) Implementation of the plan requires monitoring by the Secretariat, and the plan has to be updated and adapted at regular intervals.
- (5) Reporters should keep the ELI Secretariat informed on any impact their project has had since its adoption. They may be invited to Council meetings following the first and second year of approval of their project to outline what has been done to disseminate the output and the impact it has had.



### **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 18 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 may be changed from time to time and adapted by the ELI Secretariat and Scientific Director under the guidance of the Executive Committee in light of experience gained as appropriate in individual cases.
- (2) These Guidelines enter into force on 13 December 2022. 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 and Feasibility Study Template**

**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](#).*