

THE EUROPEAN LAW INSTITUTE (ELI)

ELI PROJECT GUIDELINES

of 9 October 2024 established under Council Decision 2024/8 and repealing ELI Project Guidelines of 1 December 2022

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).

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Introduction

- (1) Established in 2011, ELI seeks to provide practical guidance on the development of the law in Europe. It operates on its own initiative. It is also available for consultation and collaboration with other institutions involved in the development of law on an international, European or national level. ELI actively seeks to forge strategic alliances.
- (2) ELI's reputation for objectivity of procedures and the demonstrable quality of its work are invaluable assets. Its intellectual resources are focused on the law not as it is, but as it should be. Its works are politically neutral.
- (3) The hallmark of an ELI project is collaborative drafting by vocationally and geographically diverse jurists. Projects are developed in a series of drafts reviewed by project participants, various ELI bodies and external experts and are revised in line with the deliberative processes established by ELI. They are eventually approved by ELI's Council and generally its Fellows as a whole, thus reflecting the voice of the broad legal profession. Teams are supported throughout a project's lifespan by ELI's Scientific Director and Secretariat, who provide substantive feedback and project management.
- (4) The main draw to contributing to an ELI project lies in access to collective expert knowledge through the Institute's broad and diverse network and in the enhanced authority and visibility that come with work conducted by ELI.

Article 1: Scope

- (1) These Guidelines apply to all 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 ELI and the European public which allow a more timely reaction by 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 ELI conducts 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 are generally assigned to three broad categories:
 - (a) Draft legislative proposals;
 - (b) Model laws, model rules, principles; and
 - (c) Checklists or other practical guidance.
- (2) The black letter, which is the legislative proposal, model law, set of principles, checklist etc, should occupy centre stage. 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 black letter, be of ancillary nature, ie as short and concise as is consistent with explaining fully the underlying reasoning and policy choices made and with facilitating the understanding and/or use of the black letter. The output should be drafted 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 the requirements (such as country reports, conference papers or in-depth doctrinal analysis) may, with ELI's consent, be published independently 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.

Article 3: Project selection

- (1) The Executive Committee, on its own initiative or on the basis of project ideas suggested to ELI, is responsible for identifying potential ELI projects and prospective Reporters, in accordance with 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, with a view to identifying and fleshing out the most promising topics in a defined target area. It will, where appropriate, consult the Scientific Director and relevant stakeholders.
- (2) In deciding whether ELI should embark on a particular project, ELI bodies may wish to consider, in particular, whether and the extent to which:
 - (a) the output is expected to anticipate the needs of and would make a material difference for the benefit of citizens, companies and/or professionals in Europe;
 - (b) the issue is so topical and central for the development of society and law in Europe that ELI is rightly expected to offer its opinion;
 - (c) the output is expected to contribute compellingly, innovatively, distinctively and robustly to the field;
 - (d) the output is expected to be a respected reference that sets standards in the field and constitutes a touchstone for further legal development;

Generally, at least three of the above factors 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 good relationships with other organisations.

Article 4: Composition of Project Teams

- (1) The Project Team must be composed as follows:
 - (a) Projects must have Reporters who will be primarily responsible for drafting and the delivery of the agreed final output. The Reporters and, where applicable, other members together form the Project Team.
 - (b) There must be at least one Reporter who is able and prepared to invest significant working time into drafting a high quality, stylistically and structurally coherent text that aspires to clarity and simplicity, transcends the voices of its individual contributors and embodies the voice of the Institute ('Chief Drafter').
 - (c) At least one Reporter should be designated with the task of ensuring that the project is adequately disseminated throughout its lifecycle and following 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 ('Chief Disseminator').
- (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 at national level and beyond; and
 - (c) It must be sufficiently familiar with and committed to ELI procedures and ensure that the work will be conducted in accordance with the ELI Statute and Project Guidelines and in ELI's overall spirit.
- (3) Each Project Team is supported by a group of advisors (the Advisory Committee, AC). 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.
- (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 applicable.

- (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 institutional stakeholders.
- (6) Projects under the regular procedure are supported by MCCs which are automatically established on adoption of the project by the Council. While MCCs are open to all individual ELI members, it is the task of the chair of the MCC to recruit key members of ELI and externals to join ELI and the Committee.
- (7) Upon appointment, the Project Team, AC members and the MCC chair must submit the signed declaration set out in Annexes IIa and IIb.
- (8) The AC, MCC and Observers will receive draft outputs for commenting and will periodically be invited to Project Team meetings. Observers may, however, opt to be involved at mature stages of projects only.
- (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.
- (3) ELI will only exceptionally provide funding for feasibility studies. The ELI Secretariat can, however, provide assistance to prospective Reporters 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 using the form in Annex I. Applications for external funding may, still be pending at this point in time.
- (2) The feasibility study must include at least a meaningful outline of the entire black letter (such as a list of potential chapters) as well as a representative sample of what might comprise the black letter (though their content will, of course, usually subsequently change in light of further research).
- (3) Among other things, prospective Reporters 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 a mature version with a recommendation to the Council.
- (2) The Council will ordinarily expect to hear a short oral presentation by the prospective Reporters and will ask questions or seek clarifications.
- (3) It may:
 - (a) adopt the project proposal and feasibility study, if necessary with conditions, on behalf of ELI;
 - (b) decide that the prospective Reporters 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 ELI should not carry out the proposed project.
- (4) The Council may, if the work submitted fulfils the criteria, also proceed directly with approval under Article 9. The author(s) are deemed to have given their approval in advance.
- (5) 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(5), no members of the Project Team may be appointed without the Reporters' consent.

Article 8: Project execution and monitoring

- (1) The ELI Secretariat supports the execution and monitoring of projects under the guidance of the Executive Committee and the Scientific Director.
- (2) 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.
- (3) The Reporters must submit written progress reports to the ELI Secretariat at least twice per year, at least four weeks before relevant Council meetings. There must be strict compliance with this time requirement. A progress report should consist of:
 - (a) a Reporters' 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 black letter of the project, including explanatory comments and meaningful information about the status of any incomplete parts.

- (4) Without prejudice to more frequent consultations, progress reports will be sent by the Secretariat to the Executive Committee, Scientific Director, the AC, the MCC and the Council, inviting comments.
- (5) Reporters and Assessors should be prepared to appear and report before the Council in person. Where Reporters fail to comply with these duties, or where reports are found to be unsatisfactory, the Council will take the decisions it deems appropriate, which may include discontinuation of the project as the last resort.
- (6) Revisions of the project plan after 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.

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. For projects conducted under the accelerated procedure, a more flexible procedure applies.

Antepenultimate Council Draft

- (2) The Reporters shall submit a draft of their completed output to the Secretariat which will forward it to the Scientific Director, the entire Project Team, AC, MCC, Observers and other stakeholder for consultation. A meeting will be held at which the above draft is rigorously examined, provision-by-provision, and critical feedback is provided.

Penultimate Council Draft

- (3) Taking into account all consultations and comments, the Reporters shall revise the draft and submit the Penultimate Council Draft to the Secretariat which will forward it to the Project Team, AC and MCC for evaluation (using the form at Annexes IIIa and IIIb).
- (4) The Executive Committee will assess and, where appropriate, forward the Penultimate Council Draft to the Council for consultation.

Final Council Draft

- (5) Taking into account all consultations and comments, the Reporters shall submit the Final Council Draft to the Secretariat for the Executive Committee's consideration.
- (6) The Executive Committee will, either:
 - (a) forward it to the Council; or
 - (b) send it back to the Reporters with comments specifying how it considers the draft to require amendment.
- (7) 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 Reporters in which case the Reporters shall revise the draft as soon as practicable or within a period specified by the Council; or
 - (d) should be rejected.
- (8) In discharging its obligation under paragraph 7, the Council should have regard to whether the output meets the project selection criteria set out in Article 3.
 - (9) In the case of projects conducted under the accelerated procedure, Council approval is sufficient. The Fellows, in determining whether to approve the draft, may only approve or reject the draft. They shall be given no less than three weeks to vote.
 - (10) 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.
- (2) In the publication, ELI shall fully acknowledge all those who contributed to the ELI project, including members of the Project Team, AC, MCC and Observers. 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 Reporters will have the status of author(s). Where the Reporters and ELI so agree, other members of the Project Team may have the status of secondary author(s), with the Reporters 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, MCC or Observer 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 these 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 Reporters before doing so and vice versa. If the Reporters 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 Reporters, in particular the Chief Disseminator, 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 Reporters, draw up a strategy on dissemination 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 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 ELI Secretariat, and the plan has to be updated and adapted at regular intervals.
- (5) Reporters should keep the ELI Secretariat informed of 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 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 IIIb 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 IIa: Declaration by Project Team Members of Adherence to the Guidelines and Assignment of IP Rights

Annex IIb: Declaration by Members of the AC

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

Annex IIIb: Evaluation of Council Draft by Assessors

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