



ELI  
EUROPEAN  
LAW  
INSTITUTE

# ELI Updates

## April 2013

### Message from the Returning Officer



Dear Members and Friends of the ELI,

It is my pleasure to address you this month in my capacity as returning officer, appointed by the Senate to oversee the 2013 elections which will culminate in the establishment of a new Council at the General Assembly this September.

The ELI has always been intended to be an open, democratic institution and the first internal elections will see this intention come to life. Nonetheless, it is a bold and laudable decision by the current Council to organise elections a mere two years after the ELI's foundation. I look forward to overseeing the election process, and it is my wish to see a committed and dynamic Council elected in September—a Council which will represent the diversity of our body of Members and share the ambition of the ELI to establish itself as an influential, renowned and representative institution.

The work of the Council is vital to the ELI's success and its members are involved in a wide range of tasks from approving new Members to determining projects to be pursued. Council Members can choose to join standing committees for membership, international relations, fund raising and projects. Members of the Executive Committee, including the President, are elected from and by the Council.

Being a Council Member affords you direct influence on the development of the ELI; it will see you work together with prominent legal experts from all over Europe and offers the opportunity to be actively involved with projects aimed at improving law and law-making across the continent.

Council Members typically meet twice a year, with other communication and decision-making taking place via email and the MyELI platform. Reasonable expenses incurred by Council related work are reimbursed by the ELI.

The progress and activities which we report to you every month in these newsletters would not be possible without the work of the Council and its Committees. As you read this newsletter, please consider how you would like to see its pages filled in the future, and whether you could see these ideas to fruition as a Member of the next Council.

I would like to take this opportunity to invite all Fellows to consider nominating themselves for election. Detailed information about the process is available on the ELI Website and has featured in the previous newsletters.

Irmgard Griss,

Speaker of the Senate and Returning Officer for the Council Elections

#### Inside this issue:

- Statement on the European Foundation Statute 2
- The ELI's Institutional Observers 4
- Nomination for ELI Council Elections 6
- EU Law Workshop at Vienna University 6
- ELI at the EJF in Barcelona 7
- Fundamental Rights Platform 8
- Upcoming conferences and events 8

## Statement on the European Foundation Statute

The project team for the ELI's Statement on the European Foundation Statute is reaching the final stages of its work. The team, which is led by Professor Martin Schauer, has been working very hard to produce practical results under pressing time restrictions. This project is being carried out under the accelerated procedure; the completed statement can be commented on by Council and Senate members and will be published following the Council's approval. There will be an opportunity for ELI Fellows to discuss the results of the project at the General Assembly in September. On the following pages you can learn more about the people behind the project.

### Members of the Project Team

**MARTIN SCHAUER** is a professor at Vienna University's Civil Law Institute. He is also visiting professor and lecturer at various universities including the London School of Economics, Chuo University Tokyo and Jagiellonian University in Krakow. He is an associate member of the International Academy of Comparative Law, a member of the Restatement group of Principles of European Insurance Contract Law and of the Scientific Advisory Board of the Max-Planck-Institute for Comparative and International Private Law as well as the Scientific Advisory Board of Secola and the Board of the Austrian Insurance Institute.



**THOMAS VON HIPPEL** completed his legal education in Göttingen and Hamburg. He has been active as a judge in Hamburg since 2008. He has been a visiting professor or research fellow at several universities and institutions, including a three year period at the Max Planck Institute for Comparative and International Private Law in Hamburg. He has co-ordinated several interdisciplinary and legal comparative research projects on non-profit organisations, foundations, taxation and philanthropy (e.g. Feasibility Study on a European Foundation Statute (2009).

**CORRADO MALBERTI** is a notary in Milan and chair of the CNUE's working group on company law. He is also an associate professor of commercial law at the University of Luxembourg. He graduated from the University of Milan. He also completed a PhD in commercial law at Bocconi University in Milan and an LLM at the University of Chicago. He has published widely in the fields of company and securities law, both in English and in Italian.



**KATEŘINA RONOVSKÁ** graduated from the Faculty of Law, Masaryk University of Brno, the Czech Republic, where she is currently employed as an associate professor in the department of civil law. She is involved in the systematic study of law on foundation and association in the European context and is the author of numerous publications and articles in professional journals.

**VERICA TRSTENJAK** is a former Advocate General at the Court of Justice of the European Union. She is an external scientific member of the Max Planck Institute for International, European and Regulatory Procedural Law in Luxembourg. Her interest in the European Foundation is long standing, as she participated in the European Foundation research project carried out by that Max Planck Institute and Bucerius Law School in Hamburg from 2003-4. She has recently become a professor at Vienna University's faculty of law.



picture: Irena Herak/Finance

## Members of the Advisory Committee



**OONAGH BREEN** completed her legal studies at University College Dublin and Yale Law School. She has been visiting professor or research fellow at law schools across the United States, including Harvard University. She is a senior lecturer at University College Dublin, and frequent contributor at international conferences on charity law reform, an area in which she has also published extensively.

**DANIEL GUTMANN** is a partner at CMS Bureau Francis Lefebvre and a professor of tax law at the Sorbonne Law School (University Paris-1). He is director of a master in business and tax law programme and of a research centre in taxation (Sorbonne-Fiscalité). He is the author of a book on business tax law which was awarded the Legal Book Special Prize by the French Constitutional Court and the “Club des Juristes”.



**MICHELE GRAZIADEI** is a professor of comparative law at the University of Turin. His research concentrates on the methodology of comparative law, European private law, legal pluralism, law and language, and on theoretical problems relating to the comparisons of laws in general. He has published widely in several languages, and has directed or taken part in several international research projects.

**LARS HAMMER-JESPERSEN** is Chief Special Advisor at the Danish Business Authority. He represented Denmark in the Council Working Group negotiations on the European Foundation Statute and on an ad hoc basis in the Commission’s Company Law Expert Group (CLEG). He chaired the Council Working Group negotiations on the FE during the Danish Presidency in the first half of 2012.



**KLAUS J. HOPT** is Professor and Director (em.), Max Planck Institute for Comparative and International Private Law, Hamburg. He was professor in Tübingen, Florence, Berne and Munich and member of the High Level Group of Company Law Experts, European Commission 2001-02. He is a member of the International Advisory Board of the Alexander von Humboldt-Foundation and of the German National Academy of Sciences Leopoldina. He has a particular interest in foundations. Books: “The European Foundation” and “Comparative Corporate Governance of Non-Profit Organizations”, Cambridge U.P. 2006 and 2010. Contributor to the Feasibility Study for the European Commission 2009.

**ACHIM SEIFERT** is professor of civil law, German and European labour law and comparative law at the Friedrich-Schiller-University Jena/Germany. He previously taught European and international labour law at the University of Luxembourg and civil law and labour law at the universities of Trier and Frankfurt/Main. His main fields of interest are European and international labour law as well as comparative labour law.



**ENRICA SENINI** is the founding partner of Studio Legale Senini, an Italian law firm based in Brescia specialized in commercial and corporate law and in litigation related thereto. Enrica has a consolidated experience in corporate law, international contract law and in cross-border commercial litigation. She is a Member of the Company Law Committee and of the European Private Law Committee of the CCBE (*Conseil des Barreaux Europeennes*), President of the EU Law Commission and Vice President of the Litigation Commission of the UIA (*Union Internationale des Avocats*) and is author of various publications and articles on commercial law, foreign investments and international law as well as lecturer at international seminars and congresses on the same practice areas.

**HANNA SURMATZ** has been the legal counsel at the European Foundation Centre AISBL (EFC) in Brussels since 2004. Her main responsibilities include monitoring and mapping/analysis of relevant national and European developments that affect foundations’ operating environment; co-ordination of benchmarking exercises; and facilitating information exchange on foundation law matters through publications and events. She coordinated the drafting of the EFC recommendations for a European Foundation Statute.



## Supreme Courts as ELI Institutional Observers

The ELI is pleased to welcome the Supreme Court of the Netherlands (*De Hoge Raad der Nederlanden*), the Supreme Court of Portugal (*Supremo Tribunal de Justiça*) and the Belgian Court of Cassation (*Hof van Cassatie/ Cour de cassation*) as new Institutional Observers.

These three newest members join a growing network of eminent courts and other institutions with interest in taking part in the Institute's future evolution. More supreme courts are expected to join over the coming months.



## The ELI's Institutional Observers

Institutional Observers to the ELI are organisations interested in closely following and contributing to the work of the Institute. It is a relationship of reciprocity, where the ELI can benefit from the input Institutional Observers offer while at the same time providing them with updates on projects aimed to have an immediate practical impact.

Many professional organisations and legal institutions have joined the ranks of the ELI's Institutional Observers since the Institute's inception, among them: European institutions, Supreme Courts, international organisations, legal associations, law firms and universities.

We will introduce some of these observers over the next few issues of the ELI Updates, and ask them to share their views on the ELI's work and how they see the Institute developing in the future.

The first two contributions were provided by UNCITRAL and the Supreme Court of the Czech Republic.



**UNCITRAL** is the core legal body of the United Nations system in the field of international trade law. As a legal body with universal membership it has been specializing in commercial law reform worldwide for over 40 years. The mandate received from the General Assembly of the United Nations is to modernize and harmonize the legal rules governing international trade transactions.

*Renaud Sorieul, Director, International Trade Law Division, United Nations*

*“UNCITRAL’s relationship with the ELI, whilst relatively new, has the potential to be an extremely fruitful one. The aim of the ELI to initiate, conduct and facilitate research, to make recommendations, and to provide practical guidance in the field of European legal developments, is an important one and deserves the attention of UNCITRAL in several respects. On the one hand, the UNCITRAL Secretariat welcomes the opportunity to provide input and share its expertise with the ELI to ensure that, to the extent possible, regional standards are aligned with international standards, including those developed by UNCITRAL in the realm of international trade. On the other hand, UNCITRAL may invite the ELI to contribute in the law-making process conducted at the universal level, as a provider of expert advice on various aspects of the European legal culture. The UNCITRAL Secretariat looks forward to continuing to share and exchange information with the Institute and to build upon its early cooperative foundations”.*

What do you expect from your role as Institutional Observer to the ELI?

*Active participation in international legal forums and contact between experts and authorities from different areas and functions is essential for the further deepening of legal cooperation between the states, especially between the members of the European judicial area. The position of the Institutional Observer provides an opportunity to both strengthen the contacts and exchange the views on current legal developments in the European Union.*

How can access to the ELI's extensive network of experts be beneficial to the Court?

*With its participation, the Supreme Court gains access to the exchange of information on legislation and case law, useful for the purposes of comparative analysis and advanced options in the field of legislation and legal literature.*

How do you see the Institute developing over the course of the next few years?

*The Institute should continue to serve as a platform for discussion about the European judicial and legal structure. Moreover, while staying independent, the Institute should maintain ties to the European institutions, particularly the European Commission, in order to provide practical impact for the project outcomes.*



[The Supreme Court of the Czech Republic](#) seated in Brno is the highest judicial authority both in civil and criminal matters except for issues dealt with by the Constitutional Court of the Czech Republic and the Supreme Administrative Court.

*Katarína Šipulová*

*Head of the International Department on behalf of the Supreme Court of the Czech Republic*

## How can Law Firms benefit from ELI Membership ?

*by Johan Gernandt*

As a practicing lawyer at one of the largest Swedish law firms, I am well aware of the benefits that membership of the ELI can bring to practitioners and their organisations. Membership of the ELI enables law firms to stay abreast of the latest developments in European law, and offers them the opportunity to participate in discussions and project groups, whose results are communicated to bodies such as the European Commission; in this way the ELI is uniquely able to facilitate communication between practitioners and policy makers.

The ELI also has the connective potential to narrow the gap between practitioners and academics. I feel that the insight into the academic world which the ELI provides to law firms is especially valuable. Knowledge of contemporary academic discussions may have a tangible effect on a practitioner's professional work.

Now more than ever it is important for lawyers from all over Europe, whether working in EU states or not, to have a common ground where legal matters can be discussed and evaluated and information exchanged; the ELI provides such an opportunity, and invites law firms to stand side by side with renowned institutions with national and international status.

Finally, law firms and lawyers can view involvement in the ELI as an investment with the potential for very worthwhile returns. By joining the ELI and contributing an annual fee, individual and institutional members help to support the work of the Institute. In the near future, the ELI will be able to offer its members an ever more sophisticated program of events, opening new avenues for interaction, discussion and edification.

## 2013 ELI COUNCIL ELECTIONS

ANY **ELI FELLOW**  
MAY STAND FOR COUNCIL  
ELECTIONS



Send your nomination  
form to the **Secretariat**  
or upload it on **MyELI**

## Nomination for ELI Council elections underway

The Council elections commenced in April.

Once again we wish to encourage all ELI Fellows to stand for election. Being a member of the ELI Council puts you at the heart of the Institute and enables you to play a critical role in the ELI's future.

All ELI Fellows are entitled to nominate themselves for a seat on the ELI Council.

Elections will take place in September 2013 at the General Assembly in Vienna, and successful candidates will take their seats on the Council immediately.

To nominate yourself you must **complete a nomination form and submit it by 5 May** either by uploading it to the MyELI platform, or sending it to the Secretariat by post or via [email](#).

Nomination form, click to download

## EU Law Workshop at Vienna University

At a workshop hosted by the University of Vienna, the ELI Secretariat was able to explore possible areas of future cooperation with two institutes of the University, in particular with a view to initial preparations for the launch of Austrian Hub.

The ELI was represented by Christiane Wendehorst, who gave a presentation on the Institute and also moderated the discussions. Both the Institute for European Integration Research (EIF) represented by Gerda Falkner, and the Institute for European Law,

represented by Alina-Maria Lengauer and Verica Trstenjak, expressed their willingness to collaborate with the ELI in the future. The workshop, entitled “*Forschung zur europäischen Integration und zum EU Recht*” (Research into European Integration and EU Law) was opened by the Vice Rector Susanne Weigelin-Schwiedrzik and attracted a wide audience of researchers and practitioners.



Verica Trstenjak and  
Christiane Wendehorst



Workshop on EU integration,  
15 April 2013

## ELI at the European Jurist Forum in Barcelona

*The EJF and the ELI both pursue the idea of building up a strong European legal community, which was stressed by Commission Vice-President Viviane Reding and by Wolfgang Heusel, Director of ERA, in their respective opening addresses.*



ELI's stand at the EJF in Barcelona



Welcome speech by Pedro L. Yúfera, Dean of the Barcelona Bar Association (ICAB)

The European Law Institute attended the 7<sup>th</sup> biannual European Jurists Forum (EJF), held from 18-20 April in Barcelona, which brought together close to six hundred jurists from all over Europe. The ELI had an information stand, and various members of the ELI and its governing bodies participated in the working sessions. The EJF and ELI both pursue the idea of building up a strong European legal community, which was stressed by Commission Vice-President Viviane Reding and by Wolfgang Heusel, Director of ERA and one of the co-organisers, in their respective opening addresses.

The event provided an opportunity for the ELI to reach out to prospective members in particular from Spain, an area of membership the Institute wishes to see grow over the next years. It was also a chance for the Institute to touch base with its Fellows present at the event, some of whom were amongst the presenters and the panelists.

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*The 7<sup>th</sup> EJF in Barcelona was organised jointly by the Barcelona Bar Association (ICAB), the Autonomous University of Barcelona (UAB) and the Academy of European Law (ERA).*

The EJF was opened by the Prince of Spain and featured many high-profile speakers from universities, the judiciary, law firms, and the European Commission.

Parallel sessions were held on three topics:

- *private and business law: banking crisis, private investment and insolvency;*
- *new horizons in European criminal law;*
- *public law: migration and asylum policy.*

The topics all concerned areas of the law where the ELI already is or potentially could become active through its projects. Two of the main speakers at the sessions on criminal law, Prof. Vervaele of Utrecht University and Prof. Ligeti from the University of Luxembourg are also involved as reporters in the ELI Project on [‘Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law’](#).



Opening Speech by Felipe, Prince of Asturias

## Fundamental Rights Platform



The ELI has been accepted as a participant in the Fundamental Rights Platform (FRP). Members of the Secretariat also represented the Institute at this year's annual meeting which took place in Vienna from 24-26 April. The FRP, organised by the European Union Agency for Fundamental Rights (FRA) is an excellent opportunity

for the ELI to explore new avenues for collaboration with various stakeholders and members of the network.

The FRP is the agency's network of cooperation which brings together over 300 civil society organisations. It aims to facilitate discussions and the exchange of good practices among FRP

participants and encourage a European debate on fundamental rights. The meeting also invites active participation from the members via 'The Floor is Yours', an open space which enables participants to share ideas, projects or issues and discuss them with colleagues from across the EU.

## Upcoming Conferences and Events

### Common European Sales Law Meets Reality, 14-15 June, Halle, Germany

The conference will focus on the practical impact which the Proposal for a Common European Sales Law (CESL) is expected to have. The program will highlight four areas: politics, society, the judiciary and academic education. The ELI's ongoing work on the CESL will be presented by Christiane Wendehorst, member of the Working

Group on the CESL Statement. Several other Fellows and Council members of the ELI are among the many speakers: former Vice-President of the European Parliament Diana Wallis, Professor Paul Varul of the University of Tartu and former Advocate General Verica Trstenjak.



Click here for more information

### ELI Project on the Common European Sales Law 21 June, London, UK

There will be a presentation by Sir John Thomas and Dr John Sorabji, Chair and member of the CESL Working Party respectively, on the Common European Sales Law at a conference organised jointly by the UK Association for European Law and the Irish Society for European Law.

The conference will take place at the Middle Temple, London on Friday 21 June.

The Sales Law topic forms one session of the conference; the themes of the conference are:

*Current Issues in the EU: Public Procurement; the Proposed European Sales Law; Actions for Damages in Competition Law.*

For the full programme and details of the conference, see [www.ukael.org](http://www.ukael.org)

## Administrative Procedural Law in the EU

### 27-28 June, Luxembourg

The first conference organised by the Research Network on European Administrative Law will take place on June 27 and 28 in Luxembourg. This conference has been organised by the different coordinators of the ReNEUAL working groups on rule-making, single case decision making, contracts and information. The objective is to discuss various possible elements of a draft set of model rules for an EU administrative procedure law.

In order to make the discussions as fruitful as possible, the different working group committees are currently developing discussion papers which will be circulated in early June to all participants of the conference. The results of the discussions will be worked into the proposals which will be the basis for the report of the joint [ELI/ReNEUAL project on European administrative procedure law in 2014](#).

The full programme and registration details are available [here](#).



[Click here for more information](#)



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*Building on the wealth of diverse legal traditions, the European Law Institute's mission is the quest for better law-making in Europe and the enhancement of European legal integration. By its endeavours, the ELI seeks to contribute to the formation of a more vigorous European legal community, integrating the achievements of the various legal cultures, endorsing the value of comparative knowledge, and taking a genuinely pan-European perspective.*

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