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ELI Updates

February 2013

Message from the Chair of the CCC



Dear Members and Friends of the ELI,

As a member of the group which took the initiative to establish the European Law Institute, modelled on the famous American Law Institute, it is with enormous pleasure and even pride that I see how quickly the ELI is gaining influence in debates on the development of European law. Both practitioners and academics already realise the importance of ELI Instruments and Statements. This can be seen when looking at the various current and past projects in which the ELI has been involved, the interest shown by our Members during the General Assembly and the commitment with which Council members fulfil their task.

The Council members have as their duty, according to Article 10 of the Articles of Association, to exercise all powers not attributed by law or by these Articles to the General Assembly or to another body of the Association. In particular, the Council is the competent body for the election, discharge and dismissal of the members of the Executive Committee, the election of the President, Vice-President, and Treasurer and the modification of the Articles of Association. This is quite a heavy task, particularly as the ELI is still at a crucial stage of developing itself into an established European institution, not created as such by the European treaties, but through the joint efforts of practitioners and academics involved in European legal matters.

At the last Council meeting one of the points on the agenda was how the election procedure for the new Council, Executive Committee, President, Vice-President and Treasurer should be shaped. By the end of this year a new Council will have to be elected. Timely and careful preparation is needed, and a large part of the recent Council meeting was devoted to discussing the election procedure. To prepare the Council's decision making process, the Council Composition Committee was given a re-defined task to make a reasoned proposal for a procedure to conduct the first regular Council elections, which will be held at the ordinary General Assembly in 2013. The Committee presented a Council Elections Note, in which continuity and diversity on the Council were important topics for consideration. On the basis of this note, the Council took several decisions on how the election process should take place. You will find more information on the election procedure in this newsletter.

The upcoming Council elections are another crucial moment for the ELI. I can only express the hope that all Members will take an active part in these elections!

Sjef van Erp

Chair Council Composition Committee

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ELI Council reaches Important Decisions at February Meeting

The first Council meeting of 2013 was held in the splendid Senatssaal of the University of Vienna on 8 February. A large part of the meeting was devoted to the discussion of election procedure ahead of the Council elections which will take place at the General Assembly (GA) in September, and the Secretariat has since compiled a draft Election Byelaw in accordance with the decisions reached by the Council (see page three for more details). The Council also discussed and adopted the new Project Guidelines (see page five) and discussed the ongoing preparations for the 2013 GA.

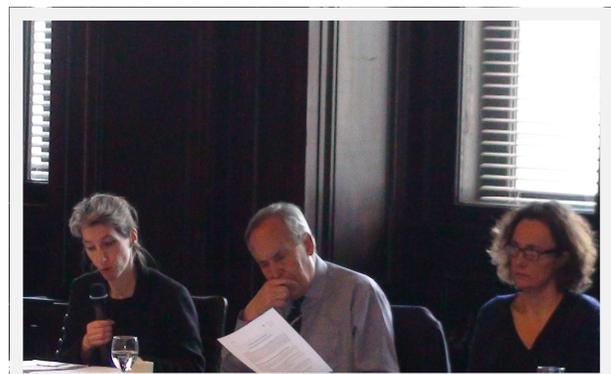
Furthermore the Projects Committee (PC) presented the Council with a project proposal on EU Copyright Law, recommending that it be adopted as an ELI Instrument. The Council followed the recommendation of the PC and accepted the proposal as an ELI project. Professor Axel Metzger from the University of Hannover has been appointed as the first project reporter, with more to follow. The final results of the project could help improve copyright protection in the EU, in particular in the digital world.



Council meeting, 8 February 2013



Council meeting in the Senatssaal of the University of Vienna



Sir Francis Jacobs, Bénédicte Fauvarque-Cosson, Christiane Wendehorst at the Council meeting

Ahead of the Council meeting, members of the PC held a meeting at the ELI Secretariat on the evening of 7 February. Productive discussions were held on current and upcoming projects. The Committee was informed of the good progress on the project *Towards Restatement and Best Practice Guidelines on EU Administrative Procedural Law* (joint project with ReNEUAL) and it is hoped that the Members Consultative Committee for this project will become active in the summer. The Committee was interested to hear a number of ideas for future projects, and appointed Committee members to submit more detailed proposals at the next PC meeting. It was decided that a joint preparatory workshop should be organised by the ELI in cooperation with UNIDROIT and the American Law Institute in late spring in order to discuss a project on *Principles of European Civil Procedure*, with the aim of assessing feasibility and the possible outcomes of such a project.

The Membership Committee also met on the evening of 7 February, with its members taking the opportunity to discuss the ways in which new individual and institutional members could be recruited to the ELI. The Committee agreed that increasing the representation of practicing lawyers and law firms in the ELI is something to prioritise in the future.

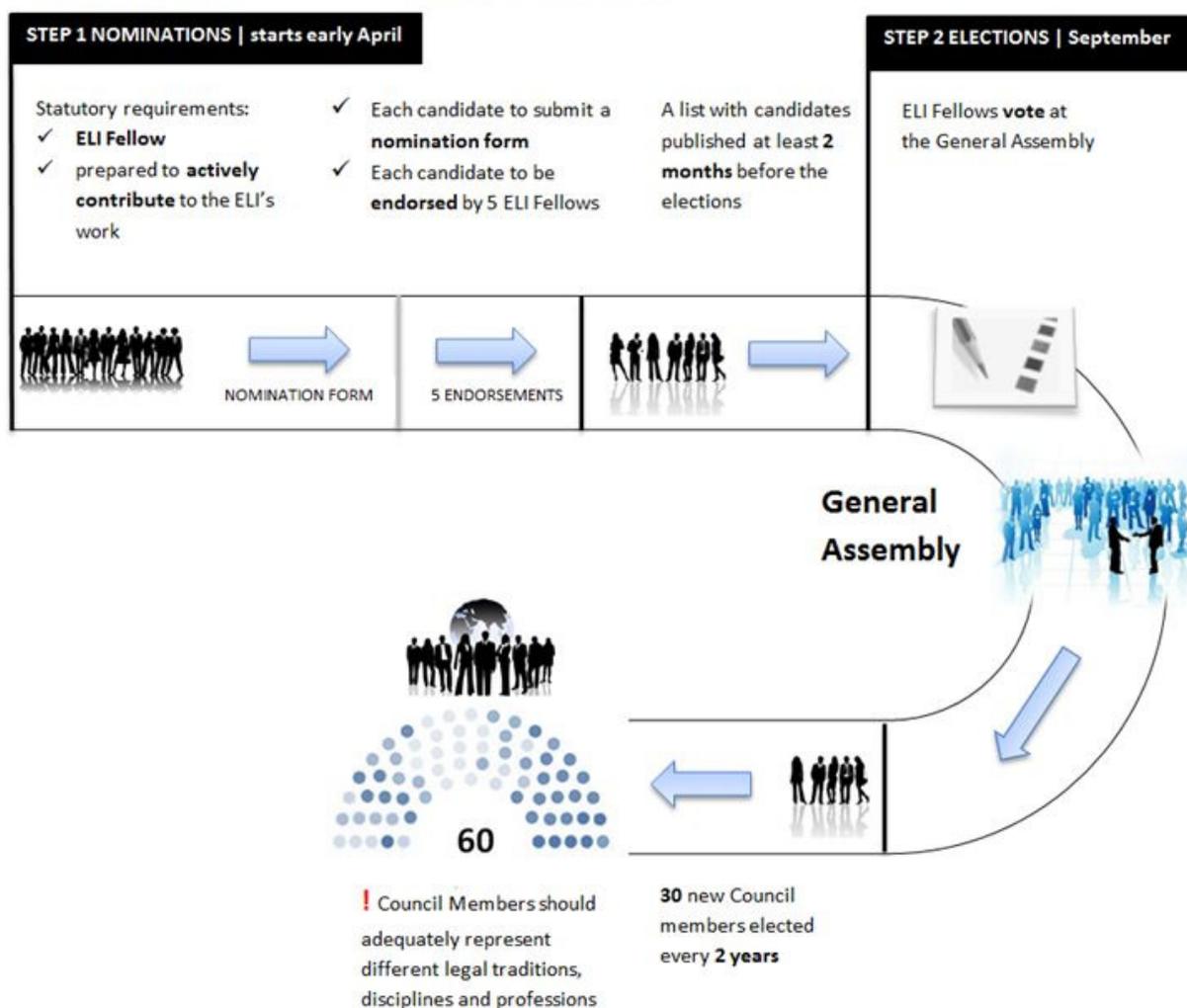
Council Elections Procedure established

Among the most significant points on the Council meeting’s agenda was the procedure for the Council elections. The Council’s deliberations on this matter were based on the proposal of the Council Composition Committee (CCC), which had previously been a subject of discussion on the MyELI platform for over two weeks. The numerous comments of Council members, the position of the Senate, presented at the meeting by its Speaker Irmgard Griss, and additional suggestions from Executive Committee members contributed to a fruitful discussion.

The discussion was preceded by a report from Sjef van Erp, the chair of the CCC, who gave a short account of the rationale behind the proposal. He explained that the Committee was not presenting specific solutions, but rather various alternatives for consideration by the Council.

The most significant decisions on the Council elections process taken at the meeting in Vienna are illustrated by this diagram:

HOW TO BECOME a Member of the ELI Council



The Council swiftly agreed that the Council elections should be prepared and administrated by the ELI Secretariat and overseen, in particular when it comes to counting of votes, by one or more Returning Officers who should be ELI Fellows (preferably Senate members) and who will otherwise take no part in the elections.

A large majority of the Council members voted in favour of the Council elections taking place at the General Assembly

Voting rights and the possibility of electronic voting were also discussed. A large majority of the Council members voted in favour of the Council elections taking place at the General Assembly with a possibility for Fellows to be represented by a proxy, limited to one per Fellow. Electronic voting will not be possible. In accordance with the Articles of Association, every ELI Fellow is eligible to stand for Council elections.

In order to stand each candidate must submit a nomination form including a short curriculum vitae and a statement of interest. All candidates must be endorsed by five other ELI Fellows. Endorsements shall either be sought electronically after submission of the nomination form or can be collected by the candidate and submitted together with the nomination form to the ELI Secretariat.

Throughout the discussion, a lot of thought was given to the issue of continuity and diversity. In order to ensure continuity on the Council, it was decided that half of the Council seats will be up for election every second year. In 2013, elections for all 60 seats will be held. For continuity reasons however, at least 30 members should be elected from among the current Council members. In order to ensure diversity in accordance with article 10(1) of the Articles of Association, which requires the Council to adequately represent different legal traditions, disciplines and professions, the Council decided that an express provision will be included on the voting ballot, which should encourage ELI Fellows to give special consideration to diversity when casting their votes. The Council found that this was the only solution consistent with democratic rules of elections.

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The Council approved the idea of a search committee, which will make non-binding proposals to the Council for candidates for the position of ELI President.

Furthermore, the Executive Committee (EC) elections were discussed. The Council approved the idea of a search committee, including members of the Senate, which will make non-binding proposals to the Council for candidates for the position of ELI President. These proposals should not, however, prevent any member of the newly elected Council from running for this position. Moreover, it was agreed that all EC members will be elected at the first meeting of the newly elected Council. A few other important issues were discussed and agreed in principle, *inter alia*, the issue of ex officio membership.

The procedural details are to be finalised during the coming weeks. The changes agreed upon at the Council meeting require certain amendments to the Articles of Association, e.g. proxy voting at the General Assembly. Drafts of the concrete statutory amendments and the draft Election Byelaw have been compiled by the Secretariat based on Council decisions. The document should be finalised soon and will then be submitted to the Council for approval.

New ELI Project Guidelines Now in Force

The new and revised [ELI Project Guidelines](#) were adopted at the Council meeting in Vienna. They have replaced the guidelines that had been in force since early 2012. The guidelines are a Byelaw of the ELI and have been published on the ELI website.

Project guidelines set out the procedures for the selection, management and approval of all projects carried out under the auspices of the ELI. Amongst other things, they establish the criteria by which projects are selected by the Projects Committee and Council, regulate the involvement of advisors and Members Consultative Committees, the funding of projects and intellectual property rights. All reporters, other members of the project team, and advisors are obliged to adhere to the guidelines. To joint projects the guidelines will apply with appropriate adaptations. Currently this only concerns the project on EU administrative procedural law on which the ELI is co-operating with ReNEUAL.

The new version of the guidelines aims to be clearer and more comprehensive than the previous one. A few flexibility clauses have been added and a number of issues that were not addressed before are now regulated. This mainly concerns intellectual property and publication issues as well as the communication of preliminary results prior to a project's approval.

The guidelines have been developed jointly by the Secretariat and some 20 members of the ELI Council and the Senate, who have provided valuable input over a period of more than three months, with much of the discussion having taken place on the MyELI platform.



ELI PROJECT GUIDELINES

These Guidelines for the selection, management and approval of projects carried out under the auspices of the European Law Institute (the Guidelines) are issued as a Byelaw of the European Law Institute (ELI) in accordance with Article 12(5) of the ELI's Articles of Association (the Statute).

Section 1: Scope of application

1. The Guidelines apply to all EU projects within the meaning of Article 12 of the Statute.
2. The ELI may engage in joint projects with other institutions such as the American Law Institute or UNIDROIT. Joint projects will be carried out, and publication rights relating to the project determined, according to the terms of any joint project agreement between the ELI and the other institution. Subject to the foregoing, the Guidelines apply to joint projects with appropriate adaptations as specified in the terms of any joint project agreement.
3. In exceptional cases, after consulting the Senate, the Council may decide that these Guidelines apply to a specific EU project only with appropriate adaptations. Any such adaptations must be defined and justified in the Council decision.
4. Nothing in the Guidelines shall prevent the ELI from embarking on activities that are not EU projects, within the fields outlined in Article 3 of the Statute.

Section 2: EU Instruments and Statements

An EU project shall either be an Instrument or a Statement. EU Instruments are medium-to-long-term projects such as draft legislative instruments, model laws or rules, principles of law, or implementation studies. EU Statements are short-term projects which can include ad hoc responses to current developments i.e. commentaries on legislative proposals, or position papers. Statements can be carried out under the accelerated procedure of Article 12(4) of the Statute.

Section 3: Project financing

EU projects will either be financed by the ELI or from external sources. Funding questions should be resolved as early as possible. The ELI will only accept external funding of projects if it is provided freely and independently of any condition concerning the nature, scope, and outcome of the project.

UNCITRAL joins as an Institutional Observer

The European Law Institute welcomes the United Nations Commission on International Trade Law (UNCITRAL) as an Institutional Observer. UNCITRAL is the core legal body of the UN system in the field of international trade law, and aims to modernise and harmonise rules on international business. The ELI has been an observer to UNCITRAL since September 2012. Institutional Observers can follow and contribute to the work of the ELI as well as profit from access to its network of renowned legal experts.



Launch of the ELI's UK Hub

A very successful launch of the United Kingdom Hub of the ELI was held at the offices of Clifford Chance in London on 25 February. Those attending included many senior members of the judiciary and leading academic lawyers and practitioners, senior representatives of the Law Society and the English and Scottish Bars, and of the Law Commission and the Scottish Law Commission as well as many other organisations.



Diana Wallis

Sir John Thomas and Lord Neuberger



Sir John Thomas and Lord Neuberger

Diana Wallis, a member of the ELI Council and formerly an MEP and a vice-President of the European Parliament, recalled the origins of the ELI, and stressed the need for the ELI to be practical in its approach in order to assist legislative bodies. Lord Neuberger, the President of the UK Supreme Court, agreed, adding that the question was not why the ELI had been set up, but why it had taken so long. The American Law Institute has already celebrated its 90th anniversary, and the English and Scottish Law Commissions had been around for some 50 years. Poorly drafted laws might engage lawyers and the courts, but there was a definite need for a body that could impartially review the quality of law being proposed across Europe in order to improve that law for everyone's benefit.

Lord Mance, a member of the UK Supreme Court and of the ELI's Senate and Arbitral Tribunal, highlighted the diversity of the ELI's Members, as well as the importance of the UK's contribution. Despite joining the EU late and representing a minority, common lawyers and the common law approach have been influential in Europe. It is important for that to continue in the future development of the law, which includes work through the ELI.

Sir John Thomas, the President of the Queen's Bench Division of the High Court and chairman of the ELI's working group on the CESL, said that his group had deliberately not entered into the politics of the CESL. They had made technical suggestions to improve the CESL, including drafting potential revisions to the proposed law. He believed that the group's report had been well-received and was proving influential in thinking about the CESL - for example, in its draft



From the left: Lord Neuberger, Sir Francis Jacobs, Lord Mance

report of 18 February, the European Parliament had specifically thanked the ELI for its statement on the CESL. Sir John considered this to be a good example of what the ELI could achieve.

ELI President Sir Francis Jacobs, urged those present who were not yet members of the Institute to consider joining and to take part in the ELI's activities. He pointed out that the UK's Supreme Court had decided to become an Institutional Observer, as had the Court of Justice of the European Union. Furthermore, he said that the ELI's work could often be done by telephone or other means of electronic communication, avoiding the need to travel. Sir Francis Jacobs also described how the ELI's work would evolve; it should not be confined to EU law or pure research and might, for example, involve collaborative work with the ALI, UN bodies and others on international projects. It should look to offer practical guidance to lawyers, judges and lawmakers.

MyELI in Full Swing!



We have been very pleased to see many ELI Members using the MyELI platform since its general launch at the beginning of February. We hope that you are enjoying the possibilities that the website offers, and we strongly encourage those of you who have not yet had a chance to login, to do so. MyELI provides fantastic networking opportunities, and is where we invite you as our Members to post any information or announcements which you would like to share with the ELI community.

The Secretariat welcomes feedback on the site, as we are keen to improve its functionality and tailor it to our Members' wishes. If you have any comments please send us an email:

secretariat@europeanlawinstitute.eu

2013 Conference and General Assembly Registration opens

The ELI 2013 General Assembly (including projects conference) will take place in Vienna on 5 and 6 September in the Vienna City Hall, the Rathaus, with a welcome reception being held on the evening of 4 September 2013. The event will include various presentations and project workshops on both ongoing and upcoming ELI projects.

Alongside the meetings, a number of social functions will also be organised, giving participants the opportunity to get to know other ELI Members in a less formal setting, and a chance to enjoy Vienna's varied cultural scene.

The event will start with a welcome reception hosted by the Rector of Vienna University. On Thursday evening, a formal Conference Dinner will be held at the Kunsthistorisches Museum, within walking distance of the Rathaus.

At the museum, participants will also have the chance to explore the galleries hosting the Imperial Collections of the Habsburgs. On Friday evening there will be a more casual get together at a traditional Viennese Heurigen (wine tavern).

More detailed information about the time schedule, social events and accommodation offers available to you at special rates will be available soon.

Register for the 2013 ELI Conference and General Assembly

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Registration for the 2013 European Law Institute Conference is now open and we invite our Members, friends and colleagues to register for the event.

The Conference will take place on 5 September in Vienna and include various presentations and project workshops on both ongoing and upcoming ELI projects.

Vital decisions, such as the election of the new Council, will be made at the General Assembly on 6 September. Active participation of our Members is imperative for a successful event that will chart the future course of the Institute.

In order for both events to meet our Members' expectations, a discussion is now open on the Institute's internal communication network, MyELI, that we hope will yield suggestions on how to make the event as beneficial as possible for the Institute and its Members. We will take the results of the discussions into consideration when finalising the programme.

The agenda, as well as more information on accommodation, etc. will be available soon. To register, please visit the [ELI website](http://www.europeanlawinstitute.eu). The ELI looks forward to welcoming many of its Members and colleagues to Austria's capital for this important event in September.

Cooperation between the ELI and ERA



On 8 and 11 February members of the ELI Executive Committee met with the Director of the Academy of European Law (ERA) in Trier, Dr Wolfgang Heusel.

Among the issues discussed was the potential for greater cooperation between the ERA and ELI. Both institutions expressed their strong desire to work together more closely in the future.

ELI at European Jurists' Forum in Barcelona

The ELI will be represented at the 2013 European Jurists' Forum in Barcelona, which will take place from 18 to 20 April 2013.

The three-day event, which is co-organised by the ERA, will see current topics of European law being discussed in three working groups, providing an opportunity for participants to contribute to the shaping of the European legal sphere. ELI Members are particularly encouraged to take part in the event. More information about the European Jurists' Forum can be found at www.eurojuris2013.com.



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Building on the wealth of diverse legal traditions, the European Law Institute's (ELI) 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.