



ELI  
EUROPEAN  
LAW  
INSTITUTE

# ELI Updates

## January 2013

### Message from the American Law Institute



Dear Members and Friends of the ELI,

The American Law Institute welcomes and takes a degree of pride in the formation of the ELI and its rapid progress. The ALI was founded in 1923 to bring coherence and reform to the 48 state legal systems then in existence. In the first 20 years the ALI "restated" a dozen areas of common law. After World War II it recommended statutes, the most influential of which were the Model Penal Code and the Uniform Commercial Code. Today we have active projects on about 15 legal subjects. In the recent period our work has become international, for example our recommendations concerning cross-border bankruptcy, transnational civil procedure, the law of world trade, and transnational enforcement of intellectual property rights. We have just begun the Restatement Fourth: Foreign Relations Law of the United States and are in the middle of our Restatement of the U.S. Law of International Commercial Arbitration.

I am struck by, and ALI members are impressed by, the ways in which ELI's leaders have seen a path so similar to the ALI's. Examples include being a membership organization; encouraging participation and cooperation among judges, practicing lawyers, and professors; and establishing Members Consultative Committees (ALI uses the same title) where work can be analyzed and improved by constructive criticism from as many members as choose to engage. Full discussion, criticism, and rewriting means that recommendations take substantial time but lead to a product that deserves to be influential. When I recruit a professor to give us five or ten years of low-paid labor as a reporter on a challenging project, I say: "You can publish a law review article and some people, mostly academics, will read it and be influenced by it. Or you can spend much more time on an ALI Restatement, Principles, or Statutory project, receive seemingly endless recommendations for change, but when completed see your effort cited in court opinions, in lawyers' briefs, and in the legislative process."

ELI faces challenges. The ALI does all its work in one language. The U.S. in 1923 was 125 years old. Europe has two dozen languages and is a youthful constitutional structure. Europe must coordinate civil law with common law systems. The ALI's founders were largely from an elite professional class. The members whose input is needed by ELI are more diverse. Those very challenges for the ELI show the importance of the effort and the possible gains from law reform work of high quality that follows adequate debate.

After 15 years I will step down as ALI Director in 2014. My successor will be Daniel Meltzer, Story Professor of Law at Harvard University. I know Dan looks forward as I do to possible collaborative work by ELI and ALI. Meanwhile, we smile as, for once, historic Europe adopts portions of the structure and purpose of an organization created in the youthful United States.

Lance Liebman,  
Director of the American Law Institute

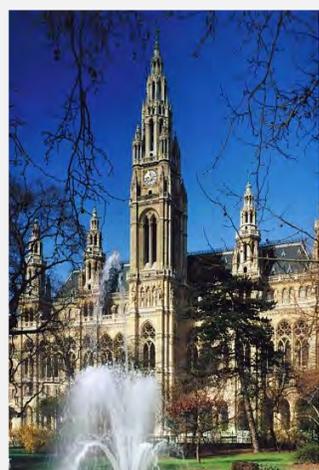
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## Save the Date – General Assembly in Vienna from 4 to 6 September 2013



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. The ELI Senate and the ELI Council are expected to convene in Vienna either prior to, or following the General Assembly.



Rathaus, Vienna

Source: [www.wien.gv.at](http://www.wien.gv.at)

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).



Kunsthistorisches Museum,  
Vienna

After a successful General Assembly last year in Brussels, where many renowned legal professionals and academics from all over Europe and beyond gathered and reflected on the accomplishments of the Institute in its inaugural year, we are hoping to welcome even more Members of the ELI this year in Vienna. The feedback on last year's event has been taken into account. We are also counting on you to help us make this precisely the event that is most beneficial for our Membership and a major highlight for the European legal community. To help us achieve this, a discussion on your expectations and suggestions will be the first ELI-wide discussion to be launched on the MyELI platform (on which you will find more information in this Newsletter), and we will take the results into account when finalising the programme. More detailed information about the time schedule, social events and accommodation offers available to you at special rates will be available soon.

For now, please take note of the date in your schedules: we sincerely hope that many of you can make it.



## The launch of the United Kingdom Hub on 25 February in London



We are pleased to announce the launch of the UK Hub of the ELI on Monday 25 February at 6pm promptly (to end at about 7.15 pm, followed by refreshments). The launch will take place, by kind invitation of Clifford Chance LLP, at their premises .

Clifford Chance LLP  
10 Upper Bank Street  
Canary Wharf  
London  
E14 5JJ

The programme will include four brief presentations, as follows:

**The Right Hon. Lord Neuberger of Abbotsbury, President of the United Kingdom Supreme Court:** *“Why a European Law Institute?”*

**The Right Hon. Lord Mance, Justice of the United Kingdom Supreme Court and member of the ELI Senate:** *“Why the United Kingdom should take an active part in the European Law Institute.”*

**The Right Hon. Sir John Thomas, President of the Queen's Bench Division:**  
*“How the European Law Institute Works: the Example of the European Sales Law.”*

**The Right Hon. Sir Francis Jacobs, President of the Institute:**  
*“How the European Law Institute might evolve.”*

The UK Hub will publicise the ELI’s activities in the UK; it will organise occasional presentations of the ELI and its work, and will encourage discussion of ELI projects. It will serve as a link with the ELI, encouraging communication in both directions. Hubs are also being set up in other countries; most recently a French Hub was launched in Paris. Further information on ELI hubs is contained in the ELI’s 2012 December Newsletter.

We are convinced that the ELI will have a major impact on the development of the law: we are also convinced that a substantial input from the UK is of high importance and will have an extremely positive impact on the ELI’s work.

We hope that many UK members and friends of the ELI will be able to attend. Please feel free to pass this information on to any of your colleagues who may be interested and who may wish to attend. If you or any of your colleagues are able to attend the launch of the UK Hub, please let Maria Dolan at Clifford Chance LLP know as soon as possible ([Maria.Dolan@CliffordChance.com](mailto:Maria.Dolan@CliffordChance.com))

## The Court of Justice of the European Union and the Conseil d'État join as Institutional Observers

The European Law Institute is pleased to welcome the Court of Justice of the European Union and the French Conseil d'État as Institutional Observers. Their membership has been gratefully approved by the Council.



The Conseil d'État is the highest court in France for administrative justice and also has an advisory function in the legislative process. Its current vice-president is ELI Senate member Jean-Marc Sauvé.

The Court of Justice of the European Union is the highest court of the European Union, presided by the honorable Vassilios Skouris. Judge Skouris gave the concluding note to the ELI Project Conference and General Assembly in 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.

## Council Meeting on 8 February in Vienna

On 8 February, the ELI Council will meet in the *Senatssaal* of the University of Vienna for its first official meeting of 2013. Meetings of the Projects Committee and the Membership Committee are scheduled on the day before.

Many Council Members have already confirmed their attendance and important decisions are expected to be reached, for example a decision on the procedure for the first internal Council elections, which are scheduled for 2013. The Council shall make its decision based on the proposal that was recently finalized by the Council Composition Committee.

The agenda also includes the new draft project guidelines, which are considered for adoption. The project guidelines outline the procedural rules for the selection, management and approval of projects by the various bodies of the ELI.



## The European Foundation: Like a Phoenix from the Ashes?

By Professor Martin Schauer

The idea of a European Foundation (*Fundatio Europea* – FE) has been under consideration for some time. In its *Action Plan on Modernising Company Law and Enhancing Corporate Governance in the European Union* of 2003, the European Commission announced that it would launch a feasibility study on a statute of the European Foundation. This feasibility study, which was carried out by the Max Planck Institute for Comparative and International Private Law (Hamburg) and the University of Heidelberg, concluded that a European Foundation would indeed be desirable, especially in light of the problems which arise from the cross-border activities of existing foundations. However further consultations with business organisations and Member States highlighted some scepticism about the need for such a legal form. This is why it came as a surprise to many observers when the European Commission actually presented a proposal for a council regulation on the Statute for a European Foundation (FE). If adopted, the FE will be the fourth supranational legal form (after the EEIG, the SE and the SCE), and the first to be especially designed for the non-profit sector. Because of these developments the ELI Council decided in

September 2012 to set up a working group to assess the Commission's proposal. The working group began its activities in January 2013. Among the questions being addressed are: Is it a good idea to restrict the European Foundation to the public benefit purposes which are enumerated in the Statute? Will the proposed governance model of the Foundation really work? Since matters which are not regulated in the Statute would be at the discretion of Member States, will the interaction between European law and national law create the risk that there will not only be one FE, but 28 different ones? Many more questions may arise as the activities of the working group progress. This project is accompanied by a sense of urgency; the European Parliament will present its report in February, and a series of working group sessions have already been held. This is why, depending on further developments in the legislation process, the working group might have to prepare a statement in a very short period of time. If approved by the ELI Council, the Statement could stand as the ELI's response to the proposal, which aims to help improve the final version of the FE Statute.

### The first meeting of the working group

The working group held its first meeting on 23 January 2013 and agreed on a “dual strategy”: In order to be prepared for the possibility of a speedy Council decision towards the end of the Irish Council Presidency, the working group will submit a short draft statement by mid-March. In order to keep this ambitious deadline the group will, over the coming weeks, prepare and circulate several working papers on each article of the Commission's proposal and have two more meetings on 18 and 27 February 2013. In the event that things do not move forward so quickly at the level of European legislature, the working group will embark on a more elaborate analysis and possibly submit more far-reaching suggestions for improvement.



*Martin Schauer is leading the ELI Project on a European Foundation. He has been a Professor at the Institute of Civil Law at the University of Vienna since 2001. He is also visiting professor and lecturer at various Universities in Europe and beyond, among others the London School of Economics, Chuo University Tokyo, Jagiellonian University in Krakow and many others. 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. His areas of interest include European private law, insurance contract law, law of succession, foundation law and law of guardianship.*



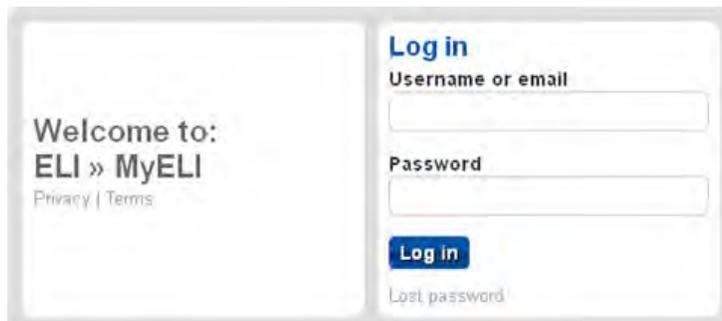
## MyELI Platform: soon open to all ELI Members

As mentioned in the last Newsletter, MyELI is an interactive online platform which has been established to enhance and facilitate communication between all Members of the ELI community. Moreover it enables ELI bodies to conduct their decision-making procedures efficiently, and provides collaborative working tools.

In the course of next week we will provide all ELI Members with access to the MyELI Platform. If you are an ELI Member you will receive your login details via e-mail from the ELI Secretariat. Access to MyELI provides you with numerous possibilities to initiate and participate in discussions with other Members of the ELI. We are working hard to ensure the technical side of MyELI can support the demands of all the new users, and kindly ask you for your patience and co-operation if any technical problems arise.

### First steps. How to access MyELI ?

Once you have received your login details from the ELI Secretariat you can access MyELI. You can login from the ELI website or via <http://myeli.europeanlawinstitute.eu> You will be asked for your user name and password. If at any point you have forgotten your password you can use the 'lost password' function.



### Your profile on MyELI

User profiles provide personal background information and contact details that can be shared with every ELI Member. Your profile is your own space on MyELI where you can display information about yourself and your role within the ELI.

Some of the personal information you provided during the membership registration procedure will be imported to your profile on MyELI. By default it will be set to private, meaning that nobody but you and the site administrators can view the information, as opposed to public, which means all MyELI users can see it. You can however change this and other settings at any time by editing your profile. You can also add further profile information, your photo and upload a CV. Information you set to public can be searched by other users; in the same way you can search users by e.g. languages or legal expertise.

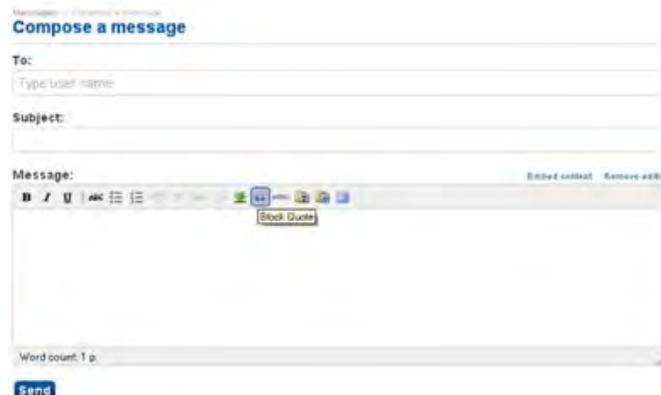
To make the most of MyELI as a networking tool, we encourage you to complete your profile information and keep it public.



## How can I use the MyELI platform as an ELI Member?

### Messages

As you are already aware, the ELI has a Membership of over 600 legal experts from Europe and beyond. Therefore the most important goal of MyELI is to facilitate communication between the ELI's Fellows and Observers. A message can be sent to any user of MyELI.



### Groups

On MyELI, a group is a page accessible to its members providing different collaborative working tools to enhance and facilitate communication. Some groups, for example those representing ELI bodies such as the Council, the Projects Committee, etc. are closed groups which can only be joined by members of that body. Other groups, such as the Newsroom and Projects Forum, are open and can be accessed by all ELI Members.

With the approval of the Secretariat, MyELI users can also initiate and set up groups, where postings and documents can be shared, open discussions can take place and polls can be created, allowing decisions to be made very efficiently with the results being automatically available.

### Newsroom and Projects Forum

#### ELI Members Newsroom



The ELI Members Newsroom was designed as a common space for all ELI Members. Here the ELI Secretariat will occasionally post information about ELI-related events, meetings, conferences, hubs, etc. However the Newsroom belongs to you, ELI Members, and we hope that you will actively contribute to its content. The Newsroom provides an excellent opportunity to network, initiate discussions with other Members, upload your publications or other files or inform other colleagues about any events and conferences in which they might be interested.

#### Projects Forum



The Projects Forum contains information on the ELI Projects, Members Consultative Committees, etc. Also, when a project requires the approval of the General Assembly, voting can take place via polls in the Projects Forum.

The Projects Forum also provides a platform for ELI Members to share their ideas for new ELI projects, discussing them with other Members, uploading related documents, bookmarking important websites, etc. These discussions will also be viewed by the Projects Committee. As a Member you can also use the MyELI platform to submit a project idea to the Chair of the Committee, who can then share it with other colleagues. If however you only wish to discuss your idea with a specific group of ELI Members, you are welcome to set up a closed group for that purpose.

## MyELI Privacy Policy, Terms and Help Section

When logging in for the first time, all Members will be asked to read and accept the MyELI [Privacy Policy](#) and [Terms](#) as a condition for using the platform.

For more detailed information and in case of any problems you may encounter while using MyELI, please have a look at the MyELI Help Section. The Help page is a source of information about the MyELI site and its functions, including a discussion board where questions and answers can be posted.

You can also contact the Secretariat directly should you require any further assistance.

We have been working hard over the last few weeks in order to adjust the MyELI platform to meet your expectations. If you have any suggestions for further improvements, please do not hesitate to [contact us](#); we are always happy to receive your feedback.

MyELI Help



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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.*

[www.europeanlawinstitute.eu](http://www.europeanlawinstitute.eu)