



ELI  
EUROPEAN  
LAW  
INSTITUTE

# ELI Updates March 2013



## Message from Chair of the Membership Committee

Dear Members and Friends of the ELI,

As Chair of the Membership Committee it is my pleasure to begin this month's newsletter with a few reflections on the ELI's most important asset: its members.

### Inside this issue:

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| Who makes up the ELI?   | 2 | Since the Institute's inauguration in 2011, membership of the ELI has been steadily growing and we now boast about 700 Fellows and Individual Observers. We are also supported by many national and European groups and organisations which have joined as Institutional Observers and served to underline our diversity from the very beginning.  |
| Preliminary Agenda for the General Assembly                         | 4 | Recently, a number of esteemed courts have become members: The Court of Justice of the European Union, the French Conseil d'Etat, the Supreme Court of Hungary, the Supreme Administrative Court of Austria and the Austrian Supreme Court in Civil and Criminal law matters all are Institutional members of the ELI.   |
| Would you like to be an ELI Council Member?                         | 5 | The ELI is proud of the broad array of nationalities and professions counted among our Fellows. Nevertheless, a focus on further enhancing diversity and improving representation is needed for some areas of our membership. This is the case for criminal law, public law and also for some private law areas, such as IP-law, labor, company, and capital market law. Lawyers from Southern and Eastern European jurisdictions and from Scandinavia are particularly welcome to apply for membership. More generally, a particular effort has been and will continue to be made to ensure the adequate involvement of legal practitioners – a key factor for our success. |
| CESL Working Group commences Stage two of the Project               | 6 | The gradual, selective growth of our community of members is essential at this time. I would like to take this opportunity to invite our members to consider these points and to actively engage in approaching suitable colleagues and encouraging them to apply. A helpful tool in this context may be our "tell-a-colleague" button on the ELI website, allowing you to send a statement about the ELI via email to anyone you choose.  |
| OGH and VwGH join the ELI   | 7 | The importance of members to the Institute, and the opportunities that ELI membership can afford to individuals is particularly apparent at the General Assembly, and I greatly look forward to seeing many of you in Vienna this September.   |
| ELI meets Head of the European Commission Representation in Austria | 7 |  |
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Walter Doralt

Membership Committee Chair and Council Member

## Who makes up the ELI?

Since the official launch of the ELI in November 2011, the Institute's membership has been steadily growing, and can now boast close to 700 Fellows and Individual Observers from all over Europe and beyond. Our members are a fundamental part of the Institute and the driving force behind the ELI's progress in the future. In order for the ELI to undertake a wide scope of projects, the professional diversity and expertise of our members in various distinct areas of law is of utmost importance.

### Two types of Members: Fellows and Observers

**Fellows** participate in the Institute's activities on the basis of their personal and professional convictions without regard to the interests of clients and stakeholders.

**Individual Observers** are actively involved in European legal development, but cannot undertake to act on their own behalf, without regard to the interests of stakeholders. Although they may participate in many of the Institute's activities and suggest projects for consideration, they are not eligible to vote.

**Institutional Observers** are institutions interested in following and contributing to the work of the ELI. The ranks of our Institutional Observers are steadily growing, most recently with the addition of several supreme courts.

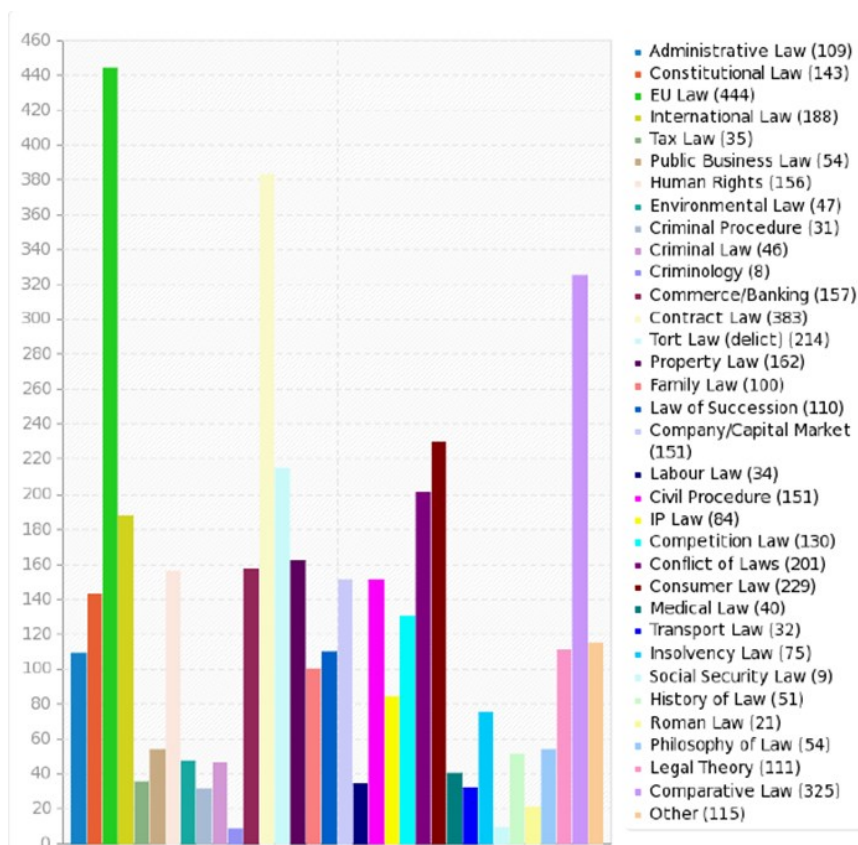
### Areas of expertise...

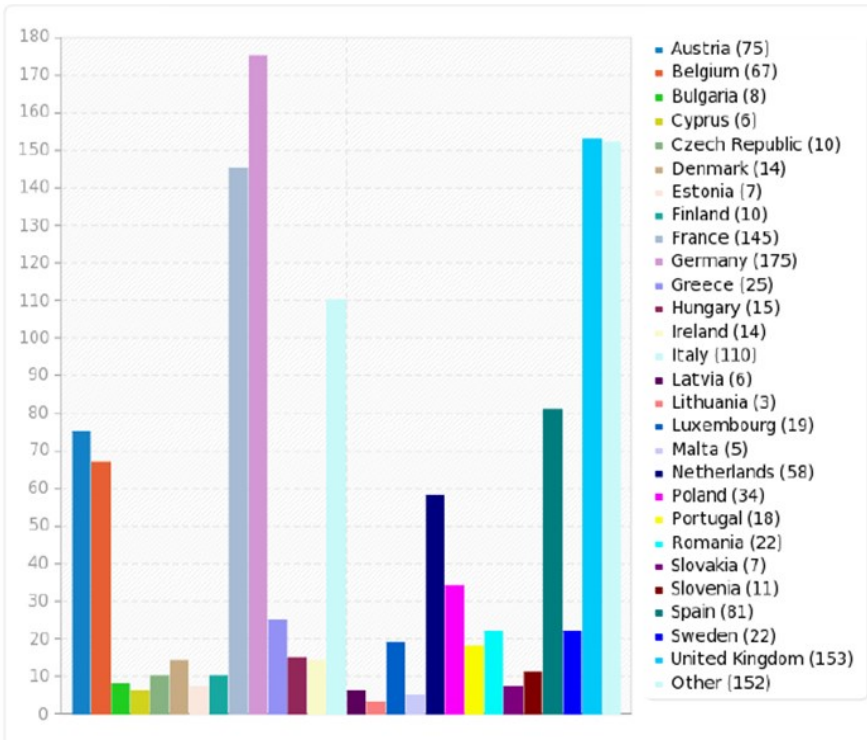
This graph gives a detailed account of the fields of interest and expertise of the ELI's members.

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*We are actively working on further broadening our membership base to include more representatives from the public and criminal law areas.*

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**Where we work...**

The following graph shows the national jurisdictions in which ELI members are professionally active. This is linked to, but does not equate to the nationalities of our members as many ELI Fellows and Observers live and work abroad or are active in more than one jurisdiction.

*The ELI is very keen to increase Membership in the national jurisdictions which are less represented, especially those in Southern and Eastern Europe.*

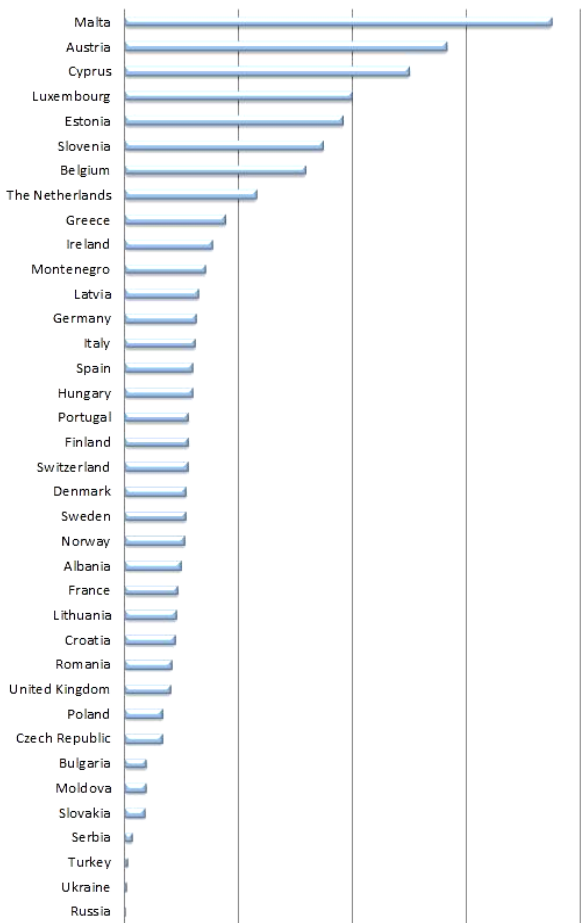
**Where we come from...**

This graph shows the nations which are best represented in the ELI in relation to their total population. Seen in this context, it becomes clear that the countries boasting the most members are not necessarily the most well represented proportionally.

ELI hubs - national communications centres - are envisioned as a way to reach out to potential members and the ELI is working on establishing them throughout Europe.

**A global institute...**

ELI members come from all corners of the globe. All 27 EU States are represented as well as many other European countries. In addition the Institute has members from the United States of America, Israel, Iran, Japan, India and other countries beyond Europe. We highly value our intercontinental members, and the perspectives which they can bring to the Institute and its work.



## Preliminary Agenda for the General Assembly

Preparations for the 2013 Projects Conference and General Assembly in Vienna continue, and here we can give you a taste of what to expect with a preliminary agenda for the three day event:

An event bringing together members of the Institute from all over the globe, the General Assembly marks the pinnacle of the ELI's annual calendar. It is here that the Institute gains a sense of unity and identity, with its members having a chance to interact and collaborate in both formal and informal, professional and recreational settings.

The GA also provides the framework for many important decisions about the Institute's future to be reached, not least the election of the new Council.

We hope to see many of our members at the GA, and remind you that online registration is already open.

2013 General Assembly		DRAFT PROGRAMME
		4-6 September 2013
		Vienna City Hall, 1010 Vienna, Austria
<b>Wednesday 4 September 2013</b>		
17.00 – 19.00	Launch Austrian Hub	Европейски институт по право
19.00 – 22.00	Opening ceremony	Evropský právní institut
<b>Thursday 5 September 2013 - Project Conference</b>		
09.00 – 09.15	Welcome	Evropský právní institut
09.15 – 10.00	Keynote speech	Evropský právní institut
10.00 – 10.30	Coffee break	Evropský právní institut
10.30 – 13.00	Project session I	Evropský právní institut
13.00 – 14.00	Lunch buffet	Evropský právní institut
14.00 – 16.00	Project session II	Evropský právní institut
16.00 – 16.30	Coffee break	Evropský právní institut
16.30 – 18.00	MCC Meetings	Evropský právní institut
19.00 – 22.00	Formal conference dinner at the Kunsthistorisches Museum	Evropský právní institut
<b>Friday 6 September 2013 - General Assembly</b>		
09.00 – 11.00	Opening General Assembly and reports from the committees	Evropský právní institut
11.00 – 11.30	Coffee break	Evropský právní institut
11.30 – 12.15	Council elections	Evropský právní institut
12.15 – 13.00	Keynote speech	Evropský právní institut
13.00 – 14.00	Lunch buffet	Evropský právní institut
14.00 – 14.30	Election results and closing	Evropský právní institut
15.00 – 19.00	Meeting of the first Council including Executive Committee elections	Evropský právní institut
20.00 – 22.00	Informal get together at a traditional Viennese Heurigen	Evropský právní institut
<b>ELI Secretariat</b> Schottenring 14 1010 Vienna, Austria		Phone: +43 (0) 1 4277-221 01 Fax: +43 (0) 1 4277-9221 Email: <a href="mailto:secretariat@europeanlawinstitute.eu">secretariat@europeanlawinstitute.eu</a> <a href="http://www.europeanlawinstitute.eu">www.europeanlawinstitute.eu</a>

To register please visit:

<https://www.europeanlawinstitute.eu/about-eli/eli-bodies/general-assembly/>

## Would you like to be an ELI Council Member?

The Council is the ELI’s main governing body. The mandate of its current members ends this year, and consequently the Institute’s first internal elections for new Council members will take place at the General Assembly on 6 September. The first meeting of the newly elected Council will follow on the same day. Any Fellow of the ELI can run for a seat on the Council and, if elected, make a significant and active contribution to the further development of our organisation.

Members of the Council are responsible for electing the Executive Committee including the President, Vice-President and Treasurer. Council members approve applications for new members, decide which projects the ELI should embark on and appoint reporters accordingly. Much of the preparatory work is done by the Council’s standing committees on projects, membership, fundraising and international relations.



ELI Council meeting, 29 September 2012, Brussels

The Council meets at least twice a year but also makes decisions electronically on a regular basis. Reasonable costs of traveling and accommodation incurred as a result of ELI Council business are usually reimbursed by the Institute.

The nomination procedure, (the main stages of which were described in the previous newsletter) will be launched in April. All ELI members will be notified by email about the detailed procedure and the starting date. Below you can find a link to the nomination form.

**Council Elections Nomination Form**

Instructions : Please fill in all the fields (required). When sending the form by email, by post or uploading it via the MyELI platform, please also attach a portrait photograph (required).

First name:

Surname:

Date of birth:

Current position:

Current location (city, country):

Nationality:

Field of expertise (e.g. criminal law):

ELI Fellow since:

Brief CV (max 200 words):

**Council Elections Endorsement Form**  
(to be filled in by an endorser)

All candidates for the ELI Council elections must be endorsed by five Fellows of the ELI. Candidates may use this form to collect endorsements as an alternative to electronic endorsements which can be given via the MyELI platform. If this form is used, only signed originals or legible scans of this form will be accepted as valid endorsements.

First name:

Surname:

ELI Fellow since:

Email address:

I hereby endorse the candidature of   
for membership of the ELI Council.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

## CESL Working Group commences stage two of the project

by John Sorabji



Following publication of the ELI Statement on the Proposal for a Common European Sales Law (CESL), the Proposal has been given further consideration by the European Institutions. In particular it was the subject of a detailed draft report issued by the European Parliament's Legal Affairs Committee (JURI Committee).

The JURI Committee raised a number of issues concerning the Proposal; most significantly it raised the question whether the CESL might be limited to distance contracts, not least internet-based contracts. Questions have also been raised concerning the potential application and interaction of the CESL with the growth of cloud computing.

In the light of the JURI Committee's draft report the CESL Working Party convened a meeting on 15 March 2013 to discuss possible revisions to the ELI Statement. The meeting was attended by existing Working Party members, Sir John Thomas, Christiane Wendehorst, Fryderyk Zoll, Peter Limmer, John Sorabji, and by Marco Loos, who has recently joined the group in order to bring further expertise in matters relating to digital content consumer contracts.



Meeting of the CESL Working Party in Vienna

The meeting initially focused on questions surrounding cloud computing, how it relates to sales contracts and issues of ownership, access to, and use of, data sold or licensed. It also considered questions of data security, privacy, termination and passing of risk. It was readily apparent that these issues would become of ever increasing importance as more and more goods become digitised and are stored for use by purchasers (or licensees) on cloud networks or systems. A decision was taken to revise the ELI Statement's options for revision of the CESL text in the light of these issues.

The Working Group also considered what revisions might be necessary to the CESL text in the light of suggestions that it be restricted to a distance-contract only instrument. A number of discrete revisions, such as to the definition of distance-contract, further refinement of the treatment of mixed and linked contracts were proposed and will form the basis of textual revisions to the ELI Statement. Issues concerning assignment, set-off and retention of title were also considered. It is intended that these will be dealt with in a revised ELI Statement, although the Working Party came to the view that not all these issues could properly be dealt with in the CESL.

Following the meeting the Working Party is preparing revisions to its initial Statement, which is anticipated to be available for comment shortly.

## Austrian OGH and VwGH join ELI

The European Law Institute is pleased to welcome the Austrian Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) and the Austrian Supreme Judicial Court (Oberster Gerichtshof, OGH) to the ranks of the ELI's Institutional Observers.



The OGH is the final appellate instance in civil and criminal proceedings, while the VwGH rules on complaints against last instance decisions from administrative bodies.

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.

## ELI meets the Head of the European Commission Representation in Austria



On 14 March 2013, ELI Executive Committee member Christiane Wendehorst met with the head of the European Commission Representation in Vienna, Mr. Richard Kühnel, and the head of the EC Representation's political section, Dr. Johann Sollgruber.

Among topics discussed were: the relationship between the ELI and the European Commission, ongoing ELI projects, the 2013 General Assembly, which will take place in Vienna from 4 to 6 September 2013 and the establishment of an ELI hub in Austria.

## European Jurists' Forum

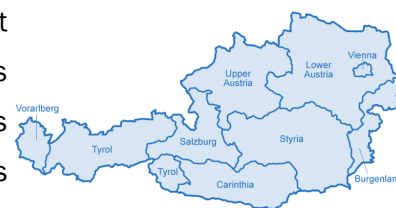
The ELI will be represented at the 2013 European Jurists' Forum in Barcelona, which will take place from 18 to 20 April 2013.

We would be delighted to see many ELI members at the event. For more information, please visit: [www.eurojuris2013.com](http://www.eurojuris2013.com).



## Preparations begin for an Austrian Hub

Arrangements to launch an Austrian Hub of the ELI to take place in the country's capital just ahead of the General Assembly in September 2013 are underway. Austria is well represented among the ELI's members and it is hoped that the Austrian Hub will help support and encourage this active jurisdiction in its contribution to the ELI's work.



## FE Statement: First Draft sent to selected EU Institutions

A first draft of the ELI's Statement on the European Foundation (FE) has been sent to members of the European Parliament's Committee on Legal Affairs (JURI Committee) and to the Directorate General for Internal Market and Services. This represents an informal communication of preliminary results in accordance with Section 13 of the Project Guidelines.

The first draft of the Statement, which has resulted from the dedicated work of a Project Team and the constructive input of an Advisory Committee, highlighted several issues with the Commission's proposal. The main objections stem from the lack of legal certainty in the proposal; for many rules it is currently unclear whether they are intended to be mandatory or default provisions, and whether they could be

subject to additional regulation under national law.

The Statement contains preliminary suggestions for rewording, often serving to clarify the scope of the proposed rules and sometimes to bring them in line with several existing directives and regulations in the field of EU company law. The Statement mainly focuses on the civil law aspects of the proposal, whereas issues of tax law have been only superficially dealt with.

Project leader Professor Martin Schauer is also in the process of assembling an expert panel to debate the Statement at the ELI Project Conference on 5 September, where all members of the ELI can participate.



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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.*