



ELI
EUROPEAN
LAW
INSTITUTE

ELI Updates

November 2013



Message from John Sorabji

Dear Fellows, Observers and Friends of the ELI,

It is a real pleasure to have been asked to open this month's newsletter. As a new member of the Executive Committee it gives me an early opportunity to consider some of the challenges and opportunities that the ELI will face in the next few years.

It is easy to forget that the ELI was founded in 2011. Since that time its membership has grown to a degree that its founders could only have imagined. And it continues to grow. This is not just a mark of the fact that it has captured the imagination of jurists across Europe and beyond. It is also a mark of the early successes it has had through delivering projects on both reform of the Strasbourg Court and on the European Commission's Proposal for a Common European Sales Law. Those projects were not simply of the highest quality (although as a member of the project team in respect of the latter of the two projects I must declare an interest!). They were also the product of collaboration between practitioners, judges and academics drawn from across Europe. They embodied the ideals that inspired the ELI's creation. They form a template for, and promise of, further excellence to come.

With this in mind I think the challenge for the ELI over the next two years is twofold. Most obviously it will have to produce more of such high quality works. It has, I am glad to say, already taken significant steps in that direction. Projects on criminal jurisdiction, on a European Foundation Statute, on the European Commission's recent Recommendations on collective redress reform and competition damages, amongst others, are all under way. I would hope that they, and others, will all produce concrete results and have played a crucial part in the development of law fit for our technological age. Equally I would hope that these projects would be viewed in years to come as no more than the starting point for the ELI's contribution to law-making. I am sure they will.

This leads me to the second challenge. If the ELI's projects are to achieve our high expectations for them, it will be of fundamental importance that the ELI ensures that they are the product of real collaboration between as diverse a range of jurists as possible. In order to do this it will have to ensure that its membership does not become unbalanced either geographically or professionally. I am sure it will not, but will – through the development of local and regional Hubs, through collaborative work with other organisations such as UNIDROIT, through attracting the support and membership of practitioners – be as diverse in its membership as possible. Through such diversity will come its strength and the success of its projects.

With your help and commitment I am sure the ELI will fulfil its potential in the immediate and the longer term.

John Sorabji

Executive Committee, Projects Committee and Council Member

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General Assembly 2014: Save the Date!

The Executive Committee and Secretariat are pleased to announce that the 2014 Projects Conference and General Assembly will take place from **25-26 September in Zagreb, Croatia**.

Following the great success of the 2013 Projects Conference and General Assembly in Vienna, we are very much looking forward to next year's event. The gathering will be another valuable opportunity for ELI Members and Friends to reflect on the Institute's progress and plan its future development. More details will follow in the coming months.



25-26 September 2014
Zagreb, Croatia

ELI Members contribute to the Assises de la Justice



Jonathan Mance
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Several ELI Members participated in the *Assises de la Justice* conference in Brussels this month. Lord Mance, who was an expert panellist at the event, said of the conference: "The Commission's *Assises de la Justice*, held in Brussels on 21-22 November was a very well attended occasion, opened and closed by Vice-President Reding, the aim being to generate ideas which will contribute directly to shaping the European Union's future justice policy. A wide variety of topics was addressed on the basis of Commission papers presented in advance and available on the web. The topics ranged from the very general and aspirational - the importance of reinforcing justice, fundamental rights, the rule of law and mutual trust in Europe - to the more particular areas of criminal, civil and administrative law. The Commission intends to use the conference speeches and discussions as well as written responses received to its papers to date and by the end of 2013 to draw together its conclusions".

In recognition of the parallels between

the aims of the ELI and those of the *Assises de la Justice*, which both hold international collaboration and diversity in great esteem, President Diana Wallis was invited to attend, and provide a contribution during the discussion entitled *Towards a more integrated European area of Justice based on mutual trust*.

Following the conference Diana Wallis commented: "At the beginning of the *Assises* Commissioner Reding referred to it as a unique and first bringing together of European legal stakeholders, judges, academics and practitioners. Of course it is also clear that this is exactly the unique constellation of Europe's legal community that ELI brings together now on a permanent and standing basis. This is an important moment for us. For me it was the three 'C's which I identified (in my intervention and which was picked up by others) which will be important for European law going forward; Confidence, Coherence and Communication. Confidence and trust between systems and practitioners to make mutual



Diana Wallis
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recognition work, coherence in the design of Europe's legal structures so that they are understandable and accessible, and finally communication of the instruments available especially where increasingly an 'optional' form is chosen.”

The conference comprised four discussions featuring several expert panels. The first panel, entitled *Effective justice systems in the EU and the EU Justice Scoreboard* featured ELI Fellow and ex-officio Council Member Paul Gilligan, who commented that: “The Assises was a major success with an attendance of seven hundred people and brought to the fore inter alia issues relating to the Independence of the judiciary across Europe and the importance of the Justice Scoreboard as promoted by Mrs Reding, Vice-President of the European Commission and Commissioner for Justice.”

Vassilios Skouris, President of the Court of Justice of the European Union, an ELI Institutional Observer, appeared in the next panel session tasked with discussing *Independence of Justice and the EU Justice Scoreboard*. In the next session ELI

Senate Member Jean-Marc Sauvé was one of four experts in a panel session entitled *Towards a New Rule of Law Mechanism*.

The panels on the second day of the conference discussed three different aspects of one overriding topic: *Towards a more integrated European area of Justice based on mutual trust*. Deliberating this idea as it applies to civil and commercial law were three panellists including ELI Senate Member Jonathan Mance and ELI Individual Observer Maciej Szpunar. One of the experts to discuss the administrative law aspects of such a goal was ELI Senate Member Sabino Cassese, who commented that: “...judicial integration is crucial to the European construct, as has been demonstrated by the leading role played by the European Court of Justice and can compensate the so-called democratic deficit (...)The first step towards improving judicial integration should be the introduction of more detailed administrative law principles at the European level, and, in particular, to regulate administrative procedures.”



Paul Gilligan
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Sabino Cassese
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Viviane Reding, the Assises de la Justice © European Union, 1995-2013

- [Video day one](#)
- [Video day two](#)
- [Programme](#)
- [Discussion papers](#)

Project: Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law

The project was approved by the Council in January 2013. The Council has entrusted the project to Professors Katalin Ligeti, John Vervaele and André Klip. Since their appointment, the reporters have been busy applying for funding. Their hard work has been fruitful and just last month the *Fonds National de la Recherche Luxembourg* (FNR) confirmed that it would finance the project.

The members of the FNR review panel unanimously considered the project and its intended results as highly relevant for the development of research in European criminal law. They also recognised the potential impact such a project might have on practitioners. The proposed group of leading experts was seen to be “outstanding”. The panel also underlined the significance of the group’s diversity in terms of nationality and vocational backgrounds, considering the working group concept highly promising.

The project tackles one of the most important legal problems within transnational criminal law, namely conflicts of exercise of jurisdiction. It aims at developing a new legal framework for their prevention and resolution. The Working Group – which is composed of practitioners and academics in the private and criminal law domain coming from different EU countries – will begin by carrying out a comparative study of different national provisions concerning conflicts of law in EU Member States. Based on the results of this work and

also taking existing research into account, the Group will conduct an analysis of the existing means by which conflicts of jurisdiction are prevented and resolved. Following that, the project will move onto the second, developmental stage in which a new legal framework will be elaborated. While exploring the solutions to the problem of conflicts of jurisdictions in criminal law, the Group will give due consideration to the principles already used in that regard in the field of international private law.

The reporters have prepared a working plan. The work on the project should commence in March 2014 and will run until February 2017. Besides scientific research done by members of the Project Team and other members of the Working Group, four meetings are envisaged to discuss the results of the scientific research and the related practice, and to elaborate the legal framework. The results of the research and the final outcome of the project will be published in a

The Members Consultative Committee (MCC) for the project has already been established and all ELI Members are encouraged to join. The first introductory meeting of the MCC took place in September in Vienna, where Joseph Davids was appointed the chair. The members of the MCC need not necessarily be experts in the field. If you are interested in joining please send an email to the ELI [Secretariat](#).



Katalin Ligeti is a Professor at the University of Luxembourg. She is Secretary General of the International Association of Penal Law (IAPL) and co-coordinator of ECLAN (European Criminal Law Academic Network).

Professor Ligeti has an outstanding record in project research, building research teams and creating international networks. Recently Professor Ligeti has led a major comparative law study (“European model rules of investigation and prosecution for the future European Public Prosecutor’s Office”). The research results have been published in

two volumes “Toward a Prosecutor for the European Union” (Hart Publishing 2013) which gather seminal work on comparative criminal procedure. Professor Ligeti serves on the editorial board of *Eucrim* and the *New Journal of European Criminal Law*. She has also participated as an expert in several impact assessments conducted by the Commission.



John Vervaele is a full time professor of economic and European criminal law at Utrecht Law School (the Netherlands) and a professor of European criminal law at the College of Europe in Bruges (Belgium). He is Vice-President of the International Association of Penal Law (IAPL), in charge of the scientific coordination of

the world organization for criminal law. His scholarly work deals with white-collar crime and economic offences as well as European criminal law and procedure. The main topics in his research field are: enforcement of Union law; standards of due process of law; procedural safeguards and human rights; criminal law and procedure and regional integration; comparative economic and financial criminal law; terrorism and criminal procedure. His expertise has been sought by both the Dutch government and European Institutions for which he worked as a consultant. He regularly teaches as a visiting professor in Europe, the US, Latin America and China.



André Klip is a professor of criminal law, criminal procedure and transnational criminal law at Maastricht University. He is a member of the Board of Directors of the International Association of Penal Law and of the

Standing Committee of Experts in International Immigration, Refugee and Criminal Law (Meijers Committee). He is a judge at the 's-Hertogenbosch Court of Appeal (criminal division). Professor Klip is also a founder and editor of the *Annotated Leading Cases of International Criminal Tribunals* (40 volumes since 1999) and editor-in-chief of the European Journal of Crime, Criminal Law and Criminal Justice as well as a member of the board of editors of the *International Criminal Law Review* and *Delikt en Delinkwent*.

Project: Rescue of Business in Insolvency Law - First Insights

In September 2013 the ELI Council approved a project in the field of insolvency law and appointed Professors Stephan Madaus (Regensburg) and Bob Wessels (Leiden) and Dr. Kristin van Zwieten (Oxford) as project reporters.

As the project title indicates, it is the issue of rescue of business that lies at the core of this project. The ultimate aim is to design a framework that will enable the further development of coherent and functional rules for business rescue in Europe. Insolvency law is at the forefront of reform initiatives in Europe and beyond, and any contemporary developments will be given due consideration as work on the project progresses. For further background information on the project see the [ELI website](#).

The project is to be carried out over a period of 30 months. During the first year, National Correspondents (NCs) will draft inventory reports on their respective national insolvency laws, based on a detailed questionnaire prepared by the reporters. NCs are experts from a selected group of 13

different European countries which each represent different approaches to insolvency law. Some topics that will be covered in those reports include: governance and supervision of in-court and out-of-court rescue, special protection for financing a rescue, treatment of executory contracts, ranking of creditors, avoidance powers, restructuring plans, special arrangements for SMEs, and the position of liquidators and directors. In addition to these national reports, an inventory report on international recommendations from standard-setting organisations, such as the World Bank and UNCITRAL, will be drafted.

The results of the first year's work will be presented and discussed at a conference, which is provisionally scheduled for the beginning of 2015. In the later stages of the project, these outputs will be used by the Project Team to formulate their recommendations for reform, which are at this stage expected to be presented in the form of a legislative guide. This process will be assisted by input from a specialist Advisory Committee (AC), staffed by experts in relevant areas of law and legal

practice across Europe.

Over the last two months, the reporters have engaged in intensive discussions over the composition of the AC as well as candidates for the NCs, striving to assemble a diverse group not only in terms of nationality, but also vocational backgrounds and expertise. In all some 40 experts have been

assembled to date, from some 15 jurisdictions. A Members Consultative Committee (MCC) will also be established. Through the MCC all interested ELI members will have the opportunity to actively participate and contribute to the work on the project.

Project Reporters



Bob Wessels is an independent legal counsel and advisor, with over 35 years of professional experience. He is a professor of international insolvency law at the University of Leiden. His previous professorship (1988-2008) was at the Vrije University Amsterdam, and he has been a visiting professor at universities in Frankfurt, New York and Riga. Professor Wessels is Deputy Justice at the Court of Appeal in The Hague (since 1987) and a member of the Joint Board of Appeal of the three European Supervisory Authorities (ESAs; ESMA, EBA and EIOPA respectively).

He served as Consultant to IMF and the World Bank and is an advisor of the European Commission regarding the preparation of the legislative texts for the revision of the EU Insolvency Regulation. He was formerly the Chairman of the Academic Forum of INSOL Europe and is currently the Chairman of the Netherlands Association for Comparative and International Insolvency Law. He has published widely in the field of insolvency law and other topics.



Stephan Madaus is a professor of civil law, civil procedure and insolvency law at the University of Regensburg. His main research interests are in German and international insolvency law and civil procedure, and in particular procedures aiming at rescuing failing companies. He was a visiting scholar on bankruptcy law and complex litigation at Stanford Law School (2008/2009). Professor Madaus is also a member of the American Bankruptcy Institute's Advisory Committee on Comparative Law. He has published in prominent legal journals in Germany and beyond.



In September 2013 **Kristin van Zwieten** was appointed to the position of Clifford Chance University Lecturer in Law and Finance and Fellow of Harris Manchester College, Oxford. At Oxford she convenes and teaches on the postgraduate Corporate Insolvency Law course, and convenes the Senior Practitioner Lectures in Law and Finance series. Prior to taking up her Oxford position, Dr. van Zwieten was a Fellow in Law at Trinity Hall, Cambridge. Her research interests include corporate insolvency law and law and financial development in emerging markets. She has been involved in insolvency law reform projects at the World Bank

and is a member of the technical committee of the Insolvency Lawyers' Association in the UK. She is an editor of INSOL Europe's insolvency case register.

Keep up with the ELI on the platform

Many of you have been using the [MyELI](#) platform to keep abreast of the Institute's work and get in touch with some of the 800+ colleagues that comprise the ELI's body of members.

MyELI is an online platform envisioned to serve as a virtual "meeting room" for the Members of the Institute.

Of particular interest to the ELI's Members are the **Newsroom**, **Events** page and the **Projects Forum**. The Newsroom provides an excellent opportunity to network, initiate discussions with other Members, upload your publications or inform other colleagues about any events and conferences in which they might be interested.

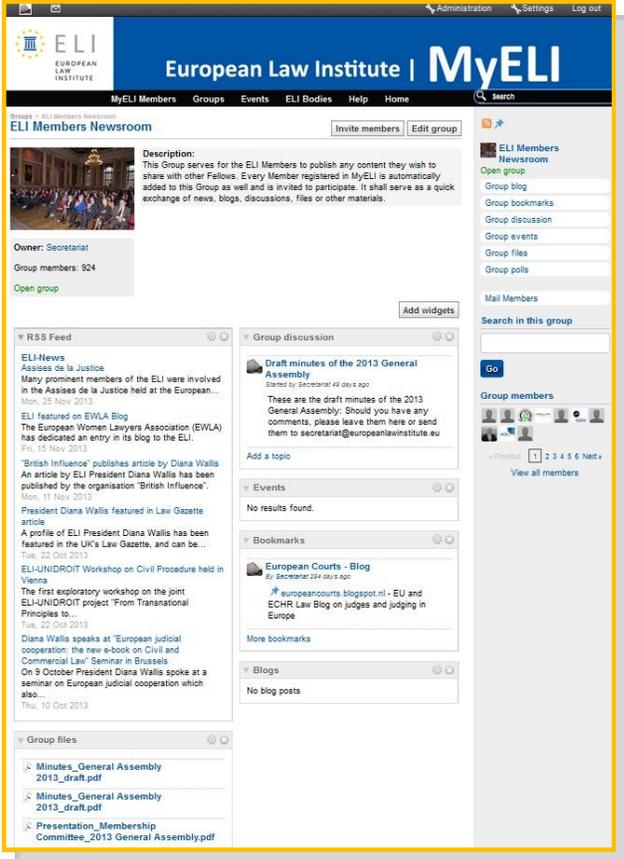
The Projects Forum provides a platform for ELI Members to share their ideas for new projects and discuss them with other Members, uploading related documents, bookmarking important websites, etc. If you wish to discuss ideas with other ELI Members, the platform provides you with the tools to set up groups which are either open to the whole community, or closed, whereby only invited people can join.

Each established Members Consultative Committee (MCC) will have a dedicated group on MyELI, where its members can access project files. Comments and views can be shared with other members of the MCC via discussion boards within the group, and final contributions communicated to the project team. Read more about the role of MCCs on the [ELI website](#).

As a Member you can contact every other Member of the Institute by sending private messages via MyELI. This of course includes the Chairs and Members of Standing Committees.

MyELI is also a venue for the ELI project working groups and bodies to discuss their work. It presents a very useful tool considering the international nature of the ELI and the busy schedules of its Members. The MyELI platform does not replace physical meetings, but it does supplement this work by allowing for frequent communication even when the team members are not able to come together. Extensive email threads can be replaced by the platform, which allows messages and files to be stored in one place online, accessible wherever you can find an internet connection, and by anyone who joins the group, even at a later stage.

All ELI Members should have received their username and a password shortly after the platform was launched in January 2013. All Members admitted after that date received their login details soon after their admittance. If for any reason you did not receive this access or have lost your login details, please contact the [Secretariat](#) and we will provide you with your login information.



The screenshot displays the MyELI platform interface for the "ELI Members Newsroom" group. The page features a navigation bar with options like "Administration", "Settings", and "Log out". The main content area includes a group description, an owner (Secretariat), and group statistics (924 members). There are sections for an RSS feed, group discussions (including draft minutes of the 2013 General Assembly), events, bookmarks, and group files. A sidebar on the right offers navigation options such as "Open group", "Group blog", "Group bookmarks", "Group discussion", "Group events", "Group files", "Group polls", and "Mail Members".

November Events



Meeting on the Collective Redress/Competition Damages Claims Project

Project Leader Mark Clough met with several members of the Project Team for the ELI Statement on Collective Redress/Competition Damages Claims in Brussels on 27 November 2013. More information about the Project and Working Group will be included in upcoming newsletters.



The Law Society of England and Wales and the ELI host a Reception in Brussels

The Law Society and the ELI will headline a reception in Brussels prior to the Council of Bars and Law Societies of Europe (CCBE) Plenary Session Gala Dinner. President Diana Wallis, who is taking part in the Plenary Session, will speak at the reception along with CCBE President Evangelos Tsouroulis.

Coming up in December

5 December: First Meeting of the New Projects Committee

The first meeting of the Projects Committee will be well attended, with fourteen of its sixteen members expected to be present at the meeting in Vienna. The group will elect a chair and discuss the best way to coordinate their work in the future. The day's meeting will include discussions on the development of current projects but, more importantly, also provide a chance for the Committee to make decisions with respect to new project proposals.

6 December: Meeting of the New Executive Committee

The Executive Committee, elected at the Council meeting on 6 September 2013 will meet on 6 December. All seven members will convene at the Secretariat in Vienna where President Diana Wallis will chair a day-long meeting. If any ELI Members have comments or questions they would like to communicate to the Executive Committee, please either send a message to the [Secretariat](#), or directly to [President Diana Wallis](#).

Interview with ELI President in *Droit et Patrimoine*

An interview with Diana Wallis has been published in the French journal *Droit & Patrimoine*. The interview (in French) can be read [here](#).

In the interview she talks about many aspects of the ELI and describes its immediate aims and ongoing activities. She stresses the value that practitioners can bring to the work of the Institute, pointing out that they are often in the best position to identify the day-to-day legal issues which citizens face, and which the ELI strives to address.

When asked about the impact of the disparity between the civil and common law systems, Diana noted that diversity often presents a richness, and that, in paying attention to a variety of influences, an even better solution may be identified.



More Institutional Observers join the ELI

The [Centre of European Law](#), which will be celebrating its 40th anniversary next year, is an institution with a long tradition of teaching and research into all areas of European Union law. It enjoys a reputation of excellence for offering a distinguished programme of public lectures, seminars and conferences. The Centre is part of the Jean Monnet Centre of Excellence at King's College London.

The [Law Society of England and Wales](#) represents solicitors in England and Wales. From negotiating with and lobbying the profession's regulators, government and others, to offering training and advice. One of the society's aims is to protect and promote solicitors across England and Wales.



The [Scientific and Methodological Center for Mediation and Law](#) is an independent, non-profit organisation established for the purpose of developing and promoting mediation and its integration into the Russian legislation as an efficient Alternative Dispute Resolution method.



The [University of Hull Law School](#) is the longest established department within the University. Its mission is to integrate the best traditions of legal scholarship into a modern context, and to teach and research law in a manner which reflects the international nature of the School's staff and its student body.



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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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