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# ELI Updates

## October 2013



### Message from Ms Paraskevi Michou (DG Justice)

Dear ELI Members and Friends,

It is a pleasure to address you on the future of EU civil justice, in the run up to the “Assises de la Justice” conference in November. As the Director of Civil Justice at the European Commission, I warmly welcome the development of a European approach to civil procedures with a special focus on the circulation and enforcement of judgments and common standards on procedural rights.

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In a true European Justice area, judgments must circulate freely without any controls between Member States. To achieve this, we have to address the different national procedural laws. And we need to have full mutual trust in the legal procedures of other Member States. One crucial element to build mutual trust is the assurance that procedural rights are protected in cross-border proceedings. Let me give you some examples. The service of documents remains a key element in any civil justice proceedings. Regulation of this matter at Union level is currently limited to ensuring an efficient cross-border transmission of judicial and extra-judicial documents. However, as we saw with the abolition of the ‘exequatur’ procedure, we need to consider questions such as which documents are to be served, under which circumstances documents are to be served, by whom such service should/could take place, to whom documents may be served, and what are the legal effects of such a service. These questions are at the heart of the protection of the fundamental right of defence enshrined in the EU Charter of Fundamental Rights.

Furthermore, problems in relation to the procedural rights of the parties, especially children, also arise in the area of the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. For instance, judgments would circulate more easily if minimum standards were to apply in all Member States as to when and how a child should be heard or how the child may be represented in court. Finally, further attention needs to be given to the efficient enforcement of judgments. Union law has so far laid down limited minimum standards on enforcement. Citizens encounter too many hurdles at the final stage of judicial proceedings, when it comes to actual enforcement of the judgment. Such hurdles undermine the efficiency of Union law and may even run counter to the policy choices made by the Union.

These are only some examples of areas where the work of the ELI, representing the diversity of Europe’s wider legal community as your President put it, can give valuable insight in constructing the European area of Justice and the Europe of tomorrow.

Paraskevi Michou  
Director Civil Justice, European Commission

## ELI-UNIDROIT Workshop on Civil Procedure takes place in Vienna

The first exploratory workshop on the joint ELI-UNIDROIT project “From Transnational Principles to European Rules of Civil Procedure” was held in Vienna on 18 and 19 October 2013.

The workshop, which was arranged by the ELI Secretariat on behalf of an organising committee made up of representatives from the ELI and UNIDROIT, was held in the magnificent neo-renaissance surroundings of the Palace of Justice, located on the city’s famous “Ringstraße”. Over 75 experts in civil procedure, including academics, practitioners and judges came to the Austrian capital to attend the event, with some travelling from as far afield as Japan, Iran, South Africa and the USA. The conference comprised five separate sessions, each beginning with presentations by renowned experts and ending with a general discussion.



The workshop was held at the Palace of Justice in Vienna

### *Background to the Project*

In 2004, the ALI and UNIDROIT adopted and jointly published *Principles of Transnational Civil Procedure*. They did so with the aim of reducing uncertainty for parties litigating in unfamiliar surroundings and promoting fairness in judicial proceedings through the development of a model and universal code on civil procedure. In 2013, the ELI and UNIDROIT agreed to work together in order to adapt the Principles from a European perspective and to develop European Rules on Civil Procedure.

### *The Public Conference*

The workshop began with a public conference on Friday 18 October which provided a general introduction to the topic. ELI President Diana Wallis welcomed participants to the event and outlined the meeting’s purpose. Inspired by the first lines of the poem “I Keep Six Honest Serving-Men” by Rudyard Kipling, she highlighted the fact that the workshop’s aim was to devise answers to the questions “why?” and “what?” and to consider, in order to chart the way forward, how the existing Principles could be put into a European context.

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*I keep six honest serving-men  
(They taught me all I knew);  
Their names are What and Why and When  
And How and Where and Who.*

*Rudyard Kipling*

In his opening address, UNIDROIT Secretary-General José Angelo Estrella Faria recalled the origins of the ALI-UNIDROIT Principles, initiated by then-ALI Director Geoffrey Hazard, and expressed his pleasure at seeing many international members of the ALI-UNIDROIT Study Group present in Vienna in order to consider the ELI-UNIDROIT proposal.

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*I sense that such a set of rules could be immensely influential not only within the EU, in particular in support of the efforts of several new EU Member States to improve their domestic court proceedings, but also at the global level.*

*José Angelo Estrella Faria*

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Loïc Cadiet, President of the International Association of Procedural Law, chaired the public conference. The first substantive presentations were delivered by ALI representatives Geoffrey Hazard and Antonio Gidi. With the wisdom gained from working on the ALI-UNIDROIT Principles, Professors Hazard and Gidi warned the ELI and UNIDROIT to be aware of the complexity and magnitude of the proposed endeavour and the polarised reactions it was likely to provoke.

*The narrower the scope the less socially relevant the project will be, but the broader the scope, the more objections it will draw.*

*Antonio Gidi*



From left to right: Burkhard Hess, Loïc Cadiet, Sacha Prechal, Michael Shotter

## *The Expert Seminars*

The first expert seminar, which was overseen by Thomas Pfeiffer from Heidelberg University, began with a presentation on the *structure of the proceedings* by Xandra Kramer (Erasmus University Rotterdam). In the subsequent presentation, which looked at *multiple claims and parties*, Ianika Tzankova (Tilburg University, BarentsKrans) endorsed a tool-kit approach in the case of group claims. Her opinion was seconded by Sir Rupert Jackson (judge of the Court of Appeal of England and Wales). In a comment from the audience he outlined how a tool-kit approach tended to be favoured by judges in

his jurisdiction. He urged that this be considered when translating the principles into rules.

Nicolò Trocker (University of Florence), who gave a presentation on *access to information and evidence*, stressed how in his view the project organisers should avoid detailed proposals and consider emerging trends in Europe, including new developments in information technology, an area still unaffected by those cultural differences which often posed obstacles to the development of common rules.



From left to right: Geoffrey Hazard, Diana Wallis, Loïc Cadiet, José Angelo Estrella Faria, Antonio Gidi

The conference continued with an overview of the *constitutional aspects of the European acquis of civil procedure* by Sacha Prechal from the Court of Justice of the European Union (CJEU). This was followed by Max Planck Institute Luxembourg Director Burkhard Hess who spoke about the *existing body of EU rules*. The *agenda of the European Commission* in the context of civil procedure was then explained by Michael Shotter, a member of Vice-President Viviane Reding's Cabinet.



The expert seminar continued on Saturday. In the first session three more aspects of civil procedure were analysed: *due notice of proceedings* (Eva Storskrubb, Roschier, Stockholm); *obligation of the parties and lawyers* (Remco van Rhee, University of Maastricht); *provisional and protective measures* (Gilles Cuniberti, University of Luxembourg). The first and final of these three topics, in addition to *access to information and evidence*, were later identified as issues to be pursued during the first stages of the overall project.

*The way forward is to focus on specific measures. A functional approach should be adopted. One purpose, one measure.*

*Gilles Cuniberti*



From left to right: Eva Storskrubb, Loïc Cadiet, Remco van Rhee, Gilles Cuniberti

The second and concluding Saturday seminar began with Neil Andrews (University of Cambridge) who spoke on costs and focused on four main issues: the loser pays principle; economic access to justice; the role of costs in procedural discipline and security for costs.

This was followed by a contribution from Frédérique Ferrand (University of Jean Moulin Lyon 3) on *Lis Pendens and Res Judicata*. The final presentation was delivered by Miklós Kengyel (University of Pécs) who discussed *transparency of assets and enforcement*.

Rolf Stürner from the University of Freiburg closed the two-day event. He observed that the current state of European legislation, which has developed in a disjointed and unsatisfying manner (in his words a “step-by-step patchwork”) provides an opportunity for an ELI-UNIDROIT led project to present a genuinely useful “European procedural model code” which could serve as a guideline for European legislators. He recommended that any European rules should be more detailed than the ALI-UNIDROIT Principles, they should be in parts modified, and should also refer to those minimum European standards developed by the European Court of Human Rights and the CJEU. He further emphasised that the code should not only be drafted in one language, thus avoiding the danger that it is too rooted in a single legal culture.



An article on the workshop written by Professor Matthias Weller from the EBS University for Economics and Law in Wiesbaden, Germany, has been published on the blog *Conflict of Laws.net*, and can be accessed [here](#).



From left to right: Neil Andrews, Frédérique Ferrand, Miklós Kengyel

## Changes at the Secretariat

This month has seen changes at the Secretariat in Vienna, with the departure of Gerard Ehrismann and the arrival of Dr Rosana Garcíandía.



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Gerard joined the Secretariat staff in September 2012 and has been of great support to the team ever since. His talents were often called for in drafting legal documents and producing reports on ongoing projects and conferences.

Gerard will spend the next two months travelling before starting to look for a new job in early 2014. We wish him all the best.



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Rosana Garcíandía will take over many of Gerard's responsibilities when she begins working at the Secretariat on 4 November.

Rosana comes to the ELI from the University of Murcia in her native Spain, where she has been working as a lecturer in law. Rosana completed her studies at the University of Navarra where she received BA degrees in Law Studies and Economics, and a PhD in International Law.

Diana Wallis and Christiane Wendehorst, who both met Rosana on behalf of the Executive Committee, are convinced that she will make a great contribution to the work of the Secretariat. Head of Secretariat Selma Powlakić and her colleagues are delighted to welcome Rosana to the team.

## ELI President Diana Wallis speaks at “European judicial cooperation: the new e-book on Civil and Commercial Law” Seminar in Brussels

On 9 October President Diana Wallis spoke at a seminar on European judicial cooperation which also marked the launch of a free e-book on Civil and Commercial law.

The seminar, entitled “European judicial cooperation: the new e-book on Civil and Commercial Law” was held at the Council of the European Union, and saw select panellists, including Diana Wallis, discussing issues concerning family and business law at a European level. The e-book itself is a project of the General Secretariat of the Council of the EU, and is intended to act as a practical reference tool for anyone involved in legal affairs in the EU. The English edition of the book was launched on 1 October 2013 and can be downloaded [here](#).

More information about the seminar and launch, including video highlights of the event, are available [here](#).



Diana Wallis  
© European Union, 2004-2013

## First Meeting on Collective Redress held in Vienna

The first meeting of the project team on collective redress and damages claims in competition cases took place in Vienna on 17 October 2013. The project was approved by the Council in early September. It will aim at an assessment of the Commission's Recommendation on collective redress and make suggestions for a coherent implementation by the Member States. Secondly, it aims to make practical recommendations for the improvement of the proposed Directive on actions for damages under national law for infringement of competition law. The non-binding Recommendation and the proposed Directive were both published on 11 June 2013 and complement each other in the European Commission's policy.



First meeting on the collective redress project at the Secretariat in Vienna

The group is chaired by Mark Clough QC, who is Head of Competition at a leading Scottish law firm and a member of the ELI Council. The group will meet again on 27 November 2013 in Brussels and is hoping to produce its first results early next year.

## ELI Presidents speak at Law Society Event in London



ELI President Diana Wallis and former President Sir Francis Jacobs were among speakers at a conference on civil justice instruments of the European Union organised by the Law Society in London on 30 October 2013.

The aim of the event was to inform UK practitioners of the newest developments in civil justice measures coming from the EU and to provide a platform for solicitors from England and Wales to discuss what changes they would like to see implemented in this regard.

Following the opening remarks by Stephan Mason of the Law Society, Diana Wallis and Sir Francis Jacobs were the first speakers of the day, and both addressed the question "EU Civil Justice - why does it matter and how can solicitors be involved in future developments?"

After the event Diana Wallis commented: "It is good to see the interest of solicitors in focusing on changes in civil practice as affected by developments in EU law but also to note the enthusiasm for wanting to be a part of and indeed to influence what is happening especially as a new EU justice programme, or equivalent is now beginning to be reflected upon. It was also rewarding to find much curiosity about the work of ELI and to potentially sign up a number of new members."

The Law Society's interest in the work of the ELI is long standing, and the Society is now in the process of joining the ELI as an Institutional Observer.



## Conference of the European Criminal Policy Initiative in Brussels

ELI Council Member Professor Maria Kaiafa-Gbandi from the Aristotle University of Thessaloniki will be appearing at the Conference of the [European Criminal Policy Initiative](#) (ECPI) in Brussels on 12 November 2013. The Conference will be hosted by the Representation of the Free State of Bavaria to the European Union, and is entitled [Future of Criminal Proceedings in the European Union](#).

Professor Kaiafa-Gbandi, one of the founding Members of the ECPI, will help present a Manifesto on European Criminal Procedure Law, which has been drafted by a group of 16 European Criminal Law Professors working together since 2008 in the form of the ECPI.

After the presentation of the Manifesto Commissioner Viviane Reding will deliver a speech and in the afternoon session the Manifesto will be critically evaluated. The day will close with a discussion entitled “Outlook on the Future of Criminal Proceedings in Europe”.



## What role for Justice in the European Union? Assises de la Justice in Brussels

On the personal invitation of Viviane Reding, Vice-President of the European Commission and EU Commissioner for Justice, Fundamental Rights and Citizenship, ELI President Diana Wallis will attend the *Assises de la Justice* to be held at the European Commission in Brussels on 21 and 22 November 2013.

The conference, entitled “What role for Justice in the European Union?” will see many ELI Members participate in expert panels. Fellow and ex-officio Council Member Mr Justice Gilligan will be one of three speakers to discuss *Effective Justice Systems in the EU and the EU Justice Scoreboard*. Mr Vassilios Skouris, President of the Court of Justice of the European Union, an ELI Institutional Observer, will appear in the next panel session tasked with discussing *Independence of Justice and the EU Justice Scoreboard*.

Mr Jean-Marc Sauvé, a Senate Member of the ELI, will appear on a panel entitled *Towards a New Rule of Law Mechanism*.

On the second day of the conference, Senate Members Lord Jonathan Mance and Mr Justice Sabino Cassese will take part in a multifaceted discussion on *Towards a more integrated European Area of Justice based on mutual trust*. Lord Mance will contribute to this discussion regarding the areas of civil and commercial law, and Mr Justice Cassese will concentrate on aspects relating to administrative law.

For more information, please visit [this website](#).



## Standing Council Committees Established

One of the first tasks of the ELI Council, which was elected at the 2013 General Assembly in Vienna, was to establish standing committees to lead the Institute on several key aspects. On this page you will find a brief description of the duties of each committee, and its current members.

### Executive Committee

The Executive Committee is made up of the President, Vice-President and Treasurer of the Institute as well as four ordinary members. This committee is tasked with administering the Institute and making important decisions relating to its day-to-day running and the achievement of the aims laid out in its Manifesto.

*Members: Diana Wallis (President), Christiane Wendehorst (Vice-President), Johan Gernandt (Treasurer), Remo Caponi, Marc Clément, Sjef van Erp, John Sorabji.*

### Projects Committee

Tasked with overseeing the establishment and progress of ELI projects, the work of the Projects Committee is central to the main purpose of the ELI. Its members meet regularly to discuss and help prepare project proposals before they are submitted to the Council for review. Early-stage discussions on projects between the ELI and relevant third parties are also coordinated by the Projects Committee.

*Members: Carole Aubert de Vincelles, Hugh Beale, Remo Caponi, Marc Clément, Jiří Hrádek, Radim Polčák, Ornella Porchia, Hans Schulte-Nölke, John Sorabji, Matthias Storme, Christiaan Timmermans, Verica Trstenjak, John Vervaele, Gerhard Wagner, Diana Wallis, Friedrich Graf von Westphalen, Marek Wierzbowski and Christiane Wendehorst (ex-officio) on behalf of the Secretariat.*

### Fundraising Committee

The Fundraising Committee's aim is to investigate ways in which the ELI can gain extra financial support without compromising its strict principles of independence. Members of the Fundraising Committee work together with the Treasurer and, when appropriate, the Membership Committee, with the intention of strengthening the ELI's financial situation.

*Members: Johan Gernandt, Maarten R. Meijer, Hartmut Wicke.*

### Membership Committee

The main focus of the Membership Committee is to ensure the steady and selective growth of the ELI's body of members. The Committee is particularly aware of the necessity to ensure good representation in the ELI's membership, and pays special attention to groups who are underrepresented in terms of national or professional background.

*Members: Maja Brkan, Marc Clément, Walter Doralt, Anne Birgitte Gammeljord, Carmen Jerez-Delgado, Ana Keglević, Miklós Király, Imelda Maher, Miguel Nicolas, Albert Ruda, Wilhelm Warth.*

### International Relations Committee

One of the tasks of the International Relations Committee (IRC) is to support the President and Executive Committee in establishing and maintaining productive relations with other institutions operating on an international stage, e.g. UNIDROIT or the American Law Institute.

*Members: Yannis V. Avgerinos, Francesco Avolio, Remo Caponi, Fabrizio Cafaggi, Mark Clough, Sjef van Erp, Bénédicte Fauvarque-Cosson, Herwig Hofmann, Rafael Illescas, Marta Infantino, Oliver Mader, Martin Nettesheim, Miguel Nicolas, Denis Philippe, Reiner Schulze, Matthias Storme, Christiane Wendehorst, Fryderyk Zoll.*

## UK Supreme Court becomes an Institutional Observer

The Membership Committee is delighted to announce that the Supreme Court of the United Kingdom has joined the ELI as an Institutional Observer. The UK Supreme Court is the fourteenth Supreme Court in Europe to join the ELI.



## ELI in the Press

On 21 October the Law Society Gazette featured an [article](#) about ELI President Diana Wallis.

The article, written by Jonathan Rayner, features comments from Diana Wallis about Euroscepticism in the UK, what first attracted her to be a part of the European Law Institute, and the valuable work which the Institute is undertaking.



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### Secretariat of the ELI

Schottenring 14  
1010 Vienna, Austria  
Phone: +43 (0)1 4277-221 01  
Fax: +43 (0)1 4277-9221  
[secretariat@europeanlawinstitute.eu](mailto:secretariat@europeanlawinstitute.eu)

*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. In 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.*