

Message from the President



Dear Fellows, Observers and Friends of the ELI,

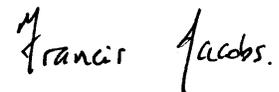
The European Law Institute, just founded in June 2011, aims, as an entirely independent organisation, to improve the quality of European law, understood in the broad sense. It seeks to initiate, conduct and facilitate research, to make recommendations, and to provide practical guidance in the field of European legal development.

The Institute has high ambitions, reflected in its Manifesto and in its Articles of Association. It will study and stimulate European legal development in a global context. That should be taken to include, but by no means be limited to, the development of European law by the European Union and the Council of Europe. The launch of the European Law Institute was a remarkable event on many counts. It followed a long and carefully managed period of preparation. That preparation involved the talents – and hard work – of some of the leading figures in European law. We owe them a great debt.

The process of founding the Institute as a pan-European body generated a high degree of enthusiasm for the idea, an enthusiasm which has been reflected in the many expressions of interest and the large number of applications for membership. The year 2012 is a very important one for Europe and for the ELI.

I wish you all the best for 2012 and I look forward to working with you in promoting the development of European law.

Yours sincerely,



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ELI's Home in Vienna

The Secretariat of ELI is located at Schottenring 14 in the heart of Vienna, close to the main building of the University, the Law Faculty building and near the representation of the European Commission in Austria as well as the information office of the European Parliament.

Small meetings with up to 15 participants can be organised in the ELI office. For bigger meetings, ELI will use the meeting rooms of the University of Vienna or one of the Court buildings.

We cordially invite you to visit us whenever you are in Vienna.



ELI Secretariat Team



Tobias Schulte in den Bäumen took up the position of Secretary General of the ELI in November 2011. Before leading the team at the Secretariat he served as an Assistant Professor at Maastricht University in the Netherlands. He is a native German who has been active for several years in European health and data protection law. Tobias can be reached by mail at tsidb@europeanlawinstitute.eu



Paul Reichert is an Austrian-born lawyer who is supporting the substantive work of the ELI. He will take care of ELI projects and will help projects reporters and the advisory groups in achieving their goals. Paul has a special interest in the regulation of financial markets and the responsibility of states for insufficient control and oversight. Paul can be reached by mail at paul.reichert@europeanlawinstitute.eu



Jelena Kopanja is the Office Manager at the ELI Secretariat. Before joining ELI, Jelena had been working for an online publication of news about Croatia in English. Jelena will take care of ELI meetings and communications. For all administrative issues she is the first contact point at the ELI Secretariat. Jelena can be reached by mail at jelena.kopanja@europeanlawinstitute.eu

Inauguration of the ELI Secretariat in Vienna



From left to right: University of Vienna's Rector Heinz W. Engl, Vice-President of the European Commission and Commissioner for Justice Viviane Reding, Austrian Federal Minister of Justice Beatrix Karl and ELI President Sir Francis Jacobs.

The ELI Secretariat moved to its new office at the University of Vienna on 1 November, 2011. To mark the occasion, and the formal opening of the ELI, a public presentation of the ELI, and of the work of the Secretariat, was made on 17 November 2011 in the presence and with the support of Viviane Reding, Vice-President of the European Commission and EU Commissioner for Justice, Fundamental Rights and Citizenship.

Commissioner Reding spoke about ELI's role in helping build a common European legal culture.

„As any builder of bridges can tell you, you need a reliable and sound surveyor to advise you where and how to build the foundations of the bridge on both sides of the river. You need expert engineering advice on how best to design your bridge. This is the important role I see for the newly created European Law Institute. You, the members of the European Law Institute, will provide practical advice to policymakers and authorities across Europe on how to build these bridges. Advice that will ultimately help to build the European area of law and justice for the benefit of our citizens,“ Commissioner Reding said.

Other speakers included University of Vienna's Rector Heinz W. Engl, Dean of the Faculty of Law Heinz Mayer, former President of the Austrian Supreme Court and current ELI Senate Speaker Irmgard Griss, Austrian Federal Minister of Justice Beatrix Karl, ELI Treasurer Christiane Wendehorst, and the President of the ELI, Sir Francis Jacobs.

In his speech, Sir Francis Jacobs stressed the unique character of the European Law Institute, reflected in its structure, the breadth of legal traditions its work encompasses and the diversity of its membership.

„Our members will represent all branches of the law and they will represent all branches also of the legal professions – they will be scholars, practitioners and judges; professors and notaries; advocates and attorneys; generalists and specialists; public lawyers and private lawyers.“ Sir Francis Jacobs invited all members to take an active role in the Institute's work by suggesting topics for projects, collaborating with other members on accepted projects, and participating in the General Assembly that will take place later this year.

ELI talks with the European Commission and European Parliament

On 15 December 2011, a delegation of the ELI met with representatives of DG Justice in the Berlaymont building in Brussels. ELI was represented at the meeting by the President, Sir Francis Jacobs, Vice-President Bénédicte Fauvarque-Cosson, the Treasurer, Christiane Wendehorst, the Chair of the Membership Committee, and the Secretary General, Tobias Schulte in den Bäumen. The meeting was chaired by Martin Selmayr, Head of the Cabinet of Justice Commissioner Viviane Reding. On behalf of the ELI, Christiane Wendehorst introduced the representatives of DG Justice to the institutional

structure and scope of the ELI. Both sides expressed their strong interest to maintain the good communication and to work on common fields of interest such as European Criminal Law, the Rights of the Child or the further development of the Acquis. In March 2012 the ELI will also visit the Committee of Legal Affairs at the European Parliament. The aim is to introduce the Members of Parliament to the work of the Institute and to establish friendly ties.

ELI Projects

Statement on the Case Overload at the European Court of Human Rights

Since the single, permanent European Court of Human Rights ("the Court") was set up under Protocol No. 11 to the European Convention on Human Rights ("the Convention") in 1998, the story has been a constant one of the Court not being able to dispose of cases at the same pace as they come in.

Despite introducing many procedural innovations on its own initiative and achieving remarkable productivity gains in the 12 years since 1998, the Court has so far never been in a position to reverse this imbalance between incoming and outgoing business. Each year the number of new cases has been greater than the number of cases that the Court has been able to decide. In 2010, for example, 61,300 new applications were allocated to a judgment formation as against 41,183 applications disposed of. The total of pending applications currently stands at an all-time record of almost 155,000.

The consequence of the constant imbalance between input and output is that the list of pending cases, the backlog (that is, applications not processed within what is considered to be a reasonable time) and the delays for applicants have been inexorably increasing each month. An especial concern is that the more serious cases are not being dealt with as rapidly as they should be. The metaphor of the death of the Convention system by slow suffocation has been used. What is sure is that if the trend continues, there must come a point where the Court is so overwhelmed that the very existence of the Convention system of human rights protection will be in jeopardy.

Protocol No.14 to the Convention, which came into full force in June 2010 with an array of procedural changes, has already had some

positive impact. The single-judge formation in particular has proven a "real success", measured by the 42 per cent increase in the number of applications (45,492) rejected as inadmissible or struck out from January to November in 2011 in comparison with the same period in 2010. Despite the improvements, however, the monthly deficit remains high (at 1,250 applications) and the stock of pending applications has risen to record heights.

Will the Protocol No.14 reforms and the Court's own innovations in time provide the awaited salvation, or, as some nevertheless fear, are further or other solutions required?

Under ELI's administration, a team of four jurists will tackle this question, completing a Statement by the end of March 2012. The team consists of: Paul Mahoney (UK), former Registrar of the Court, subsequently President of the EU Staff Tribunal, Luzius Wildhaber (Switzerland), former President of the Court, Mark Entin (Russia), Professor of International Law and European Law and Director of the European Studies Institute at MGIMO University, Moscow, and Jean-Paul Jacque (France), former Director at the Legal Service of the EU Council and former Professor at Strasbourg University. The project team will be assisted by an advisory committee which it may consult.

The Statement will, in particular, review the various proposals that have been put on the table for discussion at the conference on the future of the Court being organised this spring under the United Kingdom chairmanship of the Council of Europe.

Common European Sales Law WG meets in Vienna



CESL Working Group Members (from left to right): Pilar Perales, Matthias E. Storme, Friedrich Graf von Westphalen, Sir John Thomas, John Sorabji, Christiane Wendehorst, Fryderyk A. Zoll, Fabrizio Caffagi. **Additional members not pictured:** Paul Gilligan, Peter Limmer and Christian Alunaru. First from the right, Paul Reichert, ELI Research Officer.

In autumn 2011 the ELI Council established a working group (WG) that would prepare a response to the European Commission's Proposal for a Common European Sales Law (CESL). The WG is currently in the process of preparing this response. As part of that work, it organised a very successful preliminary workshop in Vienna on 17 and 18 November, where a wide range of proposal related issues were discussed.

The group continued its work at a follow-up meeting held in Vienna on 8 and 9 January 2012. The WG intends to prepare a draft response, by way of an ELI Statement, to be considered by the ELI Council at its meeting on 18 February 2012. The Statement will present alternative regulatory proposals which shall be considered by the legal community in the stages of the development of this optional instrument. Depending on the political discussions between the European Commission and the Member States of the EU, the WG may continue its work at a later stage to follow up on changes made to the current draft.

The WG is chaired by Sir John Thomas, ELI Council member and President of the Queen's Bench Division of the High Court of England.

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Building on the wealth of diverse legal traditions, 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, 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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Upcoming Senate and Council Meetings in Vienna

On February 17 and 18 2012, the Senate and the Council will convene in Vienna to evaluate the first few months of ELI and to set the priorities for the year 2012. The Senate will meet on the 17th in the premises of the ELI while the Council will gather on the 18th in the Senate Hall of the University of Vienna.

At its first meeting, the Senate will assess the progress made by the ELI and will assist the Executive Committee and the Council in steering the work of the ELI.

The Council as the decision making body of the ELI will focus on institutional development and the selection of ELI projects.

Both the Council and the Senate will also start the preparations for the General Assembly of the ELI which is planned later in 2012.

The place and date of the General Assembly will be finalised soon, allowing all members to reserve these dates in their agenda.

To enable all members of the ELI to participate in its work, the Executive Committee and the Secretariat are developing a communication strategy. The results will be presented to the Senate and the Council at their meetings.

The minutes of the Council meeting will be available to all ELI members. The conclusions of the meetings will be summarized in the February newsletter.



University of Vienna