



ELI
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INSTITUTE

ELI Updates

January 2014



Welcome from Wolfgang Heusel, Director of the Academy of European Law

Dear Members and Friends of the ELI,

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As Director of the Academy of European Law (ERA), and as a member of the ELI who had the chance to contribute to the debate on its creation, it is a pleasure to address you in this newsletter. ERA, like the ELI, is in fact a genuine European law institute. We share an aim already focused by the European Parliament when it called for the creation of the Academy of European Law in 1991: to strive for a common legal culture and to deepen the European community of law. This aim is just as pertinent today as it was when ERA was founded more than 20 years ago. Today, many European lawyers still resent European law as an unfamiliar body which is imposed on them from outside.

In this setting, the ELI's role is to evaluate and to stimulate the development of EU law with the aim of improving its quality and consistency. ERA's mission, on the other hand, is to spread the knowledge of European law among legal practitioners in all Member States of the European Union. While the ELI is concerned with conceiving EU law of the highest standards, ERA organises conferences and trainings on EU law which in 2013 were attended by some eight thousand legal practitioners from all over Europe.

As in their complementary roles ERA and ELI both provide regular fora to discuss ongoing legislative initiatives, I see a large potential for cooperation. Quite a few current ELI projects deal with initiatives which have also been intensely discussed at ERA events, such as the Common European Sales Law or the European Foundation Statute. A special field of common interest to be definitely further explored is the regular organisation of the biennial European Jurists' Forum (EJF). The last edition of the EJF in Barcelona 2013 was co-organised by ERA and strongly promoted by the ELI.

ELI President Diana Wallis and many other prominent ELI Members are regular speakers at ERA events. The election of Diana Wallis, who has served on ERA Boards for many years, as President of the ELI is a further indicator of the strong ties already existing between our institutes. I look forward to exploring the potential for synergies and cooperation in order to better achieve our common goals.

Dr Wolfgang Heusel
Director, Academy of European Law (ERA), Trier

German Hub Event in Berlin

Council and Projects Committee Member and Vice President of the German Bar Association, Friedrich Graf von Westphalen reports on the first congress of the ELI's German Hub:

On 28 January 2014, the German Hub of ELI held its first congress in Berlin at the premises of the German Bar Association (DAV). Professor Uwe Blaurock (Freiburg) one of the “drivers” of the German Hub, and ELI’s President Diana Wallis (London) familiarized the audience with ELI’s work and structure. Professor Dirk Staudenmayer (Brussels) spoke on the future perspective of the European Sales Law (CESL). He was sort of

optimistic that in the long run this project could enter into force, maybe in 2014 or even later despite the rather stiff opposition of some Member States, but in view of the pro-active stance of the Parliament. The congress was a success, almost 80 persons registered. The debate at the end of the congress and during the reception showed the high interest of many academics and lawyers in ELI’s work. Diana Wallis’ conclusion: “I am very pleased and I do wish the German Hub of ELI a very fine future.”



From left to right: Diana Wallis, Uwe Blaurock, Friedrich Graf von Westphalen, Dirk Staudenmayer

“It was a great pleasure to see numerous interested lawyers gathering at the *DAV-Haus* and engaging in an intensive discussion on the recent developments in European sales law. The event received also very positive feedback from representatives of governmental authorities. I am looking forward to more German hub events to come and to further successful cooperation with the German Bar Association.”

Uwe Blaurock



An Update on ELI Hubs:

ELI hubs are now active in four European countries: France, the UK, Austria and Germany. The launch of a Slovenian Hub is also planned to take place later this year. The UK Hub has an active membership and is holding an event in London on 3 February (for more information see page seven). The Executive Committee has been working on a set of *Hub Guidelines* which will formally define the idea of a hub and outline the procedures for establishing and running such entities. These Guidelines will be a subject of discussion at the Council Meeting in Vienna on 28 February (for more details see page seven).

Diana Wallis speaks in Münster and Hamburg



The University of Münster Main Building, © Rüdiger Wölk, Münster

As well as speaking at the German Hub event in Berlin, President Diana Wallis was the guest speaker at the University of Münster's Commencement Ceremony on 26 January, and gave a lecture at the Max Planck Institute for Comparative and International Private Law in Hamburg (MPI Hamburg) on 27 January.

President Diana Wallis delivered the commencement address at the graduation ceremony of the University of Münster's Foreign Law Programme, which saw over 200 graduates of the Programme receive their degrees. The University of Münster's renowned law school was founded in 1780, making it one of Germany's oldest. Nowadays it boasts 5000 students, 30 law professors and 100 assistant lecturers and research fellows. The Foreign Law Programme graduates will have taken courses in French, Spanish or Common Law, and will also have attended language classes specially tailored to students of law.

"It was a wonderful experience to join in the celebration and graduation ceremony of so many enthusiastic lawyer linguists, their wider legal education will - I know from my own experience! - give them a real edge and deeper enjoyment of whatever legal or other role they choose to pursue in the future." Diana Wallis

The following day, Diana travelled north to Hamburg where she had been invited to give a lecture at the MPI Hamburg. The lecture was entitled:

"Constructing a European Area of Civil Justice, from Tampere to today: Did we get the Politics Right?" The event was well attended and hosted by the renowned Professor Reinhard Zimmermann, director of the MPI Hamburg and member of the ELI Senate.

"It was a real honour for me to be given the opportunity to speak at Max Planck Institute, I was delighted that the subject of European Private Law and Politics created such interest and allowed me to demonstrate to such an important audience the real role there is for the ELI." Diana Wallis



Diana Wallis and Reinhard Zimmermann © MPI für Privatrecht, Hamburg

Collective Redress Project continues to make Progress

The Project Team for the Statement on Collective Redress and Competition Damages Claims has already produced its first preliminary results on the proposed *Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union*. After a fruitful meeting in Vienna on 10 January 2014 these results are now being reviewed by the Advisory Committee. The American Law Institute (ALI) was represented at this January meeting by Professor Samuel Issacharoff, an expert in complex litigation and class action. His attendance demonstrates the intention of both Institutes to closely follow each other's projects.

Under the leadership of project leader Mark Clough, the Project Team is now working on an assessment of the *Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law*. The draft assessment, which constitutes the second phase of the overall ELI Statement, will be reviewed by the Advisory Committee in February.

For more information on the members of the Project Team, please see pages four and five of the [December newsletter](#).

Introducing the Advisory Committee:



Herman Cousy
Professor of Law,
KU Leuven



Andrea Giussani
Full Professor of
Civil Procedure,
University of
Urbino



Assimakis Komninos
Partner at White
& Case LLP,
Visiting Research
Fellow, University
College London



Koen Lenaerts
Vice-President of
the Court of
Justice of the
European Union



Henrik Øe
Danish
Consumer
Ombudsman



Henrique Sousa Antunes
Professor of Law,
Catholic
University of
Portugal



Walter Stoffel
Professor of Law,
University of
Fribourg



Nils Wahl
Advocate General
at the Court of
Justice of the
European Union

ELI and Global Developments: Working together with the World Bank



Executive Committee member Sjef van Erp reports on the ELI's involvement with the World Bank.

The ELI is establishing and further developing contacts with other international organisations and comparable national institutions.

As part of these efforts the ELI is represented at the World Bank's Law, Justice and Development Week, which has been held by the World Bank in Washington for the past few years. During this week representatives from organisations involved in the use of law as a way to develop a country's economy discuss various aspects of this process. General sessions are held with renowned speakers (last year, to mention but one name, Albie Sachs, a former Justice in the South African Constitutional Court) and various parallel sessions in which particular topics are discussed, such as "Insolvency Law at the Crossroads: the Treatment of Financial Contracts and of Security Interests in Insolvency".

In order to promote contact between the various organisations involved in law, justice and development, the World Bank set up a Global Forum on Law, Justice and Development. The forum, to quote the brochure that further explains its aim and scope, "will provide an innovative and dynamic framework for the exchange of law in development knowledge, connecting developing countries, think-tanks, regional and international organizations, International Financial Institutions, and civil society organizations with relevant research and practice. It will comprise a coherent, sustained program of collaborative research and special pilot projects to accelerate knowledge dissemination and use. It will promote a multidisciplinary approach, combining economic, legal, and technical aspects of targeted issues." The ELI is involved in this global forum as a founding partner, willing to contribute its expertise.

To become more practice oriented, the global forum has set up thematic working groups. They focus on: Empowerment and Equity for Diverse Communities, Environmental & Natural Resources Law, Governance and Anti-Corruption, Justice and Rule of Law Reform, Law and The Economy. So-called "Communities of

Practice" have also been set up, e.g. for "Alternative Dispute Resolution" and "Insolvency and Creditor/Debtor Regimes". The thematic working groups and communities of practice discuss various subtopics. Some of these subtopics are of direct relevance from a European legal perspective or may even be more directly connected with work done under the auspices of the ELI. I refer, for example, to the activities of the thematic working group Justice and Rule of Law Reform (e.g. subtopics: "Exchange among judiciaries" and "Europe: Challenges in law and development in transition economies"), as well as the thematic working group Law and The Economy (subtopics "Insolvency and creditor/debtor regimes" and "Responding to the global financial crisis through domestic and international legal and regulatory reform").

Every year during the Law, Justice and Development Week special attention is given to a particular country or a particular continent. This year the focus will be on Europe. During a meeting in the Brussels office of the World Bank, where some of the World Bank's legal staff members met with European partner organisations, the functioning of the global forum was discussed to see if any improvements could be made to assure its practical impact. The "Europe day" still is under discussion.

I think it is important that the ELI makes itself visible also during meetings such as the Law, Justice and Development Week. We can certainly learn from the experience of others, but Europe also can bring expertise and knowledge to these meetings. Particularly in a period in which the European Union is conducting negotiations with the United States on a Transatlantic Trade and Investment Partnership, it becomes more than apparent that globalisation is also a part of Europe's legal development. Involvement of the ELI in this development fits within our aim and scope, given one of the core tasks of the ELI as mentioned in the ELI's Statute is: Studying EU approaches regarding international law and enhancing the role EU law could play globally, for instance in drafting international instruments or model rules.

MCC established for Insolvency Project

A Members Consultative Committee (MCC) for the ELI Instrument on Rescue of Business in Insolvency Law has been set up.

The aim of the project is to explore and design aspects of an appropriate legal enabling framework, which includes certain statutory procedures that encourage parties to negotiate solutions in a situation of business distress.

Since the project's approval by the ELI Council on 3 September 2013, much progress has been made by Project Leader Professor Bob Wessels and Reporters Professor Stephan Madaus and Dr Kristen van Zwieten. At the moment the trio is in the process of finalising the questionnaire which will be communicated to expert National Correspondents (NCs) in 13 different European countries.

The NCs will use the questionnaire as a basis to

draft inventory reports on their respective national approaches to insolvency law.

The results of the first year's work will be presented and discussed at a conference planned to take place at the start of 2015. Before this date, the MCC will be asked by the Project Team to provide feedback on preliminary results. The first meeting of the MCC should take place on the occasion of the 2014 General Assembly in Zagreb. Further supplying the Project Team with guidance and feedback will be the Advisory Committee.

For more information about the work of an MCC please see below. If you are interested in joining the MCC for the ELI Instrument on the Rescue of Business in Insolvency Law, please send an email to this address:

businessrescue@europeanlawinstitute.eu

What is a Members Consultative Committee?

For most ELI projects, the Council will establish an MCC shortly after the reporters or project leader and other members of the project team have been appointed.

The role of an MCC is to comment on any preliminary project results. Any ELI Member who is interested in actively contributing to the development of a project is invited to join the MCC, irrespective of their membership status. There is no limit to the number of Members who can participate, and MCC members need not be experts in the relevant field. MCC members come from various legal professions and specialise in different areas of law. It is exactly this diversity which enriches the debating potential of the MCC and makes its contribution so valuable.

In order to enable as many ELI Members as possible to participate effectively in the work of the MCC, reporters and project leaders are urged to make extensive use of electronic communication, in particular the MyELI platform. Nevertheless, a physical meeting of the MCC must be held once every year on the day before the ordinary General Assembly of the ELI, at which many ELI Members will be present. Reporters may call as many additional physical meetings of the MCC as they deem appropriate, provided the results are also made accessible to those members who could not attend.

 [Click here to join the MCC!](#)

 [Click here for more information about the project!](#)

Upcoming Events:

3 February 2014: UK Hub and Bar European Group Seminar

The UK Hub of the ELI and Institutional Observer the Bar European Group (BEG) are holding a seminar on 3 February 2014 entitled: "The protection of fundamental rights under the common law, the ECHR and the Charter: take Strasbourg into account but be bound by Luxembourg?" ELI Senate Member Lord Jonathan Mance will speak alongside Nuala Mole (Founder of the Advice on Individual Rights in Europe Centre) and Eric Metcalfe (Monckton Chambers). The Seminar will be chaired by BEG President Lord Justice Laws and will be held at the London offices of Hogan Lovells.

For more information please see the [agenda](#). Those wishing to attend should contact [Joanna Collins](#) at Hogan Lovells.



The flyer is a white rectangular document with a blue border. At the top left is the ELI logo (European Law Institute) and at the top right is the BEG logo. The text is centered and reads: "A Joint seminar held by the European Law Institute's UK Hub and the Bar European Group Monday 3rd February 2014 at Hogan Lovells International LLP, Atlantic House, Holborn Viaduct, London EC1A 2FG Registration 5.45pm-6.00pm; Seminar 6.00pm-7.30pm followed by drinks". The title of the seminar is "The protection of fundamental rights under the common law, the ECHR and the Charter: take Strasbourg into account but be bound by Luxembourg?". It lists speakers: The Rt Hon Lord Mance, Nuala Mole, and Eric Metcalfe, and the chair: The Rt Hon Lord Justice Laws. It also includes an introduction by Charles Brasted and an RSVP email: joanna.collins@hoganlovells.com. At the bottom, it states "CPD Points will be available".

27-28 February 2014: Committee and Senate Meetings

The ELI Senate and three Council Committees will convene in Vienna on 27 February 2014, ahead of the Council's Plenary Meeting the following day. The Membership Committee, the Fundraising Committee and the Executive Committee will all meet at the Secretariat in Vienna where their respective tasks can be discussed, and concrete plans made for the future execution thereof. Members of the Senate will also gather under the leadership of Senate Speaker Dr Irmgard Griss. The International Relations Committee will also hold a short meeting in the early morning of 28 February, before its members continue to the full Council meeting which will be held on the same day.

28 February 2014: Council Meeting

At the end of next month the ELI Council will meet for the second time since its election at the General Assembly in 2013. The Secretariat is pleased to report that attendance at this meeting should be very strong, with over 50 Council Members planning to attend. Many ex-Officio Council Members such as the new CNUE President André Michielsens will also participate in the meeting, where various aspects of the Institute and its work will be discussed. As well as hearing reports from the Chairs of the Standing Council Committees, the Council Members will discuss and vote on several matters relating to projects, membership and hubs. A thorough report of the February meetings will be included in the March newsletter. This is likely to be the last time the Council meets before it gathers again in Zagreb in September, immediately after the General Assembly.

Keeping up with the ELI

As well as the ELI website, which is regularly updated with news and events, it is now possible to follow the ELI on Twitter, or to join the ELI's group on LinkedIn. The images below will take you to the relevant pages, where you can link your own accounts to those of the ELI and receive updates automatically.



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General Assembly 2014: Zagreb

Don't forget to save the date in your diary for the 2014 Projects Conference and General Assembly which will take place in Zagreb, Croatia, on 25 and 26 September 2014. Staff at the Secretariat and the University of Zagreb are continuing to make preparations and are looking forward to bringing you more information in the near future. Arrangements for the General Assembly and Projects Conference will also be discussed at the upcoming meetings of the Executive Committee and Council.



Ban Jelačić Square, Zagreb

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.