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ELI Updates Jan-Feb 2015



GREETINGS FROM PAVEL SVOBODA, CHAIR OF THE COMMITTEE ON LEGAL AFFAIRS, EUROPEAN PARLIAMENT

Dear ELI Members and Friends,

I am very pleased to have been asked to write the introduction to this edition of the ELI's newsletter. As Chairman of the Committee on Legal Affairs of the European Parliament, I attended the ELI's Projects Conference and General Assembly in September 2014, and I think it is of essential importance that the European institutions and the ELI should work together.

The Committee on Legal Affairs has recently been reformed following the elections last year and I therefore felt that it was essential to re-establish ties. In January, the ELI, represented by Diana Wallis, Christiane Wendehorst and Sjef van Erp, came to the meeting of the Committee on Legal Affairs in order to present the work and aims of the ELI to the new committee. In fact, I intend to invite the ELI to come again in April to present the new project on civil procedure with UNIDROIT.

I feel that the ELI has an important role to play in the development of European law, as the discussion of practitioners and academics is essential for us legislators in order to be able to take decisions. Indeed, I feel that the area of civil procedure has been unduly neglected for the benefit of criminal procedure rules at European level. The average citizen is much more likely to come into contact with the civil justice system of another Member State than with the criminal justice system.

I therefore feel that it is high time that we had common minimum standards for civil procedure at European level, and I hope that the ELI/UNIDROIT project will help us move in that direction. Indeed, the Committee on Legal Affairs is considering whether to issue an own-initiative report on the subject.

I am convinced that this is the beginning of intense cooperation between the Committee on Legal Affairs and the ELI and hope you enjoy reading this newsletter.

Pavel Svoboda

Inside this issue:

ELI in Brussels: Presentation at JURI
Committee, Meeting with Věra
Jourová•2

Council and Committee Meetings in
Vienna •3

Executive Committee and
Membership Committee Meetings•4

New Four-Year Agreement between
University of Vienna and ELI•4

Special Interest Groups - Your Chance
to Shape the ELI•5

Council Elections 2015 - Would You
Like to Serve on the Council?•6

Polish Hub Launch•7

Austrian Hub at Austrian Chamber of
Notaries Event•8

Coming up in March and April•9

New Institutional Observers•10

Changes at the ELI Secretariat•10

2015 Annual Conference•11

ELI in Brussels: Presentation at JURI Committee, Meeting with Věra Jourová

A delegation of the ELI was invited to speak in a session of the European Parliament's Committee on Legal Affairs (JURI) on 19 January, which featured an exchange of views with Frans Timmermans, First Vice-President of the European Commission and the Commissioner responsible for Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights, and Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality.



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“We are here, ready to help, as much as you may like.” With these words, Diana Wallis, President of the ELI, summarised the mission of the Institute. She, along with Vice-President Christiane Wendehorst and Executive Committee Member Sjef van Erp travelled to Brussels to provide lawmakers with a general overview of the ELI and its role as an independent organisation working toward the betterment of European law. In her remarks, Diana Wallis emphasised that its broad membership, encompassing nearly all professions related to the law, including lawyers, judges, bailiffs, notaries and academics, uniquely positions the ELI to provide insight on making the law work better for citizens on a practical, day-to-day basis. The work of the Institute is concentrated in projects in fields as diverse as contract law, criminal law, and administrative law.

Christiane Wendehorst underscored this with an example: the ELI Statement on the Proposal for a Common European Sales Law involved contributions from the entire membership, including Fellows and Institutional Observers. She further stated that, far beyond simply criticising the legislature, the ELI aims for results that are of immediate, practical utility for lawmakers and practitioners. Sjef van Erp concluded the delegation's presentation by accentuating the ELI's continuing work with international organisations such as UNIDROIT, the American Law Institute, and the US Uniform Law Commission. Citing the example of intellectual property law in the technology sector, he noted that any initiative taken in the EU will have worldwide repercussions; this further increases the need to look beyond the shores of Europe in determining the scope of the ELI's work. Questions from MEPs to the delegation demonstrated a broad interest in the ELI's contributions to copyright law, international civil law proceedings, and to the simplification of law in general.

The delegation's arrival in Brussels had been in planning for several months. In his closing remarks at the ELI 2014 Projects Conference and General Assembly in Zagreb last September, Committee Chair Pavel Svoboda invited the ELI to introduce itself to his committee members to get a sense of their concerns and to investigate avenues of collaboration. This collaboration had already taken a decisive step forward when the European Parliament joined the ELI as an Institutional Observer at the beginning of 2014.



A highlight of the visit was a productive meeting with Commissioner Věra Jourová. The delegation took the opportunity to discuss the ELI, its mission and its goals for the future, which include broader cooperation with the European institutions. The Commissioner was also updated on ongoing and upcoming projects. She concluded the meeting by confirming that she would deliver the keynote address at the next ELI Annual Conference in September 2015 in Vienna.

The ELI will return to the JURI Committee in April, at the invitation of Chairman Svoboda, to update members on the ELI/UNIDROIT joint project on civil procedure (read more on [page 9](#)).

Council and Committee Meetings in Vienna

The first Council meeting of the year was held in Vienna on 13 February 2014 and was well attended. Chaired by President Diana Wallis, the full-day meeting was held in the Senatssaal of the University of Vienna. Irmgard Griss also joined the meeting in her dual role as the Speaker of the Senate and Returning officer for the upcoming 2015 Council elections. Jean Tarrade, the new President of the Council of the Notariats of the European Union (CNUE), attended his first ELI Council meeting as an ex-officio Council member. Alasdair Lewis, President of the European Land Registry Association (ELRA), Leo Netten, the President of the International Union of Judicial Officers (UIHJ), and Françoise Andrieux, Secretary General of the UIHJ, also attended the meeting.

Diana Wallis opened the meeting by expressing her gratitude to Council members for having made the effort to attend, and the overall atmosphere of the meeting was one of enthusiasm for what the



ELI has achieved so far and for all the challenges it is facing. The Executive Committee presented its response to the report produced by the Senate for the 2014 February Council meeting, in which members of the Senate provided the Council with feedback on its work and made recommendations for the future activities of the Institute. As part of this response to the Senate's report, John Sorabji presented the Executive

Committee Proposal on the establishment, structure, functioning and role of Special Interest Groups (SIGs). These are subject-specific ELI Hubs intended to play a central role in the development of the ELI, and particularly the development of future projects. The Council decided that the Secretariat should issue an open call to all ELI members seeking expressions of interest to establish and actively participate in SIGs. This call for interest can be found on [page 5](#) of this Newsletter.

In the morning, members of the Council participated in the first step of the 2015 Council elections process. In addition to the 15 voluntary resignations that the Secretariat received, 15 were drawn by lottery by Irmgard Griss from the remaining 45 Council members in accordance with the [ELI Election Byelaw](#) to provide for the 30 vacant Council seats for this year's election. More information about the Council elections can be consulted on [page 6](#) of this Newsletter.

Projects were, as usual, an essential part of the Council meeting, with active discussions on current and potential future ELI projects. The Council Decision on projects is available [here](#). Potential ideas for future



ELI projects were presented on family and succession law by Vice-President Christiane Wendehorst, on "The Rule of Law and Migration" by Boštjan Zalar, and on mediation law by Diana Wallis.

Member of the Executive Committee Sjef van Erp informed the Council about a working group on “Uniform Fiduciary Access to Digital Assets Act” that he is leading together with the United States Uniform Law Commission, which could constitute the basis for a future ELI project. The Council adopted the amendments to the ELI Project Guidelines proposed in the last Council meeting in Zagreb. You can consult them [here](#).

Members of the Council also heard reports from the Membership Committee, the Treasurer and the International Relations Committee.

Executive Committee and Membership Committee Meetings

On 12 February 2014 the Executive Committee met in Vienna. The Committee was able to discuss matters such as projects and the future general strategy of the ELI, before discussing them with the rest of the Council the following day.

Prior to the Council meeting on 13 February, the Membership Committee met at the ELI Secretariat headquarters, where the recruitment of new Institutional Observers was the main focus of discussion. Those present were informed of the latest membership statistics, so that under-represented areas could be clearly identified. As well as regularly reviewing new applicants, the Committee discussed alternative potential membership schemes that could attract new members, with the aim of building up a community of members which is diverse in terms of nationality, areas of expertise and professional experience.



New Four-Year Agreement between University of Vienna and ELI

During the course of the February Council meeting, the President and Vice-President of the ELI formalised the agreement reached with the University of Vienna concerning the hosting of the ELI Secretariat. This agreement represents a continuation of the decision made in Paris in May 2011, by which the ELI Council accepted the tender submitted by the University of Vienna concerning the ELI Secretariat’s seat.

After a very successful collaboration of four years, the ELI Executive Committee, as mandated by the Council in Zagreb, negotiated an extension of the arrangement with the University of Vienna. This new agreement is the basis for a new four-year period of mutually beneficial cooperation.



Special Interest Groups - Your Chance to Shape the ELI

The ELI Council accepted, on 13 February 2015, the Executive Committee Proposal on the establishment, structure, functioning and role of Special Interest Groups (SIGs). These are subject-specific ELI Hubs intended to play a central role in the development of the ELI, and particularly the development of future projects.

Each SIG will devote itself to scrutinising the latest, cutting-edge developments in a specific field of law and to identifying ideas for potential ELI future projects.

As subject-specific Hubs, SIGs are subject to both the ELI Statute and the provisions of the Hub Guidelines. Each SIG will therefore be required to provide regular reports to the Council and to the Executive Committee highlighting its work and drawing their attention to any important current or anticipated issues in its field.

More details on the structure and functioning of SIGs can be found in [Council Decision 2015/1](#) of 13 February 2015.

The following areas are examples of the possible SIGs that could be established:

- European Union law;
- Civil law;
- Dispute resolution;
- Family law and succession;
- Criminal law and procedure;
- Constitutional law;
- Fundamental rights law;
- Public and administrative law;
- Environmental law
- Business and Financial law;
- Insurance law;
- Tax law;
- Economic law;
- Intellectual Property law;
- Digital law.

This list is indicative. Members are encouraged to bring forward any initiatives on additional or alternative SIGs.

SIGs should...

1 ...provide an active forum for debate by ELI members in the field through which project proposals could be developed, and, where appropriate, carry out such project work.

2 ...keep abreast of current developments and draw to the Executive Committee's attention any issue that could properly call for a response by the ELI, either via an Instrument or a Statement.

3 ...provide an effective means to review any relevant legal instruments, not least those which have a defined review date.

4 ...keep their area under on-going critical scrutiny and consider what steps could be taken by the ELI to improve law through, for instance, simplification, increasing its coherence or, where appropriate, the promotion of deregulation.

5 ...enable the ELI to respond promptly to any EU or other relevant consultation.

6 ...collect and disseminate to European policymakers and legislators ideas published in Europe, not least those that would not ordinarily secure such wide notice.

The ELI Council and Executive Committee call for all ELI members who are interested in establishing and/or actively participating in one or more SIGs to contact the [ELI Secretariat](#).

Council Elections 2015 - Would You Like to Serve on the Council?

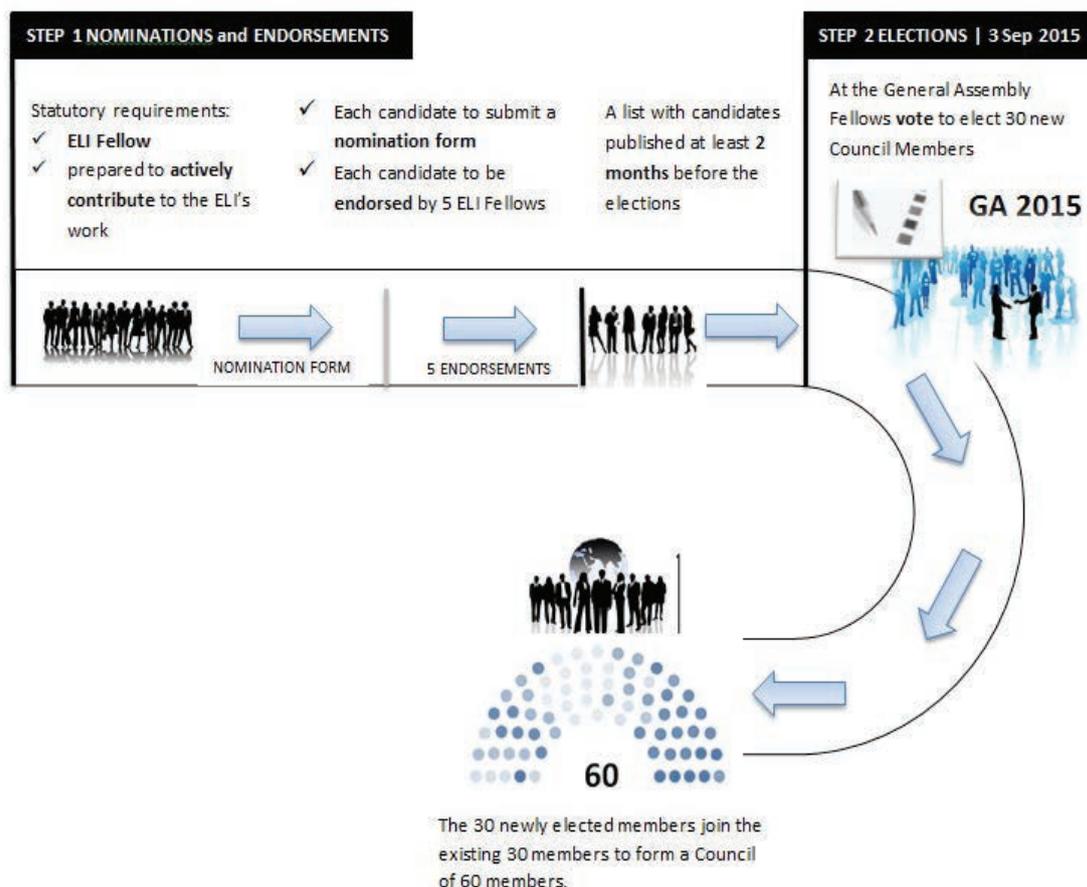
ELI Fellows wishing to play a more active role in the Institute and eager for the opportunity to help make important decisions about the governance and activities of the ELI can put themselves forward for a place on the ELI Council, 30 seats of which are to be elected at the 2015 General Assembly.

According to the [Election Byelaws](#) of 2 April 2013, 30 members of the Council elected in 2013 must resign in 2015, a process which has taken place over the past few weeks, with resignations either voluntarily or by lots which were drawn at the February Council meeting. Council members who have resigned or whose names were drawn are free to stand for re-election, alongside any other ELI Fellows wishing to join the Council.

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. Council members have the opportunity to join standing committees, such as the Membership or the Fundraising Committee. Council members are also encouraged to play a leading role in the establishment and management of [SIGs](#). The Council meets at least twice a year and also makes decisions electronically on a regular basis. Reasonable costs of travelling and accommodation incurred as a result of ELI Council business are usually reimbursed by the Institute.

The nomination and endorsement phase will begin in March, and will last until mid-May. An announcement of the exact dates along with nomination and endorsement forms will be circulated by e-mail and will be available to download from the ELI website as soon as the process begins.

2015 Council Elections | HOW TO BECOME a Member of the ELI Council



Polish Hub Launch

The ELI celebrated the opening of its Polish Hub on 16 February 2015. ELI President Diana Wallis was on hand to speak about the mission of the ELI and to mark the official beginning of its newest hub. Several eminent Polish lawyers attended the ceremony, which was held at the Polish Council of Legal Councillors in Warsaw. Attendees heard from Maria Ślężak, Vice-President of the Polish Bar and President of CCBE, Marek Safjan, judge at the Court of Justice of the EU, Maciej Szpunar, Attorney General at the Court of Justice of the EU, and Arkadiusz Bereza, Vice-President of the Polish Bar Association.



Left to right: Arkadiusz Bereza, Maciej Szpunar, Diana Wallis, Marek Wierzbowski and Maria Ślężak

Marek Wierzbowski, Professor of Law at the University of Warsaw and ELI Council member, reports on the opening of the newest ELI Hub in Poland:

Polish members of the ELI discussed the issue of setting up a Polish Hub a long time ago, during the 2013 ELI General Assembly in Vienna. It took us some time to select the institution with which we would associate our organisation in order to avoid expenses for new premises, secretariat etc. Initially, since many members are academics, we were only taking universities or research institutions into consideration. Ultimately, we decided for a cooperation with the National Chamber of Legal Councillors, one of two national bar associations. Associating the ELI Polska (the name of the Polish Hub) with the bar association should enable very easy communication with the largest group of practicing lawyers in Poland, as well as with advocates, notaries, judges, public prosecutors and civil servants.

Our activities will not be much different from those of other ELI hubs. It is our intention to take steps to broaden knowledge of European law among practicing lawyers in Poland and to serve as the communication channel between them and the ELI. We hope to bring more Polish lawyers to the ELI, both as members and as people involved in ELI projects.

We are grateful to the Chamber of Legal Councillors for organising such a spectacular event to mark the creation of the Polish Hub and to increase awareness of the ELI among lawyers in Poland.



Both members and non-members of the ELI were welcome at the event in Warsaw.



Diana Wallis talked about the ELI's role and projects.

Austrian Hub Participates in Austrian Chamber of Notaries Event

The ELI Austrian Hub participated in an event on “European Marriage and Partnership Contracts”. The event is part of the *NOTARION xp* forum organised by the Austrian Chamber of Notaries. The President of the Chamber, Ludwig Bittner, opened the evening with a welcome to the guests and a short introduction to its ongoing projects.

ELI Vice-President Christiane Wendehorst then gave a presentation titled “Model Dispositions in European Family and Succession Law.” She took the opportunity to draw attention to the difficulties that European citizens who start an international family or who move to a different country face. Even as they enjoy unprecedented freedom of movement, moving to another jurisdiction can be compared to “flying blind” into a storm of unexpected legal effects and results in intricate legal problems, which in turn reduce certainty and predictability of the law, increase the costs of litigation, and usually result in detrimental effects for the weaker party in a relationship. In most cases, unexpected effects of a change of habitual residence, as well as problems associated with forum shopping and the issue of a patchwork of forums and applicable laws, could have been avoided if the parties had, in due time, made a choice concerning jurisdiction and applicable law under the existing EU instruments. However, couples are usually not aware of these options, or do not dare raise the issue in a relationship, or are not sure it could be done at affordable costs. Christiane Wendehorst therefore suggested that European model dispositions concerning choice of court and applicable law be introduced, provided that citizens who, for example, conclude a marriage or registered partnership or register a cross-border change of residence be made aware of and given access to them. Equally, European model agreements on substantive family law issues should be developed, which would ideally be made enforceable in all (participating) Member States of the EU. In any case, they could serve as a useful tool for parties and their legal advisers and could be made available on the European e-Justice Portal and similar platforms.

This presentation set the tone for a contribution by Rudolf Kaindl, Honorary President of the Council of the Notariats of the European Union and Founding Council Member of the ELI. Two experts in the field, Katharina Boele-Woelki (Professor of Law, University of Utrecht and President of the Commission on European Family Law (CEFL)) and Robert Fucik (Leading Public Prosecutor of the Austrian Ministry of Justice) then joined the panel for a discussion moderated by Michael Umfahrer (President of the Austrian Notary Academy). A reception closed the evening.

Christiane Wendehorst gave a presentation on the same topic at a workshop titled “Cross-border activities in the EU - Making life easier for citizens” as part of the Civil Law and Justice Forum organised by the European Parliament’s Legal Affairs Committee (JURI) on 26 February. View the agenda [here](#).



Panel discussion with (l. to r.) Christiane Wendehorst, Rudolf Kaindl, Michael Umfahrer, Katharina Boele-Woelki, and Robert Fucik. © Austrian Chamber of Notaries

ELI Hubs: a forum for collaboration

Central to the ELI’s mission is to provide a forum for jurists of all disciplines and backgrounds with an opportunity to share their views on the compelling legal issues of the day. National Hubs allow the ELI to fulfill this mission in a local context and in the local language in a way that engages practitioners.

With the participation of Katharina Boele-Woelki, President of both the International Academy of Comparative Law and CEFL, a leading authority on European family law and an ELI Institutional Observer, the event facilitated a productive exchange of views among the members of the Austrian Chamber of Notaries, the ELI Austrian Hub and the broader public.



Coming up in March and April...



ELI Austrian Hub Event

EVENT ON UNCITRAL MODEL LAW ON SECURED TRANSACTIONS

In collaboration with UNCITRAL (the United Nations Commission on International Trade Law) and the Österreichische Bankwissenschaftliche Gesellschaft (the only independent research association in Austria devoted to banking), the Austrian Hub of the ELI will host a conference on “Secured Transactions in the Work of UNCITRAL” on 6 March 2015 on the top floor of the Faculty of Law (Juridicum) of the University of Vienna. Prominent experts such as Spyridon V. Bazinas (Senior Legal Officer, UNCITRAL Secretariat), Bea Verschraegen (Professor, University of Vienna) and Sjef van Erp (Professor, University of Maastricht and ELI Council member) will conduct workshops on these topics:



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- **The draft UNCITRAL model law on secured transactions;**
- **Questions concerning the conflict of laws in secured transactions; and**
- **The reception of the draft model law on secured transactions in European property law.**

Christiane Wendehorst and Spyridon V. Bazinas will host a public lunch time seminar titled “Secured transactions in the work of UNCITRAL: a modern model for Austria and the world?” The day will conclude with a discussion on a potential project between the ELI and UNCITRAL, an Institutional Observer of the ELI. View the agenda [here](#).

Guests are welcome to participate in the lunch time seminar regardless of whether they attend the expert workshops. Please send an e-mail indicating which parts of the programme you would like to attend to austrianhub@europeanlawinstitute.eu.

ELI Instrument on Rescue of Business in Insolvency Law

19-20 MARCH CONFERENCE

The first phase of the ELI Project on Rescue of Business in Insolvency Law is approaching its finalisation. To conclude this phase, a two-day conference will be held in Vienna on Thursday-Friday, 19-20 March 2015. Selected themes of the national inventory reports and normative reports, on which the National Correspondents have been working, will be the basis for the discussions with over thirty participants at the conference.

The conference will start on Thursday, 19 March, when National Correspondents from different jurisdictions will make brief presentations on the lessons that can be learnt from business rescue law and practice in their jurisdiction. On Friday, 20 March, some specific issues for a legal enabling framework for business rescue in Europe will be discussed in-depth in parallel workshops.

ELI/UNIDROIT Joint Project on Civil Procedure

PRESENTATION AT THE JURI COMMITTEE

After the successful meeting at UNIDROIT’s seat in Rome in November 2014, the Committee on Legal Affairs (JURI) of the European Parliament invited the ELI and UNIDROIT to present their joint project in Brussels in April 2015. The ELI and UNIDROIT have accepted this offer and are currently forming a delegation that will present the project “From Transnational Principles to European Rules of Civil Procedure” to the JURI Committee.

Furthermore, the ELI Secretariat is in the process of organising a Joint Meeting in Brussels, in which both the Steering Committee and the Project Reporters will discuss the ongoing activities of all five working groups.

New Institutional Observers

We are happy to announce two new Institutional Observers:



The Court of Cassation is the highest court in the French judicial system. The Court of Cassation controls the right application of the law by the inferior courts in civil and criminal matters. It aims at achieving unity in the application of the law. The Court reviews the legality of the contested decision and may annul it, but does not review the facts which form the basis of it. Since 1991, the Court of Cassation may also issue opinions on new and complex questions upon request from inferior courts.



The Spanish Association of Mediators and Legal Experts (AEPJMA) is recognised by the Spanish Ministry of Justice. Established in 2009, its main objectives are: promoting, studying and developing mediation and conflict resolution in civil law, commercial law and company law; submitting expert opinions to Courts and parties in conflict; developing research and training programmes in the areas of mediation, arbitration and expert evidence; promoting mediation as a practical and effective means of conflict resolution; avoiding intrusiveness and malpractice; collaborating with public and private institutions in the development of these areas.

Changes at the ELI Secretariat



Our Office Manager Mary Penman, after two years of service to the Secretariat and the broader ELI membership, is moving on. Her organisational talent, strong commitment to the ELI Secretariat team and her devoted attention to detail were instrumental to the success of each event the ELI organised, especially General Assemblies and Council meetings. She made crucial contributions to the creation and management of our membership and bookkeeping systems. We will miss her and wish her all the best for her future endeavours.



Succeeding her will be Joshua Davis. He holds a Ph.D. in German Studies from the University of Virginia and taught German for several years in the United States, of which he is a native. Since arriving in Vienna, he has held positions in marketing, public relations, social media management, translation and editorial management. We look forward to working with Joshua.

2015 Annual Conference

Save the date: 2-4 September 2015 in Vienna

The 2015 ELI Annual Conference and General Assembly will take place in **Vienna on 2-4 September** at the **Austrian Academy of Sciences**. President Diana Wallis will lead an opening ceremony on 2 September. The General Assembly itself will convene on the next day and will feature reports from the President, Treasurer, and other committees working for the betterment of the Institute. Council elections will also be held for half the current Council seats. Following this, the new Council will convene for its first meeting to elect members of the Executive Committee, including the positions of President, Vice-President and Treasurer. The project sessions will be spread over two days, giving ELI members and external participants the opportunity to learn about current and potential future projects and take part in lively discussions.

Highlights of the Conference will include:

- A keynote by **Harriet Lansing**, immediate past President of the U.S. Uniform Law Commission
- A keynote by **Věra Jourová**, EU Commissioner for Justice, Consumers and Gender Equality



The Festsaal of the Austrian Academy of Sciences. © ÖAW



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

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.