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COURT OF JUSTICE  
OF THE EUROPEAN UNION

## Message from Marc Jaeger

President of the General Court of the European Union

Dear ELI Members

Each and every opportunity to stress the impact of EU law on the improvement of everyone's daily legal protection should be, especially nowadays, valued to the utmost. I am thus truly honored to be offered such a platform through the European Law Institute (ELI) Newsletter. I would like to seize this occasion to highlight a few salient features showing how the ELI and the EU General Court are like-minded.

### We benefit from ELI's upstream works:

Despite some remarkable efforts from EU decision-makers to stem legislative inflation, there are still many new legal frameworks every year and still no automatic judicial impact assessment pursued simultaneously. The quality of legislation will therefore be one of the critical elements to avoid EU courts being overwhelmed by legal actions. In that regard, the ELI should be praised for its works aimed at improving even more the already high quality of EU law. For instance, the ELI's projects tackling aspects of today's digital economy, whether through its attempt to establish model rules on online intermediary platforms or through its shared initiative with the American Law Institute (ALI) to identify a common set of principles applicable to transactions in data economy, are more than welcome. The growing awareness regarding the challenges raised by online platforms has led to vivid on-going discussions about the potential consequences on the EU courts' approach in competition cases. Data economy triggers the same concerns in other legal fields, such as data protection law, consumer law or communications law. In all these sectors, EU courts are expected to deliver clarity.

**We pursue the same goals:** The EU General Court has recently modernised its procedure. After having made the digitalisation of our internal procedures a priority of my successive mandates, we now have made mandatory the use of e-curia, the external component of the written pleadings' filing process. Through its project 'the Tools of the Digital Age in the Service of More Accessible Justice', I am delighted to note that, together with the ELI, we share the same understanding: digital solutions must embrace key procedural aspects to render justice more accessible whilst securing a high degree of trust in these tools. However, we must remain cautious when following this stony path. In the context of case solving, lawyers and judges should keep entire control of IT tools. From digitalisation of processes to predictive justice, there is a conceptual gap that we have to address carefully.

**We share the same spirit:** Finally, I would like to emphasise how crucial the ELI's works are in pursuing the bridging of oft-perceived gaps between different legal cultures as well as between scholarship and practice. As to the latter, there would be no greater danger for EU justice than to be detached from the reality of the situations EU judges have to handle. Be certain, the EU courtroom is wide open to new theories and to new paradigms. We are aware of academic studies, we are aware of market constraints. Actions from ELI and similar entities help in this regard. However, today, addressing the differences between legal cultures may be the number one priority. I believe that the EU judiciary has an essential role to play in the acceptance of EU law through the identification of what binds us. The dis-



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Marc Jaeger

cussions about Brexit should not lead to a loss of legal culture and we have to make sure that it will not lead to a loss of a sense of belonging to the same Union. To foster this feeling, it must be remembered that EU courts are, from time to time, invited to define constitutional traditions common to Member States. In that regard, the ELI's project seeking to identify the common constitutional traditions in Europe participates in the promotion of the idea that, despite our differences of opinion, what unites us is much stronger than that which divides us.

Greetings from Marc Jaeger





# ELI

EUROPEAN  
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INSTITUTE

# Vienna Plays Host to the International Legal Community Again this Year

Brussels, Zagreb, Ferrara and Riga are some of the many locations that have played host to the ELI's Annual Conferences. This year, the Conference, which takes place from 4–6 September 2019, returns to Vienna.

## Registration Opens Soon!

The ELI Secretariat has arranged special deals with hotels near key venues for the participants of the 2019 Annual Conference and Meetings and a number of rooms have been set aside. You can find an overview on the [hotels](#) on the ELI website. Please note that there are many events taking place in Vienna in September. Therefore, please do book your room well in advance! Some rooms arranged by the Secretariat are only available until July.

## Contents

<b>Message from President Marc Jaeger</b>	1
<b>ELI Annual Conference</b>	2–3
<b>Updates on ELI Projects</b>	5–7
<b>ELI Representation</b>	8–9
<b>ELI Membership Update</b>	10–11
<b>Membership Update – Obituary</b>	12–14
<b>Elections</b>	15
<b>Past and Upcoming ELI Hub Events</b>	16
<b>Upcoming ELI Events</b>	17

## Keynotes:

**Josef Moser, Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice of the Republic of Austria**



Since 2017, Josef Moser has been Austrian Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice.

Prior to that function, ie from 2004–2016, he was President of the Court of Audit of the Republic of Austria and Secretary General of the International Organisation of Supreme Audit Institutions.

Since 2011, Moser has been an Honorary Professor at Nanjing Audit University. He holds a doctor's degree in law from the University of Vienna.

**Anna Joubin-Bret, Secretary of the United Nations Commission on International Trade Law (UNCITRAL)**



Anna Joubin-Bret was appointed as Secretary of Vienna-based UNCITRAL in 2017. She has over 25 years of experience in international investment law and international investment dispute resolution, working both in international organisations and in the private sector.

Prior to that function, she spearheaded the Cabinet d'Avocats Joubin-Bret and served as senior Legal Advisor to the Division on Investment, Technology and Enterprise Development of the United Nations Conference on Trade and Development (UNCTAD).

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## Imprint

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1010 Vienna, Austria

# Tentative Agenda of the ELI Annual Conference

WEDNESDAY | 4 SEPTEMBER 2019

Venue: Rathaus (Townhall)

- 08:30–09:55 Registration (Council Only)  
10:00–12:00 Council Meeting  
10:10–12:00 Registration (All Others)  
12:05–12:45 **Membership Assembly**  
12:50–13:55 Lunch Break  
14:00–14:30 **Welcome Address**  
14:30–16:00 **Plenary Session: European Rules of Civil Procedure I**  
(presentation of Consolidated Draft and commentaries for the solicitation of feedback)  
16:00–16:25 Coffee Break  
16:30–18:00 **Plenary Session: European Rules of Civil Procedure II**  
(presentation of Consolidated Draft and commentaries for the solicitation of feedback)  
19:00–22:00 **Evening Reception and presentation of the ELI Young Lawyers Award**  
(Austrian Ministry of Justice – Welcome Address: Austrian Minister of Justice, Josef Moser)

Venue: Palais Trautson, Ministry of Justice

THURSDAY | 5 SEPTEMBER 2019

Venue: Rathaus (Townhall)

- 08:00–09:00 Registration  
09:00–10:15 **Principles for a Data Economy**  
(presentation of Preliminary Draft No 3 for the solicitation of feedback) **Common Constitutional Traditions in Europe**  
(presentation of draft project output for the solicitation of feedback)  
10:15–10:45 Coffee Break  
10:45–12:00 **Plenary Session: Model Rules on Online Intermediary Platforms**  
(presentation of final results and voting on ELI Instrument)  
12:05–12:45 **Keynote speech: UNCITRAL Secretary Anna Joubin-Bret**  
12:50–13:55 Lunch  
14:00–15:15 **Plenary Session: The Protection of Adults in International Situations**  
(presentation of final results and voting on ELI Instrument)  
15:15–15:40 Coffee Break  
15:45–17:00 **Blockchain Technology and Smart Contracts**  
(presentation of draft project output for the solicitation of feedback) **R&D Tax Incentives**  
(presentation of draft project output for the solicitation of feedback)  
17:05–17:30 Announcement of the Council Election Results  
17:30–18:45 ELI Council Meeting (in its new formation – Election of the Executive Committee)

Venue: Hotel Sacher

FRIDAY | 6 SEPTEMBER 2019

Venue: Juridicum (Faculty of Law)

- 09:45–16:45 Project meetings, Hub/SIG panels/meetings (to be confirmed)  
19:00–22:00 **Social Event** (Heuriger)

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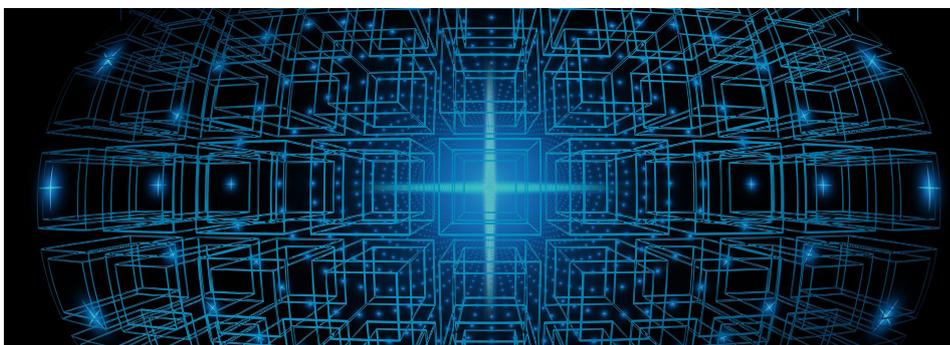
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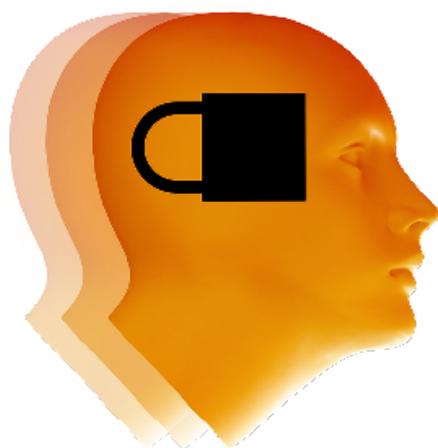
## At the Forefront of the Debate: Blockchain and Smart Contracts

On 12 March 2019, the sub-group of the [Blockchain Technology and Smart Contracts](#) project on 'Contracts and Smart Contracts' convened in Paris (France). At the meeting, Team members analysed the legal structure of [Fizzy](#), a revolutionary web and mobile insurance cover by AXA for flight delays of two hours or more, and how its insurance contract is linked to smart contracts.



## Access to Digital Assets Project Gains Momentum

Members of the ELI project on [Access to Digital Assets](#) held a meeting on 13 March 2019 at the UIHJ Secretariat in Paris. They discussed, among other things, the next steps to be taken with the project, including the tasks and composition of small working groups, and their cooperation with external stakeholders.



The ELI is pleased to announce that the UIHJ has committed to fund the project with a sum of € 5.000.

## Finalising Draft Model Rules on OIP

On 14–15 March 2019, members of the ELI project on [Online Intermediary Platforms](#) (OIP) convened at the Maastricht University Campus in Brussels. They worked on the overall coherency of the Rules since the final output of the project, accompanied by a concise commentary, will be voted upon by ELI bodies in September. Participants, among whom were all the Project Reporters, concluded the evening with a dinner which ELI President Wendehorst also attended. The next meeting will be in early June with the Advisory and Members Consultative Committees (MCC).

## Fritz Thyssen Foundation Awards Grant for Data Economy Project

The ELI is pleased to announce a further grant from the Fritz Thyssen Foundation for the ALI-ELI [Principles for a Data Economy](#) project.

The grant comes on top of an earlier award by the Fritz Thyssen Foundation for a Feasibility Study on the same theme. The € 200,000 (with a possibility to apply for another € 100,000) will go a long way to advancing this collaborative project that was approved by the ALI and ELI Councils in January and February 2018 respectively. The ELI is most grateful for the Fritz Thyssen Foundation's support.

### Now Hiring: Post-Doctoral Research Associate Position

Included in the funding is a position for a post-doctoral Research Associate, which is now open for candidates to apply for. Interested candidates should apply as soon as possible. More information on the job opening is available [here](#). Please spread the word.



# Conference on Consumers and Alternative Dispute Resolution (ADR)

The Center for Socio-Legal Studies of the University of Oxford organised a two-day Conference on ADR from 18–19 March 2019 in Oxford (UK).

The Conference dealt with current issues of the relationship between consumers and ADR. The main focus of the Conference was to discuss ways in which ADR can offer consumers a higher degree of fairness and justice, as well as the role of companies and regulators in the field. Importantly, as part of the event, the ELI-European Networks of Councils for the Judiciary (ENCJ) [Statement](#) on 'The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution' was presented by ELI's Past-President and one of the project's Reporters, Diana Wallis. Wallis also chaired a panel on the New Developments in Consumer ADR. The agenda is available [here](#).



# Seminar on the International Protection of Adults in the EU

**ELI project inches towards conclusion.**

The [seminar](#) in Milan (Italy) on 22 March 2019 focused on the topic of 'The International Protection of Adults in the European Union: Improving the Operation of the Hague Convention of 13 January 2000 between Member States'. The event, under the patronage of the ELI and the Council of Notaries of Milan, was organised with the support of the ELI Italian Hub and in cooperation with the Catholic University of Milan (Institute of International Studies).

Pietro Franzina, a Reporter of the ELI project on the [Protection of Adults in International Situations](#), opened the seminar that was attended by around 60 participants. Paola Casali, representative of the Council of Notaries of Milan underlined how notaries have a real interest in contributing to improving the scope of European law in that particular area. In her keynote speech, ELI President Wendehorst referred to how well the project fits within the overall ELI strategy of 'serving the people, companies and organisations in Europe by improving the law or facilitat-

ing its application' and 'producing results which can be of immediate practical utility'.

The seminar involved some fruitful and active discussions among participants and drew broad participation of political bodies and high-ranking governmental officials.



# Working to Ensure Our Laws Catch Up with the Digital Era

**The Academy of European Law (ERA) and ELI organised a Conference on Smart Contracts & Assignment of Claims on 21–22 March 2019 in Trier (Germany).**

The Conference aimed at analysing the most recent developments in contract law affecting businesses across a broad range of industry sectors, including banks and financial institutions.

The first day focused on the interplay of modern technology and international contract law, taking into account current EU legislation in the field. Sjef van Erp, ELI's Vice-President and one of the Reporters of the ELI project on [Blockchain Technology and Smart Contracts](#), moderated a panel and gave a contribution on Smart Contracts and Property Law Issues. Further, Raffaele Battaglini, a project member, discussed how blockchain

technology could facilitate dispute resolution procedures. Participants discussed the forthcoming EU rules on third-party effects of assignment of claims and its impact on financial industries, such as factoring and securitisation. Denis Philippe, the ELI's Treasurer, delivered a speech entitled 'What is the Position in Respect of Factoring?'

The presentations sparked lively discussions and the event, which brought together key stakeholders and top experts in the field, provided an excellent platform for the exchange of views in this fast developing field of law.



ELI Vice-President, van Erp



Academy of European Law

## Disseminating the Draft Output of the EEF Project in Slovenia

**Slovenian State Secretary welcomes ELI President.**

On 25 March 2019, ELI President Christiane Wendehorst, one of the Reporters of the ELI project on [Empowering European Families](#) (EEF), met the Slovenian State Secretary Gregor Strojín at the Ministry of Justice in Ljubljana to present the draft outcome of the EEF project, which is currently before the ELI's General Assembly for approval.

On the occasion, Wendehorst explained the background to the project, its aims and output and welcomed the insightful contribution of State Secretary Strojín. The timing could not have been better as Slovenia is currently reforming its family law, offering new options to be chosen by couples. Therefore the EEF project is of practical significance. The meeting was also [publicised](#) locally.



# Shape ELI Projects – Join a Members Consultative Committee (MCC)!

The ELI invites all its Members to join the MCC of the Common Constitutional Traditions in Europe, Access to Digital Assets as well as Blockchain Technology and Smart Contracts projects.

The role of an MCC member would be to consult with the Project Team and to provide comments at various stages of the project, overall offering guidance and insight. You can read more about the role of MCCs [here](#). To join any of the above MCCs and contribute to shaping the project outcomes, we invite you to kindly send a request via email to the [ELI Secretariat](#).



## Common Constitutional Traditions in Europe (CCTs)

The project on [CCTs](#) in Europe seeks to identify the source of CCTs; their content; their relationship with national identity; whether they are an autonomous source of European law and the way in which they emerge as common to Member States and are expressed as such. The output aims to be of practical utility for EU institutions, in particular the Court of Justice of the European Union (CJEU), and for EU citizens. In addition to a methodological proposal on arriving at CCTs, and a restatement of specific national constitutional traditions, and the extent to which they do or do not form part of CCTs (ie in a forward-looking manner), a checklist for the implementation of CCTs is also envisaged. Former judge of the Constitutional Court of Italy, Sabino Cassese, President of the University Institute of European Studies, Mario Comba, and Sir Jeffrey Jowell QC head the project.

## Blockchain Technology and Smart Contracts

Distributed Ledger (or 'blockchain') Technology (DLT) and smart contracts are technologies that have a huge potential to fundamentally change many areas of private law transactions. The ELI has thus embarked on the [Blockchain Technology and Smart Contracts](#) project in a bid to scrutinise the legal basis for these applications and consider how the law can enshrine sufficient operational security and whether minimum standards should be regulated, either at national, European or global level (the latter with clear European influence). More specifically, the Project Team aims at drafting a legislative guide (toolbox) for policymakers, legislators and legal practitioners, which will detail the notions of DLT and smart contracts, the link that can be established be-



tween smart contracts and the Internet of Things, and more general legal questions which may arise, such as questions on jurisdiction, applicable law and the appropriate standard of proof. A more specific part will focus on three 'layers' of the blockchain technology (the ledger layer, the applications or smart contracts layer and the smart objects layer) that have an impact on certain areas of law. ELI Vice-President, Sjef van Erp, and Associate Professor at the University of Lille, Juliette Sénéchal, head the project.



## Access to Digital Assets

Today, we live in world sometimes referred to as the fourth Industrial Revolution – a parallel world of a 'real' and 'virtual' or 'digital' economy. Led by ELI Vice-President, Sjef van Erp, and Secretary General of the International Union of Judicial Enforcement Officers (UIHJ), Jos Uitdehaag, the project on [Access to Digital Assets](#) seeks to facilitate the position of those entitled to digital assets (and in doing so the Project Team will focus on private individuals) and the position of those who increasingly have to deal with digital assets in their daily legal practice, in particular judges, notaries and bailiffs. Guiding principles will be drafted, which will propose a firm basis for harmonising the laws of the Member States in such a way that these laws are: (a) based on a common understanding of what is meant by 'digital assets'; 'access to digital assets'; etc; (b) give basic rights to those entitled to such assets; and (c) facilitate the work of legal practitioners when they are confronted with problems surrounding digital assets. The Project Team's specific focus will be on: (a) digital wealth inherited by heirs; (b) digital wealth to be managed by a trusted person in the case of incapacity of the 'owner' of that wealth; (c) the seizure of digital wealth in the interest of creditors; and (d) the use of digital wealth as security for loans.



### **ELI Secretary General at the Hague Conference on Private International Law (HCCH)**

**On the invitation of the HCCH Secretary General Christophe Bernasconi, the ELI was present at the HCCH's Council meeting of 5–8 March 2019 in The Hague as an Observer.**

The ELI's Secretary General, Vanessa Wilcox, attended the event which was opened by Bernasconi who outlined the organisation's achievements over the last 12 months.

Among other things, time was dedicated to the organisation's possible new (legislative) instruments and post-Convention activities, including work on the HCCH's 2000 Protection of Adults Convention, a theme that an ELI's [Project Team](#) is also undertaking.

A number of the ELI's Institutional Observers were also present at the meeting including the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT), both of which are undertaking a tripartite project on a practitioners' guide to uniform legal instruments in the area of international commercial contacts (with a focus on sales) with the HCCH.

Speaking on UNIDROIT's behalf, Anna Veneziano thanked the Hague Conference for its contribution to the ELI-UNIDROIT's project on [civil procedure](#) that is due to be finalised next year. The UIHJ was also represented at the meeting.

### **ELI President Contributes to the EC Expert Group on Liability and New Technologies**

**President Wendehorst attended the European Commission's Expert Group meeting in Brussels on 13–14 March 2019.**

The Expert Group was set up in 2018 to provide the Commission with expertise on the applicability of the Product Liability Directive and with assistance in developing guiding principles for possible adaptations of applicable laws related to new technologies. The meeting focused on the discussion of draft reports, among others, on algorithmic decision making in the financial market, autonomous healthcare applications and rights of redress, and was followed by a discussion on liability for autonomous drones. The drafting committee, which ELI President Wendehorst is a part of, presented the structure of the Final Report of the Expert Group on Liability and New Technologies/New Technologies Formation. More information can be found [here](#).

### **The ELI at UNCITRAL expert meeting on digitalisation and trade law in Paris**

**ELI Representatives Share Updates on ELI projects with UNCITRAL.**

On 15 March 2019 an UNCITRAL expert meeting on digitalisation and trade law took place in Paris. The expert meeting was attended by several representatives of the ELI: ELI President Wendehorst gave an overview on the current status of the joint ELI-ALI project on Principles for a Data Economy whereas Vice-President Sjef van Erp presented the recently approved Access to Digital Assets project, with a special focus on ownership of data, particularly digital assets. Furthermore, Juliette Senechal, Co-Reporter on the Blockchain and Smart Contracts project with van Erp gave an update on the same.



### **The Law Society promotes the ELI**

The Law Society of England and Wales, an esteemed Institutional Observer of the ELI, recently published a guest contribution by ELI President Wendehorst, introducing the ELI, its aims and projects. The article is available to read [here](#).

The Law Society represents solicitors in England and Wales. From negotiating with and lobbying the profession's regulators, government and others, to offering training and advice, it helps protect and promote solicitors across England and Wales.

# The President of the Slovenian Supreme Court Welcomes ELI President

Furthering mutual goals.

On occasion of her visit to Ljubljana on 25 March 2019, ELI President Christiane Wendehorst was welcomed by Damijan Florjančič, President of the Supreme Court of the Republic of Slovenia.

In the meeting, Wendehorst spoke about the ELI's causes and projects and was informed about various aspects of the Court.

The ELI currently has 20 courts of highest instance as its Institutional Observers including the Austrian, Croatian, Dutch, French and UK Supreme Courts.



## A Meeting of Minds Between ELI and ESA



### Cultivating Relations with EFTA Surveillance Authority (ESA).

The ESA has been a longstanding Institutional Observer of the ELI. Among its numerous contributors, the November–December 2017 [ELI Newsletter](#) saw Sven Erik Svedman, ESA's outgoing President, opine 'I trust that the ELI, as an independent organisation with an extensive network of experts, will remain an important and trustworthy actor in ensuring the quality of European law, and look for-

ward to a more solid cooperation between ESA and the ELI in future.'

True to form, current ESA President Bente Angell-Hansen, accompanied by Catherine Howdle, Deputy Director of the Legal Department, paid the ELI a visit on 8 April 2019. They were welcomed by ELI President Wendehorst and Secretary General Wilcox. The meeting presented an opportuni-

ty for discussions on possible avenues to strengthen mutual aims. Discussions centered on the independence of the judiciary, access to justice and the current global political climate, with the ELI inviting ESA to join its project on CCTs in Europe.

ESA monitors compliance with the Agreement on the European Economic Area (EEA) Agreement in Iceland, Liechtenstein and Norway, enabling those States to participate in the Internal Market of the European Union. ESA is independent of the States and safeguards the rights of individuals and undertakings under the EEA Agreement, ensuring free movement, fair competition and control of state aid. ESA's work helps remove barriers to trade and open up new opportunities to over 500 million Europeans, creating jobs and growth and adding to the international competitiveness of the States.

At 25 years old this year, the ELI has much to learn from ESA. Here is wishing it continued success!



Vanessa Wilcox, Christiane Wendehorst, Bente Angell-Hansen, Catherine Howdle

# The ELI Welcomes its New Members

The ELI is pleased to welcome the following whose membership applications were approved by the ELI Council recently.

## Institutional Observer

### The Ordre Français du Barreau de Bruxelles

The [French Brussels Bar](#) ('Ordre francophone du Barreau de Bruxelles') is the official public representative body of lawyers holding the title of 'avocat'. Registration to the Brussels Bar is mandatory to practise law in Belgium and abroad under that title. The Bar is responsible for ensuring respect and enforcement of professional rules by lawyers, defending their interests at national, European and international level and preserving our values and ethics throughout the Kingdom and abroad.

The French Brussels Bar, thanks to the presence of the European institutions and a long-standing policy of openness towards foreign lawyers, currently comprises more than 5,000 members, including 541 lawyers from 22 European countries and 98 lawyers from other countries worldwide. European lawyers registered under the E-List can exercise their profession as lawyers under the title of their Member State of origin whilst non-European lawyers, registered under the B-List, can be admitted as an 'associated member of the Brussels Bar'. The existence of two lists is explained by the difference in powers to represent and defend clients before Belgian courts. B-List lawyers are not allowed to represent and defend their clients before such courts. They can, however, choose to qualify as a Belgian lawyer, provided they meet certain conditions.



## Institutional Observer

### Iura Vasconiae

The Foundation for the Study of Historical and Regional Law of Vasconia ([IURA VASCONIAE](#)), based in Donostia-San Sebastián, is an independent research centre devoted to the study of historical public and private law of the Basque Country, which brings together academics and cultural agents interested in researching the past and present of the public and private law of the Basque territories.

Its main activity consists in the organisation of annual symposia devoted to monographic issues, which are published in the homologous academic journal of the centre, *Iura Vasconiae*. As well as the *Revue*, the Foundation publishes several monographic series on the sources of historical law of the traditional institutions and self-government of the Basque territories. In its fifteen years' history, IURA VASCONIAE has held 15 symposia and has published 45 monographic works. The Foundation is actually working on the *Historiographic Dictionary of Vasconia, Notitia Vasconiae*, which is meant to be the main international reference for Basque historiography. Thanks to the collaboration with public entities of Vasconia, the Foundation also offers a service of scientific infrastructure consisting of a specialised library and an open database that brings its full production and publications of relevant authors related to historical and regional law of the Basque Country.



## Individual Members

- Edoardo Bacciardi
- Anne Barlow
- François Bernard
- Geoffrey Bezzina
- Ioana Bratu
- Marlene Brosch
- Aysegul Bugra
- Irene Cappellini
- Michele Casi
- Diana Cerini
- Tudor Chiuariu
- Daria de Pretis
- Petr Dobiáš
- Jose Luis Fernandez Lozano
- Dariusz Fuchs
- Martin Geldner
- Giovanni Giacalone
- Myles Gilvarry
- Katalin Gombos
- Marina Grosu
- Jens Karsten
- Roderic Kermarec
- Konrad Kohutek
- Gordana Bozidara Kovacek Stanic
- Zdeňka Králíčková
- Katarina Kresal
- Thalia Kruger
- Ulrich Krüger
- Bruno Lasserre
- Petra Leupold
- Margarida Lima Rego
- Stephan Matyk
- Amandio Nangaiafina
- Ana Luiza Nevares
- Maria Orlov
- Vera Palea
- Irene Picciano
- Liudmyla Savanets
- Caterina Sganga
- Harald Springorum
- Peter Takats
- Jos Uitdehaag
- Ahmet Samim Ünan
- Erik van den Haute
- Manon van Roozendaal
- Caroline van Schoubroeck
- Joeri Vananroye
- Victor Vaugoin
- Barbara Warwas

# Not an ELI Member Yet? Join Today!

The ELI offers multiple benefits to its members. For an annual fee of € 60, individuals gain from free entry to the ELI's Annual Conference and Opening Reception, which otherwise costs € 80. Institutional Observers on the other hand can send up to three representatives to the event without further charge. As a membership-based organisation, other benefits include shaping the ELI's course and its projects.

ELI members can also run for key posts including the Council and its Committees and the Executive. It is the ELI's constituents, through its elected Council, who approve projects to go ahead under its auspices, and it is they who critique and ultimately vote on whether to approve projects as worthy of the ELI's seal. Other benefits of membership are outlined in the overview on the right.

	 Institutional Observers	 Sustaining Members	 Individual Members	 Non Members
Free attendance to ELI Annual Conference	✓ up to three representatives	✓	✓	
Access to ELI approved project output	✓	✓	✓	✓
30% discount on the UK recommended retail price of ELI's publications with Oxford University Press	✓	✓	✓	
20% discount on Oxford University Press publications*	✓	✓	✓	
40% discount on conferences hosted by the Academy of European Law (ERA) in Trier (Germany)	✓	✓	✓	
Hub and SIG membership	✓	✓	✓	
Hard copy of ELI's Annual Activity Report	✓	✓	✓	
Subscription to ELI Newsletter	✓	✓	✓	✓

\* see [website](#) for details

## Become a Sustaining Member of the ELI

**Want to support the ELI further in its ambitious endeavour to impact the quality of law in Europe? Sustaining Members make a donation of € 60 per year (in addition to € 60 for membership fees), enabling the ELI to embark on new initiatives that further its causes.**

**The Sustaining Membership scheme is open to natural persons only.**

**Click [here](#) to upgrade your membership.**

### The ELI is grateful to its current Sustaining Members:

- Alexander Arabadjiev
- Maria Lourdes Arastey
- Andrej Auersperger Matic
- Josef Azizi
- Elena Bargelli
- Teresa Bielska-Sobkowicz
- Robert Bray
- Sabino Cassese
- Christina Charalambous
- Jorge Cordero Sanchez
- Andra Cotiga-Racchah
- Darinka Dekleva-Marguc
- Larry di Matteo
- Walter Doralt
- Sjef van Erp
- Joerg Fedtke
- Tanel Feldman
- John Gaffney
- Anne Birgitte Gammeljord
- Patrick Gielen
- Laurence Gormley
- Irmgard Griss
- Christian Hertel
- Hana Horak
- Paola Iamiceli
- Marta Infantino
- Iryna Izarova
- Fransisco Javier Jiménez Muñoz
- Philip Johnson
- Tatjana Josipovic
- Chen Lei
- Lance Liebman
- Piotr Machnikowski
- Vanessa Mak
- Corrado Malberti
- Dan Marcotte QC
- Karl-Heinz Oehler
- Peter Oliver
- Tekla Papp
- Denis Philippe
- Pascal Pichonnaz
- Teresa Rodriguez de las Heras
- Nelson Rosensvald
- Albert Ruda
- Vincent Sagaert
- Hans Schulte-Nölke
- Tsisana Shamlikashvili
- Anna Simonati
- Vincent Smith
- John Sorabji
- Astrid Stadler
- Felix Steffek
- Ben Steinbrück
- Gert Straetmans
- Lord John Thomas
- Christiaan Timmermans
- Lampros Tsogkas
- Lajos Vekas
- Angelo Venchiarutti
- Christiane Wendehorst
- Friedrich Graf von Westphalen
- Konrad Wietrzynski
- Vanessa Wilcox
- Eike Wolf
- Herbert Zech
- Reinhard Zimmermann
- Irina Zlătescu

# In Memory of Ole Lando

**Professor Ole Lando, who died on 5 April 2019 at the age of 96, was a Founding Member of the ELI.**

Lando is best known for *The Principles of European Contract Law*, produced by a group of scholars and practitioners whom he inspired and led. He is rightly regarded as one of the most influential figures in the development of European private law to date. But the Principles were just the culmination of a long and varied career in which he came to specialise first in private international law and then in comparative contract law.

Lando's background was cosmopolitan. His paternal grandfather, an industrialist and merchant in Warsaw of Jewish descent, had sent his son Zelman to study in Frankfurt am Main when the First World War broke out. As a Russian citizen, Zelman was rounded up but he escaped to Sweden and the following year he settled in Denmark. In 1919 he married Gudrun Petersen, who had been brought up as a Lutheran; and with her support Zelman obtained first a doctorate in economics and then an associate professorship at the Copenhagen Business School. Lando was clearly very much influenced by his mother (see 'My Life as a Lawyer', ZEuP 10 (2002), 508 – a fascinating account that gives a wonderful sense of Lando as a person). In particular, she instilled in him a love of literature, getting him to read authors such as Defoe, Dickens, Mann and Martin du Gard. She insisted that he should always speak the truth, and give his honest opinion, whether or not it was what the other person wanted to hear; and also that he should speak and write in simple language.

Zelman and Gudrun were free-thinking and politically engaged. Zelman was free-trader and the young Lando dreamed of being an eminent economist who would promote economic integration among nations. At this time Lando was strongly attracted to communism, though he did not join the party. However, his father who had made some enemies in the Copenhagen Faculty of Economics, encouraged him to take a degree in law instead. Lando found the first-year

teaching boring and at first he persevered only because he wanted to be able to support himself in another dream to become a novelist like those his mother had encouraged him to read. (He said that later he discovered that he did not have the skills for this.) But in his second year he attended lectures by Alf Ross, and was immediately attracted to legal realism.

Lando's studies were rudely interrupted in 1943, when the Nazis attempted to round up the Jews in Denmark and Lando and his father had to flee to Sweden. Lando was only able to return to Denmark in 1945. But curiously this interruption may have led to Lando's success. Zelman arranged for Lando to have access to the Law Library at Gothenburg Business School, where Zelman was teaching; and there Lando found and read a copy of Cheshire's *Private International Law*. He found the common law emphasis on cases and their outcomes fascinating. He wrote a paper on party autonomy in private international law and presented it as part of his law degree, which he obtained in 1947.

After graduating, Lando joined the Ministry of Justice, which he found very conservative. He said that he did not work hard and 'was considered to be almost a failure'. In the meantime, his political thinking was changing: in the light of the cruelties and oppression by the Soviet Union, he was looking more favorably on a (regulated) free market as the best way forward. In addition, as Western Europe began to recover from WWII and more borders opened, he yearned to travel.

Perhaps someone in the Ministry may have realised that Lando's heart and mind were elsewhere, because he was given several periods of extended leave in order to study. In 1951, in order to prepare and write an essay for the Copenhagen University prize on qualification in private international law, he was allowed to study in Paris (where by his own account

he spent more time with various young ladies than with his books) and in Oxford (where there seem to have been only too few such distractions from work). Lando later said the paper was immature and did not use the comparative methods that it should have done, but it won third prize and was enough to get him a teaching job at Copenhagen Business School.

The second period was for a year in the US for Lando to work on a thesis on conflict of laws in the law of contract; and in September 1955 Lando and his newly-married wife Ellen, a polyglot correspondent and also a remarkable singer, arrived in Ann Arbor, Michigan. In Ann Arbor Lando received both encouragement from Professor Yntema and inspiration from the comparative law lectures of Professor John Dawson. He also made two friendships that would be important: with Ulrich Drobnig and with Claus Ehlermann. It was Drobnig who arranged for Lando, when he returned to Europe, to have access to the Max-Planck Institute in Hamburg, where he met Professor Paul Heinrich Neuhaus, who helped Lando enormously. Drobnig would become a life-long collaborator and friend.

Lando defended his thesis in 1963 and was finally able to leave the Ministry to take up a professorship in international and comparative business law at the Copenhagen Business School. He taught private international law, of course, and also EC law (he chaired the Danish Association of European Law from its inception in 1973 until 1995) and comparative business law. He very much enjoyed the teaching. Anyone fortunate enough to have shared a class with Lando will know what a wonderful rapport he had with his students. He also continued to write, on Danish and comparative contract law and private international law.

However, Lando was gradually becoming disillusioned with private international law as a means of settling international contractual disputes. He was in favour

of a 'universalist' approach, so that the parties would get the same decision in whichever jurisdiction the case was heard. He believed that if courts made use of comparative law rather than applying the *lex fori*, this would be attainable. But when he studied the cases in both the US and Europe, he came to believe that in practice courts would always be influenced by the merits of the case or would apply whichever rule seemed the best in substance. Although he did not abandon private international law, Lando adopted a new approach: the unification of contract law.

Lando told colleagues that the idea of unifying contract law across Europe came to him one morning in 1974, as he was taking a shower. Of course by this date there had already been harmonisation, or attempts at it, elsewhere in the world. In the US, the States had all adopted the model Uniform Commercial Code produced by the American Law Institute and the National Conference of Commissioners on Uniform State Laws; work on the Convention International Sale of Goods was advanced; and in Rome, UNIDROIT was beginning work on what was then envisaged as 'Uniform International Commercial Code'. (Lando would join the UNIDROIT Working Group on Contracts in 1976, and many of his later collaborators were members of the UNIDROIT team.) But it is not clear that by that date anyone else was thinking of replacing the laws of the Member States by a single contract law – which was Lando's vision.

Now old friendships helped. Not only was Ulrich Drobnig a key player in the project from the outset, but Claus Ehlermann, by now the Director General of the Legal Service of the European Commission, was able to ensure funding for the project. Lando quickly assembled a very strong team of 16 – more members were added as new countries joined the EC – to become the first 'Commission on European Contract Law'. Work began in 1980 and the drafting of the first Part



Ellen and Ole Lando at their home in Holte (Denmark) in 2016

(on Performance, Non-Performance and Remedies) was completed in 1990. Lando then formed a Second Commission, which started in 1992 and finished its drafting in 1996; and the Third Commission worked from 1997 to 2001. From 1994, the European Commission ceased to fund the work, but Lando was tireless in finding, or getting friends to find funding for the Second Commission; and the Work of the Third Commission was very generously funded by Professor Reinhard Zimmermann from the Leibniz prize that he had won.

Lando's method was firmly rooted in his concerns with the practical outcomes of cases and his experience in comparative law. Reporters were expected to draft rules only after considering how the situation would be dealt with in at least the main systems (or 'families') of contract law; and they should employ the 'functional approach'. In other words, they should look beyond differences in terminology and concepts and concentrate on the practical outcomes. So far as possible, the Principles should reflect these outcomes – which in many cases turned out to be much the same. Where outcomes

differed, the Commission would have to make a choice, or find a compromise that everyone could live with. The aim was always to produce a set of rules that would form a workable system.

The other thing on which Lando insisted may have reflected his mother's influence. It was that the Principles must be easy to understand – not just for the lawyer but for the average business person.

It must be said that not all members of the Commissions shared Lando's vision of a single, unified contract law across Europe. Some thought that the rules should be designed for adoption by the parties as an alternative to using an existing law, either if this came to be permitted (as was indeed proposed by the European Commission at one point during the drafting of the Rome I Regulation) or as part of an arbitration. (Many systems allow arbitrators to decide cases according to non-national rules, such as 'internationally accepted principles of contract law'.) Others saw the Principles primarily as a model for law reform, particularly in the new democracies of Central Europe and the Baltic. But Lando, as ever, was tolerant of

a broad church within the Commissions; and in any event, the differences in view had little impact on the substance or form of the Principles.

Needless to say, there were disagreements within each Commission over both substance and how to express the rules – when systems produce different outcomes, or formulate the rules in different ways, there is a natural tendency for lawyers to think that their own system's approach is the best or the easiest to understand. But it is a tribute to Lando's skill in choosing members of the Commission, and in chairing the Drafting Group that considered the drafts in great detail before they were submitted to the Commission as a whole, that the work progressed remarkably smoothly. It was not always possible to get a consensus around the table. Some questions had to be put to a vote, and some of the votes were very close. But they were very few times when anyone seemed to go away feeling that they could not live with what had been decided. That, and the clarity of the rules, have contributed enormously to the success of the Principles.

What was less simple was to prepare the Principles for publication, because, being the true comparatist that he was, Lando was insistent that the Principles should have not only Comments explaining how the Principles should apply and giving examples, but also comparative Notes, explaining the sources used and the similarities or differences to the various national laws. Collecting, synthesising and ensuring the Notes were up-to-date took a very long time, and that was the principal reason for the time lapse between completion of the drafting and publication of the final versions. Lando was often worried both by the time taken and the risk that something in the Notes would be wrong. But in the end the work was done; and it is thought that the Notes add enormously to the value of the work, particularly for scholars and for legislators who want to know what rules are used and where.

This is not the place to try to evaluate the Principles or describe their impact in detail. Suffice it to say that they inspired directly the work of the Study Group on a Eu-

ropean Civil Code established and led by Professor Christian von Bar; they formed the essential basis for the *Draft Common Frame of Reference* produced for the European Commission; and they formed the basis of the Common European Sales Law proposed by the European Commission in 2011, though subsequently withdrawn in the light of opposition in the European Council of Ministers. The Principles had a significant impact on law reform in the European countries that were modernising their contract law or civil codes after years of Soviet domination, and also in France, where the reforms to the Code civil of 2016 were much influenced by the Principles. The Principles inspired the *Principles of Latin American Contract Law* and the work on Asian Principles of Contract Law.

The Principles may have been Lando's greatest achievement but it is as a person that he will be remembered even more by those who met him. He had the gift to inspire and encourage at the same time as guiding. He was always ready to listen to different views, and he developed the skill of giving his own opinion in such clear, simple and gentle terms that it was hard for even those who had differed not to accept his advice. He was particularly open to the views of younger colleagues. He seemed to enjoy the meetings of the Study Group almost more than those of the Commissions because the Study Group included so many bright young researchers, and they in turn came to regard him as a father figure, both revered and loved. Many of them will recall him walking round the meeting room to stand behind them as they were speaking, so that despite his increasing difficulty in hearing he did not miss a word of what they were saying. Lando gave them the sense of being wholly included in what came to be almost the 'family' of European contract lawyers.

Lando was also renowned for his sense of humour. The meetings of the Commission on European Contract Law were hosted by many different universities and Governments, and Lando had to make a great number of after-dinner 'thank you' speeches. They were at once sincere and peppered with funny stories, many of

which involved either Lando's (hopefully fictitious) German aunt or a pair of Danish sailors (almost invariably on the razzle). Even Members of the Commission who had listened to Lando's speeches many times before looked forward to the next adventure of these dubious characters. They also enjoyed the many less formal meals that they shared, partly because Lando had an excellent nose for good restaurants but mainly because he was so good at putting everyone at ease. Many of us were also privileged to visit Ole and Ellen in their lovely home in Holte, where we enjoyed both wide-ranging conversation and great food. Lando was a good cook – his soufflé au fromage was much in demand.

By the time Part III of the Principles was published, Lando was over 80. Nonetheless he played an active role in the Coordinating Committee of the Study Group, and for some years he continued to attend the many conferences that took place during the preparation of the Common Frame of Reference (whose complex structure and technical language did not much please him). He also continued to write and put forward new ideas, including suggesting that we should adopt a Global Code of contracts (see *Recueil Dalloz* 13 (2008), 904). His continued participation was welcomed on all sides, but it came at no small cost: restricted mobility and deafness made taking part in meetings more and more difficult. So gradually Lando withdrew to Holte, where he and Ellen lived close to their children and grandchildren, in whom Lando delighted and had enormous pride.

When Lando's death was announced, tributes and personal recollections came pouring in from across Europe. They show the enormous esteem in which Lando was held and how much he will be missed. As Hamlet said of another Dane, 'I shall not look upon his like again.'

Ole Bent Lando, 2 September 1922 to 5 April 2019. He is survived by his wife Ellen and his children Ane Vibeke, David, Henrik and Helene.

*Written by Hugh Beale*

# ELI Council Elections 2019: Would You Like to Serve on the Council?

**In 2019, the ELI's Fellows will elect 28 new Council Members. If you wish to shape the future of the ELI, please consider running for the Council.**

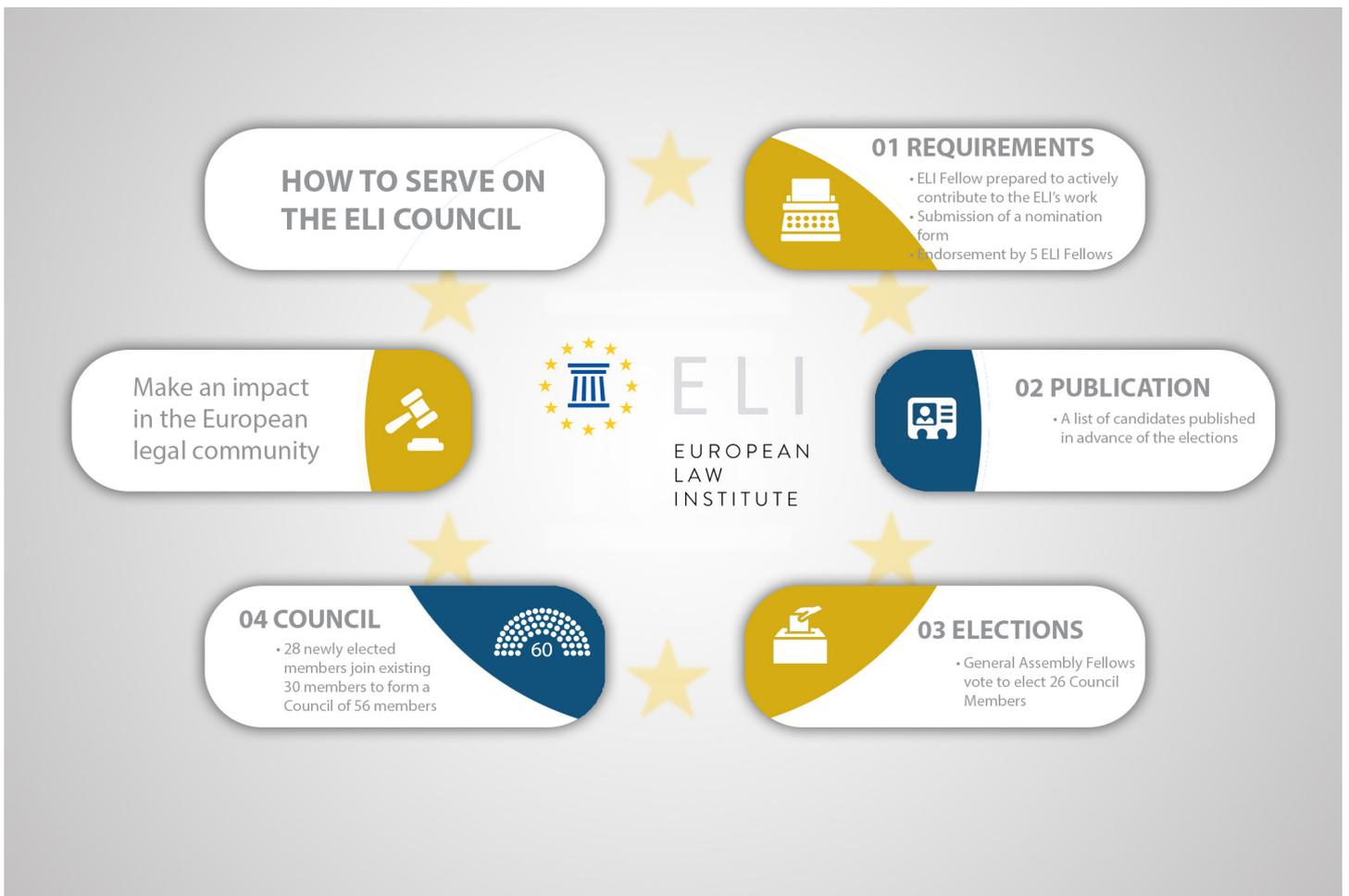
ELI Fellows wishing to play a more active role in the Institute and eager for the opportunity to help make important decisions about the governance and activities of the ELI can put themselves forward for a seat on the ELI Council.

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. Council members have the

opportunity to join standing committees, such as the Membership or the Fundraising Committee. They are also encouraged to play a leading role in the management of Special Interest Groups (SIGs).

The Council meets at least twice a year, and 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 according to the ELI Reimbursement Guidelines.

The nomination and endorsement phase will begin in May 2019. An announcement of the exact dates along with nomination and endorsement forms will be circulated by email and will be available from the ELI website as soon as the process begins.





### **Italian Hub: Symposium on Judicial Control over Arbitral Awards**

The ELI Italian Hub, the Lyon Catholic University, the University of Florida and the University of Trieste co-organised an international symposium on 'Judicial Control over Arbitral Awards: Scope, Vacation and Public Policy' on 26–27 April 2019.

The Symposium brought more than 30 arbitration experts to Lyon, both from academia and practice, and from across Europe and beyond (including Argentina, Australia, China, Peru, Russia, Ukraine and the US). It provided a European and global vision on the enforceability of arbitral agreements and arbitral awards. For more information, please click [here](#).



### **Spanish Hub: 4th Annual Meeting in Elche (Spain)**

On 9 May 2019, the 4th Annual Meeting of the ELI Spanish Hub on European Jurisprudence will take place in Elche under the auspices of the University 'Miguel Hernández'.

[Here](#) you can read further details about the event.



### **Irish Hub: New Directions for the Irish Legal System After Brexit?**

On occasion of the launch of the new ELI Hub in Ireland, the legal community will convene on 2 May 2019 in Dublin (Ireland).

Following a welcome address by Professor Imelda Maher, Dean of the Sutherland School of Law, speeches will be delivered by Advocate General Gerard Hogan of the Court of Justice of the European Union, Lord Justice John Thomas, Former Lord Chief Justice of England and Wales and Member of the Executive of the ELI, and Mr Justice William McKechnie of the Supreme Court of Ireland. More information about the event can be found [here](#).



### **Belgium-Luxembourg Hub: Launch of a New ELI Hub**

We are delighted to inform you that an ELI Belgian-Luxembourgian Hub will be launched on 27 May 2019 in Brussels (beginning 17:00) under the initiative of Robert Bray, Denis Philippe and Matthias Storme. Please save the date! More information on the event you can find [here](#).



### **Hungarian Hub: Conference on Hungarian Cases**

On 7 June 2019, the Hungarian Hub of the ELI will organise a Conference on Hungarian cases before the Court of Justice of the European Union.

The conference will be held in Budapest in Hungarian. More details [here](#).



### **German Hub: Conference on Protection of Trust in the Digital Age**

On 11 October 2019, the German Hub of the ELI will organise a Conference on various aspects of Protection of Trust in the Digital Age (in German).

The colloquium will be held in Frankfurt/Main as a one-day event in cooperation with the Ernst von Caemmerer Foundation and the Johann Wolfgang Goethe University. The event will be sponsored by the Ernst von Caemmerer Foundation.

It is intended that the presentations and a report of the discussion will be published in the Foundation's series.

# Save the Date: Upcoming Public ELI Events

A full list of upcoming ELI events and working group meetings  
you can find on the ELI [webpage](#).

2 May 2019

Launch Event of the Irish Hub  
in Dublin (Ireland)

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8 May 2018

Meeting of the Slovenian Hub  
in Ljubljana (Slovenia)

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9 May 2019

4th Annual Meeting of the Spanish Hub  
in Elche (Spain)

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15–17 May 2019

Intellectual Property SIG: Conference  
in Tilburg (Netherlands)

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21 May 2019

Round Table on Common Constitutional  
Traditions in Europe  
in Aix-en-Provence (France)

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27 May 2019

Launch of the Belgium-Luxemburg Hub  
in Brussels (Belgium)

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7 June 2019

Hungarian Hub Conference on Hungarian cases  
before the Court of Justice of the EU  
in Budapest (Hungary), in Hungarian

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4–6 September 2019

ELI Annual Conference and Meetings  
in Vienna (Austria)

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10 October 2019

Law Insurance SIG: First International Confer-  
ence on Systems of Governance in the  
European Insurance Industry  
in Vienna (Austria)

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11 October 2019

German Hub Conference on  
Protection of Trust in the Digital Age  
in Frankfurt/Main (Germany), in German

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# European Law Institute

- Pan-European, democratic, membership-based organisation
- Uniting prominent jurists of all legal professions
- Aiming to improve the law in Europe
- Carrying out projects with immediate practical application

Members of the ELI can contribute to its projects and gain access to an international network of jurists. Apart from other activities, the ELI organises its Annual Conference and General Assembly, bringing together Europe's leading experts in diverse fields of law.

## Executive Committee

President:	Christiane Wendehorst
Vice-President:	Sjef van Erp
Treasurer:	Denis Philippe
Members:	Anne Birgitte Gammeljord Hans Schulte-Nölke Lord John Thomas

## 2019 ELI Conference

The 2019 ELI Annual Conference will take place from **4–6 September in Vienna (Austria)**. Please take note of this date.

We look forward to seeing you there!

## ELI in Vienna

The Secretariat of the ELI, which is hosted by the University of Vienna, is located in the heart of the Austrian capital, close to the main building of the University, the representation of the European Commission in Austria as well as the information office of the European Parliament.

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



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