



**ELI**  
EUROPEAN  
LAW  
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# Newsletter

Bringing Legal Experts Together

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Cover Letter by Heinz W Engl, the Outgoing Rector of the University of Vienna

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Spotlight Contribution by Marc Rotenberg on the Law of Artificial Intelligence and the Protection of Fundamental Rights: The Role of the ELI Guiding Principles

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# Interview with the Outgoing Rector of the University of Vienna

Heinz W Engl

**Your leadership as Vice-Rector (2007–2012) and Rector (2013–2022) of the University of Vienna brought you important successes. What was the key to those important successes?**

Excellent teams, friction-free cooperation with Senate, University Council and the teams, and finally a large budget increase from 2017, which we could use for 80 additional professorial and tenure track hirings.

**Circumstances forced you to go through difficult times in the course of your leadership of the University of Vienna, marked by recession, pandemic and war in Europe, among other things. The pandemic and war are still not over yet and another recession looms. What do Europeans need to overcome these and future challenges?**

Even more unity than shown during these crises, and strengthening the trust in science as one (not the only) basis of political decisions.

**How important is it in our times for jurists to be schooled on defending democracy and the rule of law?**

More important than ever in the last decades. The University of Vienna with its broad profile and international orientation can contribute to this.

**Amongst many pleas for support, you chose to back ELI several times. What made you opt to fund our Institute since its establishment in 2011?**

Both its continued success in the EU arena and also its strong involvement of our Law Faculty.

**ELI has already accomplished a lot in the past 11 years. What, in your view, are the greatest challenges that lie ahead for ELI in the years to come?**

Constant evolution of its profile and mission and thereby making itself indispensable for the EU and the University of Vienna.

**After 5 years at the helm of the oldest university in the German-speaking world, that is also one of the largest and most renowned in Europe and that is associated with 21 Nobel Prize Winners, one might long to take some time off. What are your plans once you hang your hat up as Rector?**

Nobel Prizes at the University of Vienna have been some time ago, but even more important is the success of our researchers in ERC funding: more than 90 ERC awards now. Besides observing how the University will develop further under even more difficult circumstances, I will be able to spend much more time with my family, including 2 grandchildren, one living in the US and the other to be born in Austria soon.

**As you leave, what are your parting words to ELI?**

I am glad that I made the decision to make a bid for the ELI Secretariat in 2011, and ELI's success confirmed my decision, which might have been a bit bold then.



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Heinz W Engl



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ELI is extremely grateful to the outgoing Rector for his foresight and for his decision to allow the University of Vienna to bid to host the ELI Secretariat in Vienna in 2011.

ELI is also indebted for his decision to grant successive extensions of the Framework Cooperation Agreement.



# The Law of Artificial Intelligence and the Protection of Fundamental Rights: The Role of the ELI Guiding Principles

By Marc Rotenberg<sup>1</sup>

In a remarkable judgment earlier this year, the Court of Justice found that certain Artificial Intelligence (AI) techniques may be incompatible with the protection of fundamental rights. *Ligue des droits humains*, C-817/19, concerned the processing of passenger records to identify serious threats to public safety.<sup>2</sup> Human rights groups objected that the Passenger Name Record (PNR) Directive authorized mass surveillance that was incompatible with the Charter. The Court's ruling upheld a narrowed version of the Directive but also drew a red line for machine learning techniques, which typically rely on statistical inferences to make decisions about people. 'Given the opacity which characterises the way in which artificial intelligence technology works', the Court explained, 'it might be impossible to understand the reason why a given program arrived at a positive match'.<sup>3</sup> The practical consequence would be to deny individuals the right to an effective judicial remedy.

The *Ligue des droits humains* case is a timely reminder of the growing importance of legal review of the new technologies that shape our lives. While AI techniques have brought forward innovations in medical

science, language translation, and image recognition, these same techniques also raise new challenges when decisions are made concerning border crossings, employment, education, public administration, and credit scoring. Fairness, accountability, and transparency must therefore be coded into the design of these systems to ensure that automated decision systems are non-discriminatory. And courts must look closely at these systems to assess their impact on fundamental rights and public safety.

The ELI's Guiding Principles set out 12 principles to assist developers, courts, and lawmakers in understanding and assessing the use of AI techniques.<sup>4</sup> The Guiding Principles are similar to an earlier framework – the Universal Guidelines for AI – that set out the rights and responsibilities for the use of AI systems.<sup>5</sup> But the Guiding Principles provide more focus and practical application. These Principles also fill in gaps left open in other areas of EU law, such as Article 22 of the GDPR and the Digital Services Act. Returning to the *Ligue des droits humains* case, we can see the particular relevance of the Principles concerning Traceable Decisions and Reasoned Decisions.

The Traceability Principle is not equivalent to the well-known Principle of Transparency.<sup>6</sup> Traceability focuses on the concrete path of a particular decision.<sup>7</sup> The ELI Paper explains that AI systems must include traceability by design. The Traceable Decisions Principle, and the subtle distinction with transparency, aligns perfectly with the Opinion of the Advocate General Pitruzzella in *Ligue des droits humains* who wrote of the PNR Directive that algorithms 'must function transparently, and that the result of their application must be traceable'.<sup>8</sup> Machine learning systems

**The ELI Guiding Principles also help inform the rapidly evolving field of AI policy frameworks.**

Marc Rotenberg

## Spotlight

may provide impressive results, but their legal status will remain unclear until traceability is established.

The Reasoned Decision Principles provides further insight into the assessment of AI techniques. Here the ELI advises that the complexity and opacity of algorithms should not render decisions that are ‘unreasoned, arbitrary, or unfounded.’<sup>9</sup> This understanding is also reflected in the *Ligue des droits humain* judgment and the Court’s specific concern about the modification of assessment criteria without human intervention.

The ELI Guiding Principles also help inform the rapidly evolving field of AI policy frameworks. In 2019, the OECD member countries set out

the AI Principles, the first global framework for AI policy.<sup>10</sup> The OECD AI Principles emphasized human-centric and trustworthy AI. In 2021, 193 nations backed the UNESCO Recommendation on AI Ethics, the most comprehensive approach to date for the governance of AI. Now the EU is pursuing the AI Act, and the Council of Europe is developing a Convention on AI.

A clear articulation of foundational principles for AI systems provides direction for lawmakers who develop new frameworks to govern AI and courts that examine disputes arising from the deployment of AI techniques. The ELI Guiding Principles are a major milestone in the development of the field of AI law.

**The ELI Guiding Principles are a major milestone in the development of the field of AI law.**

**Marc Rotenberg**

## The Author



Marc Rotenberg is the President and founder of the Center on AI and Digital Policy, and Adjunct Professor at Georgetown Law. His expertise includes data protection, Internet policy, open government, and AI policy.

He has served on expert panels for the OECD, UNESCO, the UN, among others. He has published in the *Economist*, the *European Data Protection Law Review*, the *European Law Journal*, the *Financial Times*, the *Harvard International Review*, *Japan Economic Forum*, the *New York Times*, *Scientific American*, the *Stanford Technology Law Review*, among others. Marc is a graduate of Harvard College, Stanford Law School, and Georgetown Law.

<sup>1</sup> Marc Rotenberg is President and Founder of the Center for AI and Digital Policy in Washington, DC. He is the editor of *The AI Policy Sourcebook* (2020), and author of the forthcoming *Law of Artificial Intelligence* (West Academic 2023).

<sup>2</sup> CJEU – C-817/19 – *Ligue des droits humains v Conseil des Ministres*, Judgement, 21 June 2022.

<sup>3</sup> Par 195.

<sup>4</sup> ELI, *Guiding Principles for Automated Decision-Making in the EU* (May 2022).

<sup>5</sup> The Public Voice, *The Universal Guidelines for AI* (2018).

<sup>6</sup> Marc Rotenberg, *Artificial Intelligence and the Right to Algorithmic Transparency* in Information Technology, Life Sciences, and Human Rights (CUP 2022).

<sup>7</sup> ELI Guiding Principles at 18.

<sup>8</sup> CJEU – C-817/19 – *Ligue des droits humains v Conseil des Ministres*, Opinion, 21 June 2022, par 228.

<sup>9</sup> ELI Paper at 19.

<sup>10</sup> OECD, *Recommendation of the Council on Artificial Intelligence*, 21 May 2019.

# Updates on ELI Projects

The following events took place in July and August 2022.

## HLEG on the Use of Biometric Techniques

### Meeting

On 23 June and 5 July 2022, ELI organised High Level Expert Group (HLEG) meetings on the Use of Biometric Techniques. Read more [here](#).

## AI and Public Administration: ELI Model Rules

### Presented at IPCLC

On 8 July 2022, the above ELI project was presented at the Intellectual Property Case Law Conference (IPCLC) 2022. Read more [here](#).

## Admissibility of E-Evidence in Criminal Proceedings

### Hybrid PT and AC Meeting

On 11 July 2022, the Project Team and Advisory Committee Meeting took place in a hybrid mode. Read more [here](#).

## AI and Public Administration: ELI Model Rules

### Available in Polish

On 18 July 2022, the Model Rules were published on the ELI website in Polish. Read more [here](#).

## Guiding Principles and Model Rules on Algorithmic Contracts

### Project Team Meeting

On 19 July 2022, the Project Team met remotely. Read more [here](#).

## The ELI Council Adopts Two New Projects

At its meeting of 5 July 2022, the ELI Council adopted two projects: Third Party Funding of Litigation and Guiding Principles on Implementing Workers' Right to Disconnect.

The first project aims at developing principles containing safeguards that provide an environment in which TPLF is allowed but balances the availability of the tool with the interests of claimants and defendants and a healthy litigation market. The principles may also serve as a 'check-list' for courts when regarding the validity of a TPLF agreement as well as providing inspiration for national legislators.

The project Reporters are [Susanne Augenhofer](#), [Dame Sara Cockerill](#) and [Henrik Rothe](#). More details are available [here](#).

The aim of the second Project Team is to draft guiding principles on the right to disconnect. Such principles will benefit from a comparative assessment of some important jurisdictions in Europe while also taking stock of on-going research projects on the very same topic.

The project is chaired by [Silvana Sciarra](#), and led by Reporters [Karine Lempen](#) and [Luca Ratti](#). More information is available [here](#).

## Call to Participants in an MCC

ELI Members are invited to join one or more Members Consultative Committees (MCCs) of the following projects:

- The Concept and the Role of Courts in Family and Succession Matters
- ELI-Mount Scopus European Standards of Judicial Independence
- Climate Justice – New Challenges for Law and Judges
- Ecocide
- Fundamental Constitutional Principles
- Guiding Principles and Model Rules on Algorithmic Contracts
- Third Party Funding of Litigation

MCC members will be invited to comment on drafts at various stages of the project's lifecycle, thereby offering guidance and insight.

The level of involvement in the MCC is not predetermined and, thus, it is for each MCC member to decide how much time to devote to it.

Typically, Project Reporters will submit drafts to the MCC at least twice per year, ahead of the ELI Council meeting in February and September, and invite comments.

You can register your interest to join the MCC by sending a message to [ELI Secretariat](#).

# Updates on Further ELI Projects

## The European Law Institute Publishes ELI Draft of a Revised Product Liability Directive

**Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (the 1985 PLD, as amended in 1999) was the basis for product liability in the EU for almost four decades. The ELI PLD Draft aims at proposing solutions that will make the 1985 PLD fit for to the digital age.**

The 1985 PLD's technology-neutral and cross-sectoral approach has made it rather resilient to many developments, but digitalisation, and in particular the increasing interaction between, and gradual merging of, tangible and purely digital goods means that the 1985 PLD is no longer as suitable in protecting consumers and other victims of harm caused by unsafe products.

The ELI PLD Draft aims at proposing solutions that will make the 1985 PLD fit for the digital age. It builds on earlier ELI output on the subject (see below), and was drafted in full acknowledgment of current plans by the European Commission to amend the 1985 PLD. It aims at providing a comprehensive, coherent and consistent model that can also serve as a point of reference for a future debate on a revision of the 1985 PLD at EU level.

Reflecting on the Team's output, Bernhard A Koch, the project's Co-Reporter said: 'After commenting on various aspects of the PLD that seem to require at least reconsideration, we wanted to show, with the example of an actual legislative draft text, that there are indeed ways of implementing our suggestions.'

That '[d]igitalisation has an impact on most aspects of product liability, including the notion of product,



the persons that can be held liable, relevant harm, defences, etc' was emphasised by Jean-Sébastien Borghetti, the other project's Co-Reporter, who went on to add that 'the team has done its best to tackle all these issues in a coherent way, as well as others, such as the interaction between product liability and product safety.'

The ELI PLD Draft is a perfect example of an output which has immediate practical utility. As Christiane Wendehorst, the project's chair, emphasised, 'Legal scholars often tend to present their good ideas in the abstract – it is one of the hallmarks of ELI work to also demonstrate how they might look in practice.'

The output is available [here](#). A webinar on the topic took place on 29 August 2022. To watch the webinar, please click [here](#).

For an overview of ELI's previous contributions to the topic, please see:

- '[Guiding Principles for Updating the EU Product Liability Directive for the Digital Age](#)', authored by Christian Twigg-Flesner, which set out specific proposals for updating the EU Product Liability Directive with a view to adapting it to the digital age.
- '[ELI Response to the European Commission's Public Consultation on Civil Liability](#)', prepared under the leadership of Bernhard A Koch, which produced recommendations on the way forward and answered questions specifically posed by the European Commission.

# Updates on ELI Hub and SIG Activities

The following events by ELI Hubs and SIGs that took place in July and August 2022.

## ELI Croatian Hub

### 17th Webinar in Hub's Series

On 5 July 2022, the Hub held a webinar on 'Regulation Proposal COM(2021) 223 on Foreign Subsidies Distorting the Internal Market'. Read more [here](#).

## ELI Belgio-Luxembourg Hub

### Seventh Seminar

On 7 July 2022, the Hub held a seminar on 'Planned Obsolescence' as a policy of planning or designing a product. Read more [here](#).

## ELI Austrian Hub

### Conference

On 8–9 July 2022, the Hub held a conference on 'Class and Aggregate Litigation in Europe and North America'. Read more [here](#).

## ELI Family Law SIG

### First Webinar

On 5 May 2022, the first webinar on 'Family Status, Identities and Private International Law' took place. Read more [here](#).

## ELI Digital Law SIG

### Sixth Seminar

On 13 July 2022, the Hub held its sixth seminar on 'Tackling Disinformation'. Read more [here](#).

## ELI Ukrainian Hub

### Second Webinar

On 26 August 2022, the second webinar on 'Combating Illegal Migration' took place. Read more [here](#).

## ELI Successfully Launches a Turkish Hub

On 29 July 2022, ELI launched a Turkish Hub. This is the 14th Hub ELI has created.

The Hub is co-chaired by Başak Başoğlu, Hüseyin Can Aksoy, Ayşegül Buğra, Kadir Berk Kapancı and Bora Kaya.

The Hub also has an Advisory Board. Its members are Samim Ünan, Şebnem Akipek Öcal, Yeşim Atamer, Orkun Akseli, Valentin Retornaz and Eylem Aksoy Retornaz.



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TURKISH HUB

# Updates on ELI Representation

Below is an overview of ELI's representational activities that took place in July/August 2022.



## ELI President Meets President of the Korea Legislation Research Institute

7 July 2022

ELI President, Prof Dr Pascal Pichonnaz, met President Kim Kye-Hong of the Korea Legislation Research Institute (KLRI) remotely. The Presidents were joined by Secretary General Dr Vanessa Wilcox on ELI's side and Senior Research Fellows Kim Hyung-Gun and Kim Dong-Kyun on the KLRI side. Read more [here](#).



## ELI President Gives a Keynote Speech at 'Justice in Crisis? Equality, Access to Justice & Digital Inclusion' Conference

12 July 2022

ELI President, Prof Dr Pascal Pichonnaz, gave a keynote speech at the above event organised by the Centre for Access to Justice and Inclusion (CAJI). The focus of the speech was on access to justice and how to establish effective remedies in the digital age. Read more [here](#).



## ELI Representatives Participate in 55th UNCITRAL Session

27 June–15 July 2022

ELI President, Prof Dr Pascal Pichonnaz, ELI's Executive Committee Member, Teresa Rodríguez de las Heras Ballell, and ELI's Scientific Director, Prof Dr Christiane Wenderhorst, represented ELI at the 55th United Nations Commission on International Trade Law (UNCITRAL) Commission Session. Read more [here](#).



## ELI Presidency and other ELI Members take part in the 23rd Summer School European Private Law

4 July–16 July 2022

ELI President, Prof Dr Pascal Pichonnaz, gave several lectures, while ELI Vice-President Lord Thomas gave an opening speech at the Summer School organised by the Academy for European Private Law, in collaboration with the University of Salzburg and leading universities around the world. The event took place in Salzburg. Read more [here](#).



The European Law Students' Association

## ELI Secretary General Meets Outgoing and Incoming ELSA International Presidents

25 July 2022

ELI's Secretary General, Dr Vanessa Wilcox, was introduced to incoming President of ELSA International, Yuri van Steenwijk, by outgoing President, Francisco Argáez Lima. The meeting served as an occasion to review cooperation to date and discuss other means of collaboration. Read more [here](#).



## ELI President Attends the Uniform Law Conference of Canada's Annual Conference

15–19 August 2022

ELI President, Pascal Pichonnaz, attended the Uniform Law Conference of Canada (ULCC) Annual Conference where he presented the work of ELI to the civil section of the ULCC: more specifically the ELI Principles on the Use of Digital Assets as Security. The event took place in Canada. Read more [here](#).

# ELI Welcomes its New Members

ELI is pleased to inform you about its new individual and institutional Members.

## New Individual Members

**Rosanna Anderson**, Tilburg University, Netherlands

**Elisabeth Alofs**, Free University of Brussels, Belgium

**Metin Ugur Aytekin**, Piri Reis University, Turkey

**Peter C H Chan**, City University of Hong Kong, China

**Tomasz Chmielewski**, Kancelaria Adwokacka Tomasz Chmielewski, Poland

**Adriana Ciancio**, University of Catania, Italy

**Michael-James Edward Clifton**, EFTA Court, Luxembourg

**María del Carmen García Garnica**, University of Granada, Spain

**Djalma Gasparotto**, Gasparotto Advogados e Consultores, Brasil

**Christine Hampton**, University of Graz, Austria

**Rebeca Herrero Morant**, University of Zaragoza, Spain

**Florenzia Marotta-Wurgler**, New York University School of Law, USA

**Sarah McKechnie**, Bar of Ireland, Ireland

**Sandra Schurian**, University of Graz, Austria

**Patricio Uruena Palacio**, Embassy and Permanent Mission of the Argentine Republic to the International Organizations in Vienna, Austria

**Leah Wortham**, Catholic University of America, USA

## New Institutional Members

### Faculty of Law of Bilkent University

Bilkent University was founded on 20 October 1984 by İhsan Dođramacı (1915–2010) and admitted its first students in 1986. The Law Faculty, which was established in 2002, commenced education with 140 students and produced its first graduates in 2006. To the present day, the Faculty has contributed approximately a thousand legal practitioners to the legal world of lawyers, judges, public prosecutors, and academicians and has raised qualified lawyers who gained ground in national and international areas, in international organisations, and law firms.



**Bilkent University**  
**Faculty of Law**



**Bundesgericht**  
**Tribunal fédéral**  
**Tribunale federale**  
**Tribunal federal**

### Federal Supreme Court of Switzerland

The Swiss Federal Supreme Court is the highest judicial authority in Switzerland. It rules on appeals against decisions of the highest cantonal courts and the three federal courts of the first instance. It examines whether they have applied the law correctly. In this function, the Federal Supreme Court covers all legal domains, in principle: civil and criminal law, debt enforcement and bankruptcy law, as well as public and administrative law (including social insurance law). Through its decisions, the Court ensures the uniform application of federal law. It protects the constitutional rights of citizens.

# 2022 ELI Annual Conference and Meetings

**ELI is pleased to have welcomed over 200 guests to its 2022 ELI Annual Conference and Meetings at Universidad Carlos III de Madrid and to have secured over 200 registrants online.**

The 2022 ELI Annual Conference and Meetings was hosted by Universidad Carlos III de Madrid. The Conference featured the Ole Lando Memorial Lecture, a Welcome Address, Keynote, ELI Young Lawyers award as well as the ELI Hub and SIG of the Year awards. Further, a series of panels on current and prospective ELI projects, which span a number of areas of law, took center stage. A detailed account of the event will feature in our next Newsletter.



## **Ole Lando Memoriam Lecture**

This year's Ole Lando Memorial Lecture on the 'Interaction between Soft Law and Case Law – How Precedents Fulfill Ole Lando's Ambitions to Harmonize European Contract Law' was delivered by Prof Dr Christina Ramberg (Professor at Stockholm University). She was introduced by Prof em Hector MacQueen (University of Edinburg), last year's speaker, and she nominated Prof Dr Anna Veneziano (Deputy Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT)) to give next year's speech. The Ole Lando Memorial Lecture series was launched in 2019 in memory of Danish Professor Ole Lando (1922–2019). Professor Lando was a Founding Member of ELI and a leading private international lawyer. Among many achievements of his long and varied career were the 'Principles of European Contract Law', which have been highly influential in the development of both EU and national contract laws.



## **Welcome Addresses**

Welcome Addresses were given by ELI President, Prof Dr Pascal Pichonnaz and the Rector of Universidad Carlos III de Madrid Juan Romo. Juan Romo is a Professor of Statistics. He has been Rector of Universidad Carlos III de Madrid since 2015.



## **Keynote Speech on Climate Change**

The Keynote Speech on Climate Change was delivered by Valérie Masson-Delmotte, who is a Co-Chair of Working Group I of the Intergovernmental Panel on Climate Change of the United Nations and a Senior Scientist in France's Laboratory of Climate and Environment Sciences at the University of Paris Saclay.

## **ELI Young Lawyers Award**

This year, ELI once again presented its Young Lawyers Award, which was officially launched in 2016. Tea Mustać (University of Rijeka, Faculty of Law) won the award. Her paper on 'The Lost Philosophy of Copyright' will be uploaded on the ELI website soon. An extract will also feature in the next Newsletter.



## **ELI Hub and SIG Awards**

Hubs and Special Interest Groups (SIGs) were established to monitor legal developments and facilitate discussions among ELI members and others. Whereas Hubs are country specific groups, SIGs are topic specific. This year, the ELI Austrian and Croatian Hubs won the Hub of the Year award. The ELI Environmental Law SIG won the SIG of the Year award.

# Events Calendar At-A-Glance

Please save the following dates should the events below be of interest to you. Stay up to date by following our [website](#) and social media channels for more details.

A blue vertical bar on the left side of the calendar contains the text "Sep" in white, indicating the month of the events.

**26 Sep** **ELI Belgio-Luxembourg Hub: Regulating Trade in Forest Risk Commodities: Two Cheers for the EU**  
*Online*

**28-30 Sep** **ELI Croatian Hub & ELI Global Private Law SIG: Zagreb Law of Obligations Conference**  
*Zagreb, Hybrid*

**29 Sep** **ELI Insurance Law SIG: Insurance in Times of War: Selected Issues**  
*Online*

**28 Oct** **ELI Hungarian Hub/ORAC Conference and Book Launch**  
*Online*

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

## Executive Committee

President:	Pascal Pichonnaz
First Vice-President:	Lord John Thomas
Second Vice-President:	Anne Birgitte Gammeljord
Treasurer:	Pietro Sirena
Other Members:	Bénédicte Fauvarque-Cosson Teresa Rodríguez de las Heras Ballell Aneta Wiewiórowska-Domagalska

## ELI in Vienna

The Secretariat of 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.



### ELI Secretariat

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