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ELI Updates

May–June 2017

MESSAGE FROM IRMGARD GRISS, ELI RETURNING OFFICER AND SPEAKER OF THE SENATE



Dear Members and Friends of the ELI

It is my pleasure to address you this month in my capacity as Returning Officer, appointed by the ELI Senate to oversee the 2017 elections. The elections, which will lead to the establishment of a new Council at the Annual Conference and General Assembly this September, reflect the ELI's status as an open and democratic institution. Only half the seats on the Council are up for re-election every two years, while the other Members continue to serve out their terms. This is done in order to ensure continuity.

The work of the Council is vital to the ELI's success. Among other things, Council Members are involved in a wide range of tasks from approving new Fellows to determining projects to be pursued and approving project outcomes. Council Members play a decisive role in establishing national Hubs and using them as a vehicle to promote the ELI's mission. Members of the Executive Committee, including the President, Vice-President and Treasurer, are elected from and by the Council.

Being a Council Member affords you direct influence on the development of the ELI; it allows you to work together with prominent legal experts from all over Europe and offers the opportunity to be actively involved in projects aimed at improving the law and lawmaking across the continent. Council Members typically meet twice a year, with other communication and decision-making taking place via email and the MyELI platform. Reasonable expenses incurred in the course of executing Council-related work are reimbursed by the ELI.

The activities and progress made by the ELI, which is reported every two months in these newsletters, would not be possible without the work of the Council. As you read this newsletter please consider, if you are a candidate, how you would like to see its pages filled in future, and whether you could help these ideas come to fruition as a Member of the next Council.

If you are a Fellow not standing for election, please take the opportunity to acquaint yourself with the list of candidates who would like to represent you in the ELI Council. Let your voice be heard and vote at the General Assembly in Vienna between 6–7 September 2017; if you cannot attend you may vote by proxy. Detailed information concerning the process is available on the ELI website and featured in previous newsletters.

The ELI recently celebrated its sixth birthday (on 1 June) and as a Founding Member, it is with great pride that I look back at what it has achieved in such a short period of time. However, there is much more to anticipate and I hope that you will be a significant part of it. I will conclude by saying that I look forward to overseeing the election process, and it is my wish to see a committed and dynamic Council elected in September – a Council representing the diversity of our body of Members and sharing the ambition of the ELI to further establish itself as an influential, renowned and representative institution.

Irmgard Griss

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The ELI Marks its Sixth Birthday

On 1 June 2017, the ELI marked its sixth birthday. It is steadily growing. There are currently over 1,300 Individual Members (including academics, judges, lawyers and other legal professionals) and 100 Institutional Observers (such as professional associations, international organisations, national supreme courts and other courts of high instance, academic bodies and networks, European institutions as well as law firms).

In 2017, the ELI also adopted its first Instrument, on the Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law and is in the process of approving another on the Rescue of Business in Insolvency Law. Experts working under the auspices of the ELI will soon present the ELI's eight Statement (on the Detention of Asylum Seekers and Irregular Migrants and the Rule of Law). With six completed projects, nine ongoing and several upcoming ones, the ELI has proved its ability to offer comprehensive solutions of immediate practical utility to legislative bodies, judiciaries or other interested parties.

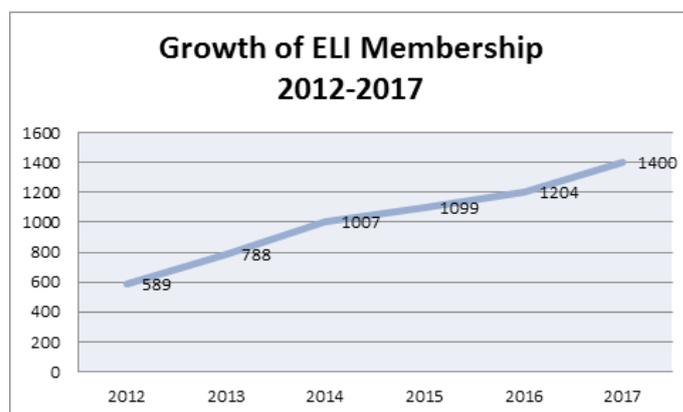
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The objectives of the ELI are multifold: these include the desire to maintain diversity with regard to areas of expertise, national and professional backgrounds and to offer a unique meeting point for its Members, the broad constituency of which provides legitimacy to ELI projects. In order to achieve this, the ELI Membership



Last year has also seen the growth of Special Interest Groups (SIGs), which facilitate networking and bolster the exchange of knowledge across specific areas of law. The ELI's Hubs – which provide a forum for ELI Members to meet closer to home, communicate in their native language, discuss current or upcoming projects and generate ideas for future ELI activities – are also increasing in numbers, the Italian and Spanish Hubs having been set up in 2016. With several other Hubs and ideas underway, the ELI has much to look forward to.

Committee announces different focal points for Members throughout the year. Applications from jurists in other fields are, as always, highly desirable too, irrespective of the Membership Committee's current focus. Membership applications can be made directly through the [ELI's website](#). Detailed information on what the ELI currently does and stands for can be found on the website as well.

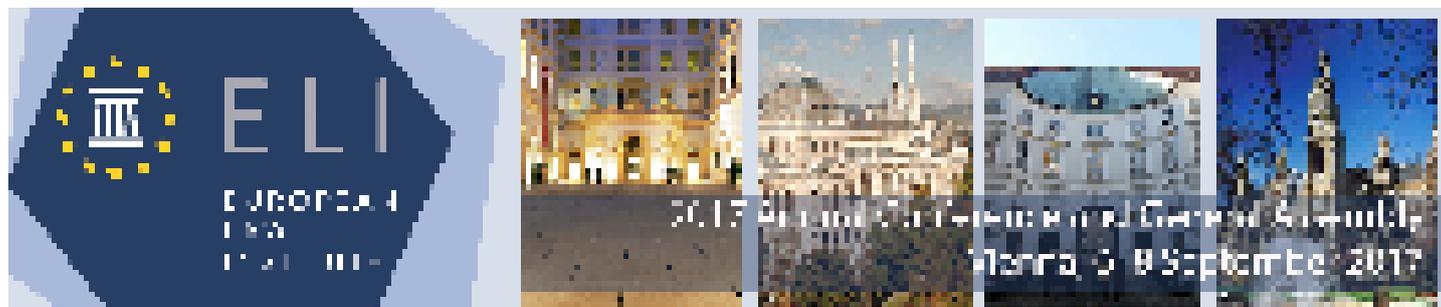
Membership Fee: if you have not yet paid your membership fee for 2017, please do so by bank transfer, PayPal or by filling in a SEPA Direct Debit mandate form, which you will find [here](#). Please [contact the Secretariat](#) with any questions arising in this context.

Targeted Areas of Law:

Targeted Professions:

Administrative and Constitutional Law

Notaries and Judges



Join the ELI Community Working to Improve European Law

Keynote Speakers



Wolfgang Brandstetter

Austrian Vice-Chancellor
and Minister of Justice

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Michael O'Flaherty

Director of the EU Agency
for Fundamental Rights



Lance Liebman

Former Director of the American Law
Institute and Professor of Law at
Columbia Law School

Hotels

Kindly note that the availability of rooms in Vienna in September is limited, due to other events happening at that time. Be sure to take advantage of the exclusive deals arranged by the ELI's Secretariat and book your room well in advance!

Conference Dinners

Please also be advised that there is a limited number of places available at Conference dinners. Kindly register as soon as possible and join us at these prestigious and enjoyable event!

[Agenda](#)

[Registration](#)

[Hotels](#)

The First European Young Lawyers Award

The European Young Lawyers Award was officially launched at the 2016 Annual Conference. Its goal is to provide the young European legal community with a mechanism to propose practical suggestions for the improvement of European law, as a way of giving voice to future European legal experts and to helping the ELI in fulfilling its core mission of improving the quality of European law.

Candidates had to submit a unique and original paper which was not previously published and which dealt with a European legal issue that could be improved. The winner of the first award, supported by the ELI and other appropriate participating institutions, will be announced at the ELI General Assembly on 6 September 2017.



Jury

The ELI is proud to announce the following Jury members, who are currently reviewing the submitted entries.

- **Robert Bray:** Jury Chair, Head of Unit, Committee on Legal Affairs of the European Parliament
- **Sabino Cassese:** Former Italian Constitutional Court Judge and Professor of Administrative Law
- **Katharina Miller:** 3C Compliance, SL (Founding Partner), European Woman Lawyers Association (Board Member)
- **Diana Wallis:** ELI President
- **Reinhard Zimmermann:** Professor and Director of the Max Planck Institute for Comparative and International Private Law



The winner will be revealed at the end of July 2017 and will be invited to present his/her paper to the ELI General Assembly on 6 September (at the ELI's expense). This will provide him/her with an opportunity to meet and greet some of the world's leading law experts and exchange ideas with them.



In addition, the winning contribution will be published on the ELI's website and its author will be awarded with two years of free ELI fellowship, which will allow him/her to be involved in SIGs, present project proposals and participate in the Member Consultative Committees of different ELI projects.

More information on the ELI Young Lawyers Award 2017 can be found [here](#).

Panel Discussions

The 2017 Annual Conference will feature plenary and parallel sessions focusing on diverse fields of law, in areas where the ELI is currently researching or hoping to commence research in future. The following pages provide an overview of the panel sessions. A more detailed agenda for each session will be made available in due course.

Panels on 6 September

Plenary Session: Rescue of Business in Insolvency Law (14:30)

The Rescue of Business in Insolvency Law Project Team began their work in late 2013 with the challenging aim of designing elements of an appropriate enabling legal framework for business rescue in Europe. This includes certain statutory procedures that could better enable parties to negotiate solutions when businesses become financially distressed. The ELI is pleased to announce that the final report of this flagship Project is ready to be presented at the upcoming Annual Conference. Panel members include Prof em Bob Wessels (University of Leiden) and Prof Stephan Madaus (Martin Luther University, Halle-Wittenberg), both of whom are Project Reporters. The Rescue of Business in Insolvency Law

Project is timely and may have a significant and positive impact on the harmonisation efforts of the European Commission as laid down in the November 2016 Proposal for a Directive on Preventive Restructuring Frameworks. The Instrument contains 114 recommendations on a variety of themes affected by the rescue of financially distressed businesses: legal rules for practitioners and courts, contract law, the treatment and ranking of creditors' claims, labour law, laws relating to transaction avoidance and corporate law. Following the presentation and discussions, the ELI General Assembly will be given the opportunity to vote on the Instrument.



This project is co-funded by the European Union

Parallel Session: Detention of Asylum Seekers and Irregular Migrants and the Rule of Law(16:30)

The importance and urgency of tackling this Project arose as a result of an increased number of cases of third country nationals arriving in Europe either as asylum seekers or irregular migrants, many of whom, including children, were forced to stay in detention centres for long periods of time. The influx of individuals, usually fleeing their home countries as a measure of last resort, triggers a lot of controversies and has been addressed in cases seen by the Court of Justice of the European Union (CJEU), the European Court of Human Rights (ECtHR) and in national courts. It is crucial to guarantee that norms and rules enshrined by European and national laws are effectively and coherently implemented. The ELI is pleased to announce that its Project, which aims

to contribute to the effective application of existing European law, including due process standards and conditions of detention, is drawing to an end. The final results of the Project, a Statement on the Detention of Asylum Seekers and Irregular Migrants and the Rule of Law, will be presented at the Annual Conference. Please join the session, in which the Project Repporteur, Boštjan Zalar (Professor, Judge of the Administrative Court of the Republic of Slovenia and ECtHR ad hoc judge) will present a set of judicial check-lists tools – designed to provide much required guidance to European judges adjudicating detention cases – and accompanying explanations.

Parallel Session: Common Constitutional Principles in Europe (16:30)

The phrase 'constitutional traditions common to the Member States', has been formulated by the European Court of Justice and has found its way into the Treaty of the European Union and the Charter of Fundamental Rights of the European Union. This project seeks to identify the source of those traditions; 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 panel, chaired by Jeffrey Jowell, will pursue these questions and devise a research plan.

Panels on 7 September

Parallel Session: From Transnational Principles to European Rules of Civil Procedure: Evidence, Provisional Measures and Service of Documents (09:00)

The ELI and the International Institute for the Unification of Private Law (UNIDROIT) embarked on this joint Project in 2013 with the aim of developing Model Rules of European Civil Procedure which would reflect the common standards and best practices of European legislation in the area of civil procedure. Since then, the Project has grown substantially from three to nine Working Groups focusing on essential elements of civil procedural law. At this Conference, the output of the three initial Working Groups will be presented and discussed for the first time. The first consolidated draft of model rules focuses on access

to information and evidence, provisional and protective measures and service and due notice of proceedings. Members of the Steering Committee, Members and a Co-Reporter of the 'Structure' Working Group, as well as the chair of the ELI Members Consultative Committee will present and discuss the first official consolidated draft of three sets of rules.

The panel will be co-chaired by Diana Wallis, ELI President, and Anna Veneziano, UNIDROIT Deputy Secretary-General.



This project is co-funded by the European Union

Parallel Session: Building a Data Economy (09:00)

Data plays a significant role in today's global economy leading to economic growth, job creation and further progress in innovation and technology. It is even considered the currency of the digital economy, its potential, if unleashed, is phenomenal (it is predicted to form 4% of overall EU GDP by 2020). While the law of commerce globally has historically focused on trade in items and on payment in monetary or other assets, in a data economy, tradeable items are often information represented, in particular, by a binary code. This joint ELI and American Law Institute (ALI) Project seeks to analyse how law in the EU and US applies to the new

data economy. It also takes into account the law of EU Member States and US law at both Federal and State levels. The first phase of this Project is in the nature of a feasibility study, setting out the basic principles and main challenges both lawmakers in the US and in Europe face. It takes contract law as a starting point. This panel will explore relevant issues pertaining to the ongoing ALI-ELI work in the field and will consider questions such as the extent to which existing legislation enhances and boosts the data economy in the EU and US; the extent to which it is an impediment; and whether there is a room for new legislation.

Parallel Session: The Courts and Alternative Dispute Resolution (10:45)

This panel will present the preliminary findings of the joint ELI and European Network of Councils for the Judiciary (ENCJ) Project on the Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution. The Project has already consulted on the risks arising from different methods of alternative dispute resolution, and the relationship between court-

based and non-court-based dispute resolution processes. It is now consulting on a code of good practice as to what courts and judges need to assess when considering or requiring the parties to participate in an alternative dispute resolution process.



This project is co-funded by the European Union

Parallel Session: Rules and Standards for Online Intermediary Platforms (10:45)

Since the last ELI Annual Conference a new Project on ELI Online Intermediary Platforms is underway. It deals with online platforms that form marketplaces where customers can purchase goods or services from a multitude of suppliers (eg Ebay, Airbnb, Uber). The aim of this Project is to draft Model Rules which can serve as a source of inspiration for national, European

or international lawmaking, for self-regulation and for drafting the terms and conditions of such platforms. The panel will give an insight into the Project Team's ongoing works and in particular will deal with two core aspects: the first is the question of the scope of any regulation or self-regulation. Should only platforms which form a two-sided marketplace where platform users conclude

contracts with partners from the other end of the market be included? Or rather, should platforms that offer, for example comparison services or that allow ratings by customers be tackled? Is platform regulation mainly a consumer law issue or should a broader approach be taken? Secondly, increasing aspects of 'compliance by design' and data-driven regulations fall within the focus of this Project. Are platforms required to adopt a design system which ensures that users offering

goods or services via them fulfil their information requirements? Should platforms be obliged to use readily available data on transactions in order to identify users that have wrongly labelled themselves as consumers if the data indicates that they are using the platform in a business-like manner? The Project Reporters will discuss such questions with experts from regulatory bodies and from the platform industry.

Parallel Session: Business and Human Rights (14:00)

Some of the largest multinational corporations now easily rival nation states in terms of economic power and influence. This development has resulted in increased efforts to impose stricter duties to respect human rights on private actors. As a response, the United Nations Human Rights Council established 'Protect, Respect and Remedy: A Framework for Business and Human Rights' in 2008. Under that framework, UN Guiding Principles on Business and Human Rights were developed and published in 2011. On 20 June 2016, the Council of the European Union adopted a conclusion on the subject, stating that 'access to effective remedies for victims of business-related human rights abuses is of crucial importance and should be addressed in National Action Plans'. It also acknowledged that 'further progress on

this third pillar of the Guiding Principles [ie the duty to provide victims with access to effective remedy, both judicial and non-judicial] is necessary'. Indeed, the Charter of Fundamental Rights also enshrines EU citizens' 'right to an effective remedy before a tribunal'. As part of this the panel will explore how violations by EU corporations outside of the EU can be the subject of adequate remedy before EU courts or tribunals but by the same token ensuring that EU citizens have equal access to processes to hold corporations to account for breaches of EU law within the Union. The Business and Human Rights panel will discuss the above call for clear legislative guidelines on how to improve access to effective and appropriate remedies when businesses violate human rights and values enshrined in EU law.

Parallel Session: Internet of Things (14:00)

Advancing the Internet of Things (IoT), a concept describing an environment in which physical and virtual objects inter-network, is now high on the legal agenda (see eg the European Commission's 'Advancing the Internet of Things in Europe (2016)'). The expected benefits of the IoT span from increased safety and efficiency to promoting the independence and improved quality of life of senior citizens. At the same time there are certain challenges which must be addressed: inter

alia, a balance needs to be struck between fostering innovation and consumer protection. In so doing the law must also respond to the question of common European national and industry standards. In particular, the questions of liability (civil and criminal) and data protection have to be urgently dealt with. This panel will explore the feasibility of future ELI work in the field, building on the ELI's successful work on other aspects of digitalisation and the EU's Digital Single Market Strategy.

Third-Party Funding of Litigation (15:45)

Third-party litigation funding has emerged as an increasingly viable alternative to traditional methods of funding litigation, and it can increase access to justice for those who would not otherwise be able to secure funding considering the rising costs of litigation. Amongst other sources Crowdfunding, exemplified by Crowdjustice's funding of the 'People's Challenge', a case against the UK Government to determine parliamentary rights in the context of Britain's exit from the EU can assist in bringing cases of public interest to the fore. At the same time, however, there are many challenges

resulting from the current lack of regulation in this regard (eg with regard to the participation of funders in proceedings, conflicts of interest, judicial review, ensuring the fairness of the deal and the financial viability and trustworthiness of funders). Even more intricate problems arise in the context of collective redress. This panel will outline the evolving trends in litigation and raise the question on the need for harmonising the regulatory framework for third-party funding of litigation in Europe and in doing so seek to highlight the need to balance the interests of the various parties involved.

Parallel Session: Fiduciary Access to Digital Assets (15:45)

The Fiduciary Access to Digital Assets Feasibility Study Group is now working on a European version of the US Fiduciary Access to Digital Assets Act, Revised (2015). This model Act has proven to be extremely successful and has solved a number of problems in US legal practice. For Europe, a major problem is the diversity of national laws on property, succession and seizure. Can this diversity be overcome with a model law? In many national jurisdictions the status of digital assets has not

yet crystallised. A clear example is the ongoing litigation in Germany concerning the legal nature of Facebook accounts and the question whether access is allowed by interested parties under telecommunications law. The panel will discuss this legal diversity and the difficulties which must be solved before a potentially successful model law can be drafted. Active input from participants will be highly valued.

Project Panels on 8 September

Parallel Session: Vulnerable Adults (09:30)

Due to the diversity of national legislations and court practice, persons who are unable to protect their interests because of an impairment or insufficiency of their personal faculties face practical difficulties. This includes elderly people suffering from dementia or victims of severe brain injuries. Currently their personal or financial interests are at issue in cross-border scenarios. The protection of their fundamental rights lacks the required degree of effectiveness, and legal security is far from being ensured. The practical and political relevance of the topic is now confirmed by the Resolution adopted

by European Parliament on 1 June 2017, under which the Commission has been asked to put forward rules to foster automatic EU-wide recognition and enforcement of protection measures, such as decisions on legal guardianship, and private mandates (2015/2085(INL)). This panel will provide an opportunity to scrutinise and assess key developments in this field, while potentially marking the start of a new ELI Project.



This project is co-funded by the European Union

Parallel Session: Empowering European Families (11:15)

The Empowering European Families Project, embarked on by the ELI, the University of Vienna and the University of Utrecht (the latter two being beneficiaries of an EU Action Grant for this Project), aims at raising awareness of the intricacies that come with being an international couple, or with moving cross-border as a family, in the EU. More specifically, it aims at facilitating the free movement of citizens by developing contract templates concerning issues such as property, maintenance, and pension rights, including aspects of choice of law and choice of court,

which couples and their legal advisers may use to express their choices and have better certainty about their rights and obligations when moving abroad. It will also develop contract templates for informal relationships in the EU (cohabitation agreements). This panel will present the results of the second workstream which dealt with property, maintenance and pension rights for both spouses and registered partners.



Co-funded by the Justice Programme of the European Union

Parallel Session: R&D Tax Incentives (14:00)

Increased research and development ('R&D') is one of the main objectives of the EU and has recently been emphasised even more intensely by the latter which hopes that expenditure in R&D grows to 4% of the EU's GDP by 2020. R&D tax incentives are estimated to stimulate investment and are an important means to reach this goal. Input tax incentives for R&D can take many forms, such as tax credits, enhanced allowances for

expenditure on R&D, accelerated depreciation and even incentives that apply to social contributions and/or wage taxes. Although tax incentives for R&D are common in Europe, Member States designed their own tax incentive schemes from the outset without coordinating their domestic regimes with other Member States' regimes. Additionally, the EU Commission has re-launched its Common Consolidated Corporate Tax base project

(CCCTB), with the aim of establishing common corporate tax rules and consolidating the calculation of tax across the EU. The CCCTB project includes a R&D Tax Incentive scheme allowing for a deduction of up to double the R&D expense. A harmonised list of R&D expenses at European

level and an articulation of the CCCTB and national R&D tax incentive systems is considered indispensable. A panel of outstanding experts will present and debate the stakes, challenges and current developments in this area.

Parallel Session: Conflict of Laws and Digitalisation (15:15)

As is the case with the law generally, legal rules still focus, first of all, on the 'real' world around us, just as legal proceedings are still based on printed (real) documents. Digitalisation of the law and legal proceedings increasingly makes us rethink existing law in as far as this focus on the 'real' and not the digital or 'virtual' world creates a growing number of problems in legal practice.

In the area of conflict of laws *lex rei sitae* traditionally plays the leading role. But how may one find the situs of data? What is the status of digital documents (such as an e-conveyance or an electronic statement of claim) abroad? When can they be recognised in a foreign jurisdiction? This new problem area will be explored during this panel discussion.

SIG Conferences and Meetings on 8 September

On the last day of the Conference, several Special Interest Groups (SIGs) will hold Conferences/meetings, parallel to the above-mentioned project panels, including:

- **Digital Law SIG Conference** (open to public) (08:30–10:45)
- **Business and Financial Law SIG Meeting** (Members only) (11:15–12:30)
- **Administrative Law SIG Conference** (open to public) (14:00–15:15)
- **Family and Succession Law SIG Meeting** (Members only) (15:15–16:30)
- **Civil Law SIG Meeting** (Members only) (tbc)
- **Contract, Tort and Property Law SIG Meeting** (Members only) (tbc)



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2017 Annual Conference and General Assembly
Vienna, 6–8 September 2017



ELI Elections

The nomination and endorsement period for potential Members of the ELI Council is finally over. This phase lasted from 28 April–16 June 2017. Soon, Fellows will have the chance to vote for their preferred candidates during the Annual Conference in Vienna from 6–7 September. The Council consists of a maximum of 60 Members from among the ELI's Fellows and should ideally represent different legal traditions, disciplines and professions.

The election procedure is governed by the ELI Election Bye-law adopted in Council Decision 2013/5 of 2 April 2013, which can be consulted [here](#). The list of remaining Council Members, whose mandate lasts until 2019, can be consulted [here](#).

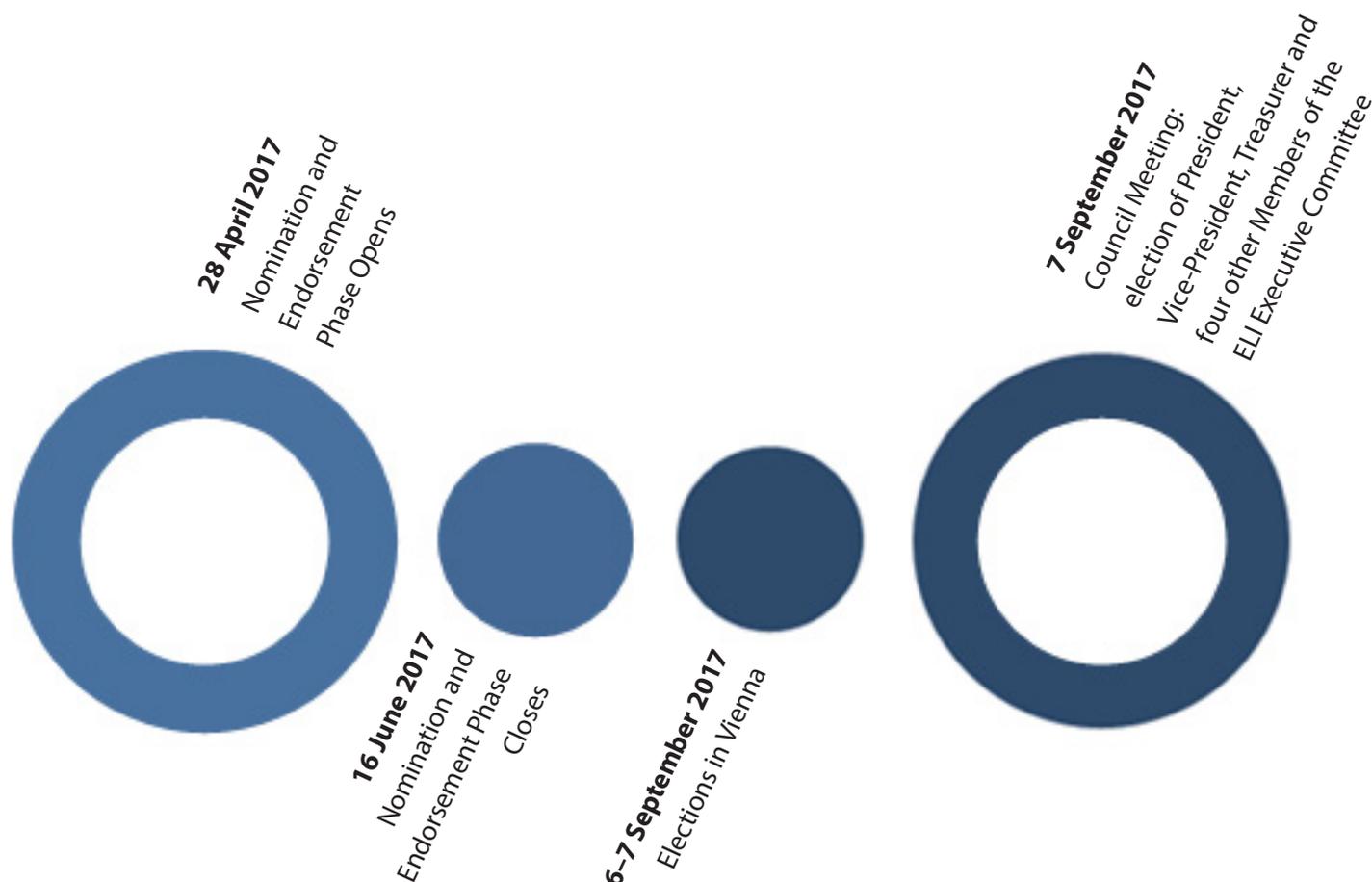
The elections are prepared and administrated by the ELI Secretariat and overseen by the Returning Officer, Irmgard Griss (Speaker of the Senate).

In order to stand for election, each candidate had to submit a completed nomination form together with a portrait photo. All nominations had to be endorsed by five Fellows. Candidates were not allowed to endorse their own nominations.

Each ELI Fellow had the chance to endorse an unlimited number of candidates. The names of endorsers is only visible to the Returning Officer and support staff in the Secretariat.

The full list of endorsed candidates can be viewed on the MyELI platform and will be published on the ELI website on 5 July 2017. Every ELI Fellow present at the meeting of the General Assembly is entitled to vote. Proxy voting is possible, with the number of proxies limited to one proxy per Fellow in attendance. The elected candidates become Members of the Council on the condition that they accept their election.

The first meeting of the newly elected Council will follow after the announcement of the election results on 7 September. This meeting will also be the point at which the President, Vice-President, Treasurer and the four other Members of the Executive Committee will be (re) elected. It is therefore important that candidates who stand for election arrange their schedule so as to enable them to take part in the meeting. Further details on the election of the Executive Committee will be provided soon.



Updates on Projects

Presentation of the First Consolidated Draft of ELI-UNIDROIT Joint Project on Civil Procedure

The ELI-UNIDROIT joint Project on civil procedure aims to build upon the 'Principles of Transnational Civil Procedure', an instrument jointly published by the American Law Institute (ALI) and UNIDROIT. The ELI and UNIDROIT cooperation endeavours to draft the ALI-UNIDROIT Principles from a European perspective in order to develop a coherent set of soft law European rules of civil procedure that provide practical and accessible guidance.

ELI President and Member of the Joint Steering Committee of the ELI-UNIDROIT Project, Diana Wallis, was



This project is co-funded by the European Union

invited to attend the 96th session of the UNIDROIT Governing Council. The session itself was held at the seat of UNIDROIT in Rome, from 10–12 May 2017. On the morning of 11 May 2017,



Anna Veneziano (a Member of the Project's Steering Committee, representing UNIDROIT) and Diana Wallis (on behalf of the ELI) presented the first consolidated draft of three Working Groups to the UNIDROIT Governing Council. The Project will be presented again at the ELI Annual Conference on 7 September 2017.

First Meeting of the Joint ELI/ULC Feasibility Study Group on Digital Assets

The ELI is pleased to announce the first (and indeed highly successful) meeting of the joint Feasibility Study Group, which took place on 11 May 2017 via video conferencing.

In addition to ELI Members, the chair of the US Uniform Law Commission Draft Committee (ULC), a legal counsel of the ULC and the chair of the Uniform Law Conference of Canada (ULCC) Drafting Committee took part in the meeting. After just about a year, the US model law has already been enacted in 32 States. Canada proceeds on the basis of the first-year version of Uniform Fiduciary Access to Digital Assets Act (UFADAA) while Australia is looking at the Canadian model. Furthermore, the civil law jurisdiction of Quebec has no problems with implementing the Canadian draft. The Study Group is currently working on a comparative overview in order to create a possible model law.



Uniform Law Commission

The ULC was established in 1892 and is a non-profit American association. It aims to provide US States and jurisdictions with well drafted legislations in order to bring clarity to critical areas of statutory law across jurisdictions.

More information on the ULC can be found [here](#).

The Project Team of the ELI-ENCJ Joint Project on ADR Meet



This project is co-funded by the European Union

The team of the ELI-European Network of Councils of the Judiciary (ENCJ) Project on the Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution met on 15 May 2017 in Vienna (Austria). The law firm, DLA Piper, was kind enough to host the event. In addition to being a committed supporter of the ELI, DLA Piper is one of its Institutional Observers.

During the meeting, the results of the first consultation with stakeholders were analysed. The team also further developed two out of three planned outputs of the Project – namely Output 1: A Draft Statement of European Best Practice in Relation to the Approach that Courts and Judges Should Adopt in Interacting with all Types of ADR Processes and Output 3 Draft Recommendations as to the Best European Models that can be Developed and Applied for Coherent Access to DRPs in Respect of Different Types of Dispute, and Towards Which Member States may wish to Progress. The Team decided that the relevant stakeholders will be further consulted in this regard. The Team also agreed that the next meeting will be held during the ELI Annual Conference on 7



Project team during the meeting in Vienna (Austria)

September in Vienna. The project continues to attract a lot of outside attention. ELI President Diana Wallis has been frequently asked to speak on this subject. Click [here](#) to read the extensive magazine interview (in Spanish) with the Catalonian College of Notaries following a presentation in Barcelona. Also, co-rapporteur on behalf of the ENCJ Sir Geoffrey Vos, Chancellor of the High Court, gave mention of the project in a recent speech concerning the challenges to UK jurisdictions after 2019. Read more [here](#).

Public Workshop of the Empowering European Families Project



The ELI project on Empowering European Families (EEF) has finished its second workstream on model agreements concerning property, family home, maintenance and pension rights with a meeting and workshop held on 19–20 June in Utrecht (The Netherlands). The Reporters and Working Group presented their findings to the public and invited renowned external experts to critically scrutinise the interim results, among them ELI Council Member Elena Bargelli (from Pisa, Italy), Tim Amos (QC from London, UK), Jens Scherpe (from Cambridge, UK), Wilbert Kolkman (from Groningen, The Netherlands), Magdalena Habdas

(from Katowice, Poland) and Josep-Ferrer Riba (from Barcelona, Spain). The Working Group had prepared two alternative models, one taking a more conservative approach and focusing on comparative information and the other a more ambitious approach of striving to develop templates with concrete choices and boxes to tick. The majority of experts present preferred to include both approaches in the final report.

The third and last workstream will deal with model agreements for informal relationships, on which first drafts are already circulating. The results of the whole EEF Project will be presented at a public Conference at the Academy of European Law (ERA) in Trier (Germany) on 30 November – 1 December. All ELI Members and interested parties are invited to attend. Details about the Conference will be available soon on the [ELI](#) and [ERA](#) websites.



Co-funded by the Justice Programme of the European Union

Hub Updates

Spanish Hub

On 9 May 2017, the Spanish Hub came together for its second meeting, which took place in Granada (Spain). The event was organised by the University Carlos III in collaboration with the University of Münster. Presentations on international law, the CJEU and the ECtHR were given.



Participants of the meeting on European Jurisprudence in Granada (Spain)

Additionally, numerous legal experts came together for a seminar on property law, which was held in Madrid on 12 June 2017. The seminar was co-organised with the *Colegio de Registradores de España* and focused on various issues relating to the real estate credit market in Europe. ELI President Diana Wallis delivered the opening remarks. Experts from Austria, France, Germany, Italy, Spain and the Netherlands (ELI Executive Committee Member, Sjef van Erp) addressed presentations relating to the state of play in their respective countries. The topics discussed were the accelerated repayment term of mortgage loans due to non-payment, variable interest rates, unfair mortgage credit contract terms and

Italian Hub

On 22 June, the Italian Hub held a seminar entitled 'The Role of Judges in European Legal Integration: New Powers, New Responsibilities' at the High Council of Judiciary (*Consiglio superiore della magistratura*, CSM) in Rome (Italy).

The Italian Hub took the chance to introduce themselves for the first time to the CSM.

The participants were welcomed with a speech by the Vice Chairman of the High Council, Giovanni Legnini and

procedures to declare their inefficacy as well as mortgage execution procedures.

The seminar was held in the light of a recent decision of the CJEU which led to legal modifications in Spain. Consequently, interest rates were drastically lowered within a short period of time.

Another event, organised by the Spanish Hub, the III Spanish and German Conference, will take place in Madrid (Spain) on 19–20 October 2017.

The Conference will address a variety of topics regarding 'Contracts for the Supply of Digital Contents' from the perspectives of Spanish and German law. The event will be organised by the University Carlos III in collaboration with the University of Münster.

Further details can be found on our [website](#).



Speakers during the Seminar on Property Law in Madrid (Spain)

Giovanni Mammone, who is the President of Section and Secretary General of the Court of Cassation. The event was followed by a brief presentation of the work and progress of the Italian Hub.

The seminar concluded with a final discussion round on the right to judicial effective protection.

SIG Updates

The ELI's Special Interest Groups (SIGs) were officially launched during the 2015 ELI Annual Conference. At the Conference, SIGs discussed potential topics of focus and planned ahead. A year later, in September 2016, SIGs were once again given the opportunity to meet in Ferrara (Italy) to summarise the results of their work and their achieved medium-term progress.

Several SIGs have scheduled Conferences/meetings to be held in 2017 at the Annual Conference and General Assembly in Vienna (Austria).

Administrative Law SIG Conference

On the 7–8 June 2017, the ELI's Administrative Law SIG held a Conference in Budapest (Hungary). The event was co-organised by Andrásy University Budapest, ELTE University Budapest and the Hungarian Supreme Court (*Kúria*). Additionally, the Conference was kindly supported by the Konrad-Adenauer-Stiftung.

On the first day, SIG Coordinator Priv-Doz Alexander Balthasar (Visiting Professor for public law at Andrásy University Budapest, Hungary) initiated proceedings with a warm welcome to participants. He introduced the role of administrative law and highlighted the mission of the ELI in promoting mutual understanding in all fields of European law. In the same vein welcome addresses by Dr István Kónya (Vice-President of the *Kúria*) and of Prof Pál Sonnevend (Vice-Dean of the ELTE Law Faculty) followed.

The first session which was dedicated to 'Generalia et Fundamentalialia' was commenced by Prof Christoph Paulus (Chair of Civil and Roman Law, Humboldt-Universität Berlin, Germany) who identified the influence of Roman law on modern private law and the impact of this private law on modern administrative law. Prof Paulus further explicated the efficacy of Roman administrative law, the impact of which has attracted less attention from scholars. As a discussant, Prof Josef Azizi (former Austrian judge at the EU General Court) pointed out the intermediary function of Canon law. Following this, Krisztina Rozsnyai (Professor of administrative law at ELTE), spoke on the gradual emancipation of the administration of administrative justice as well as of the legislation on administrative procedures from civil law and civil court procedures in current Hungary, after the decline of the Communist era. The session was concluded



Participants of the Administrative Law SIG Conference in Budapest (Hungary)

by Priv-Doz Attila Vincze (Andrásy University Budapest), who discussed the impact of EU administrative law on Member States' administrative law, on the basis of a comparison of five Member States, namely Germany, Austria, UK, Czech Republic and Hungary.

The second session on 'The Right to Good Administration' (art 41 of the EU Charter of Fundamental Rights), began with Polonca Kovač (Professor at the University of Ljubljana, Slovenia), who focused on the spillover effect of art 41. Then Marc Clément (ELI Executive Committee Member) and Judge at the Administrative Court of Appeal of Lyon, France) discussed the legal consequences of a breach of art 41 by administrative authorities from a court's reviewing perspective. Mariella Fiorentino (attorney-at-law and Member of the Campania Administrative Campus Chamber of Advocates), treated the obligation of the administration to give reasons for its decisions, according to Italian case law and in particular in the wider context of preventing corruption.

The third session on 'Administration in Action' began with a presentation by Dr Dulce Lopes (lecturer at the University of Coimbra, Portugal), on the recognition and enforcement of Foreign Administrative Acts. Konrad Lachmayer (Professor at the Sigmund Freud University, Vienna, Austria) discussed the rise of independent European networks, such as Frontex and the Agency for the Cooperation of Energy Regulators (ACER).

The session was concluded by Anna Simonati (Professor of administrative law at the University of Trento, Italy) who elucidated the importance of maintaining administrative

transparency in Italy, particularly through access to documents and data.

The final session on 'Environment and Migration', began with Dr Mariia Muravska (Scientific advisor at the Parliament of Ukraine), who considered the harmonisation of EU soil management legislation with the Paris Agreement (on climate change).

Dr Athena Moraiti (attorney-at-law in Athens, Greece) discussed the application of the European Convention on Human Rights (ECHR) by Greek judges with regard to asylum procedures. Finally, Prof Bruno Reynaud de Sousa (Portucalense University, Portugal) evaluated the current state of public international law with regards to migration policy, holding that in particular the 1951 Geneva Convention on Refugees does not meet the challenges of modern day mass migration. After concluding remarks from Prof Alexander Balthasar, participants were invited to attend an impressive dinner reception at the Austrian

Business and Financial Law SIG Inaugural Workshop

On 23 June 2017, the Business and Financial Law SIG held their inaugural workshop, organised by Yuri Biondi (Research Director at the Financial Regulation Research Lab ([LabEx Refi](#)), France), Corrado Malberti (Professor at the University of Trento, Italy) and Andra Cotiga-Racchah (Associate Professor at the Catholic University of Lille, France).

The event was kindly supported by the LabEx Refi and hosted by the University of Vienna (Austria). The welcome address was given by George Cavalier (University of Lyon 3, France) and Peter Doralt (Vienna University of Business and Economics). The SIG drew various practitioners and academics together from across Europe and various topics, including the natural role of companies, limited liability, sources of liability and socially responsible investments were discussed.

Other topics included a revised Shareholders' Rights Directive, cross-border mobility of companies in the EU (including reform options), and disclosure/accountability for corporations and investors. The day produced fruitful

Dispute Resolution SIG Meeting

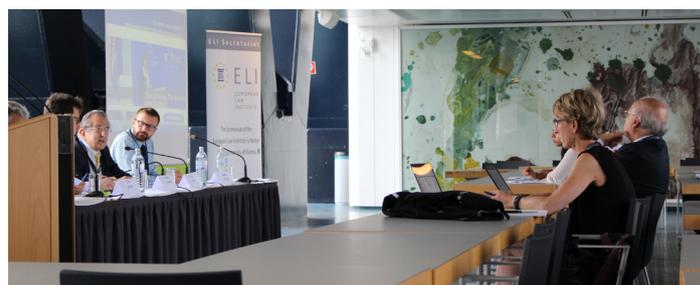
As announced in the March/April Newsletter, a more detailed report on the ELI 'Dispute Resolution' SIG is available on our [website](#).



Presentation during the Administrative Law SIG Conference

Ambassador's residence. Being a lawyer herself, HE Elisabeth Ellison-Kramer expressed a particular affinity to the SIG's work.

On 8 June, participants were invited to visit the *Kúria*, which included a guided tour of the building and an overview of its former judges. Afterwards, the *Kúria*'s President, Dr Péter Darák, received the group for an exchange of views. Participants engaged in a lively discussion.



Participants during the inaugural workshop in Vienna (Austria)

discussions, the latter being consistent in substance and European harmonisation was considered in tandem with the various topics addressed. The SIG will meet again (on 8 September) at the ELI's Annual Conference to further discuss their findings and consider aspects of the SIG's future, including welcoming new Members.

While the Business and Financial SIG mainly focused on the above topics, they have also dealt with the subject of financial intermediaries in the era of new information technologies.

The aim of the SIG, in line with the goals of the ELI, adopt a holistic approach to considering the role which businesses play in shaping the market.

ELI Representation

Diana Wallis in Belgium

The second plenary of the European Justice Stakeholder Forum (EJSF) took place on 24 April 2017 at the European Economic and Social Committee (EESC) in Brussels (Belgium). For details of Diana Wallis' (President of the ELI) attendance of this event, please consult our [website](#).

Christiane Wendehorst in Germany, Malta and Belgium

Christiane Wendehorst (Vice-President of the ELI), spoke at several events that focused on the challenges posed by digitalisation. This year's Münster Colloquium on EU Law and the Digital Economy in Germany (from 4–5 May 2017), co-organised by ELI Council and Founding Member Prof Reiner Schulze and Dirk Staudenmayer from the European Commission, addressed the topic of 'Trading Data in the Digital Economy: Legal Concepts and Tools', a topic closely connected with the ongoing Feasibility Study for ALI-ELI Principles of the Data Economy.



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Wendehorst also participated in the 68th Annual German Lawyers' Conference (*Deutscher Anwaltstag*), which took place from 24–26 May 2017 in Essen (Germany). The panel on ownership and similar rights in data was organised and chaired by ELI Council and Founding Member Friedrich Graf von Westphalen.

On 8 June, Wendehorst spoke on the theme of Legal Questions on the IoT at the *Konferenz der Karlsbader Juristentage*, organised by Friedrich Graf von Westphalen.

After speaking on the new EU General Data Protection Regulation (GDPR) and access to effective remedies at a conference launched by the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection on 12 June, Wendehorst again spoke at a workshop on the Data Economy in Valetta (Malta) on 16 June as part of the Digital Assembly 2017, which was co-organised by the European Commission and the Maltese Presidency of the Council of the European Union.

Wendehorst identified several barriers to a flourishing European data economy and focused on ways to reconcile a vibrant data economy with strong protection of personal data. The Assembly ended with young individuals discussing their expectations and views of the digital economy and society. More information on the Digital Assembly 2017 can be found [here](#).

On 21 June, Wendehorst presented on challenges posed by Artificial Intelligence and Autonomous Systems, in particular concerning liability, at the Annual Conference of the German Ethics Council (*Deutscher Ethikrat*) in Berlin (Germany). On 22 June, she spoke on consumer data as consideration at a workshop launched by ELI Member Matthias Weller at the European Business School in Wiesbaden (Germany). The topic is closely connected with an upcoming Directive on contracts about the supply of digital content on which the ELI published a Statement in 2016. The ELI Statement can be found [here](#).



Wendehorst also sat on a panel discussion on legal, ethical and social issues in a software defined world during the Net Futures 2017 Conference in Brussels (Belgium) on 29 June. More information on the Net Futures 2017 Conference can be found [here](#).

Lecture on the EU and the ELI



Institute for Legal and Constitutional History

On 21 June, Dr Vanessa Wilcox, LL.M. (Cantab) (the ELI's recently appointed Secretary General) and Ala Šabanović (an ELI Project Officer) welcomed a group of 20 students to the ELI Secretariat's premises at Vienna's Old Stock Exchange building (the *Börse*). The lecture, which focused on both the EU and the ELI, was organised in collaboration with Dr Stephan Wendehorst, who runs the Law and Empire course at the Institute for Legal and Constitutional History at the University of Vienna.

In the words of former President of the European Commission, Jose Manuel Barroso: 'We are a very special construction unique in the history of mankind.' He continued: 'Sometimes I like to compare the EU as a creation to the organisation of empire. We have the dimension of empire.' Barroso clarified, however that instead of like super State empires of old, the EU empire is built on a voluntary pooling of power and sovereignty and not on military conquest.



The lecture began by outlining the difficulties of defining the so-called 'EU empire's' borders and the complex nexus of agreements which expand the geographical reach of EU laws. Reference was made not only to the European Free Trade Association (EFTA), Schengen and Eurozone countries (some of which are not EU countries) but also to those jurisdictions that fall within the EU's Outermost Regions (where EU law applies by default) and the overseas countries and territories which have special links with certain EU Member States, whose nationals are EU citizens in principle.

The potential territorial impact of the ELI's projects is thus very broad indeed. Ala Šabanović, who administers various ELI projects began by describing the process through which an idea becomes an actual ELI project. Šabanović focused on a couple of current ELI's



projects and their objectives: namely the Detention of Asylum Seekers and Irregular Migrants and the Rule of Law Project and the From Transnational Principles to European Rules of Civil Procedure Project. As respects the former Project, Šabanović explained how the recent migration crisis in Europe spurred the ELI to seek to develop rules to ensure the effective implementation of due process standards and to lead to an improvement of material conditions for detention in Europe. As respects the latter Project, and given the EU's cornerstone 'free movement' concept, the Project Reporters seek to reduce uncertainties faced by parties litigating in unfamiliar surroundings and promote fairness in judicial proceedings through the development of a model universal civil procedural code. In concluding her outline on ELI projects, Šabanović emphasised the need for all ELI projects to be 'capable of producing results with immediate practical utility'.

In addition to outlining other ELI activities, such as SIGs and Hubs, Wilcox also explained the ELI's funding structure and in doing so, she underlined the independence that comes with a diverse portfolio of funding sources. Among other things, she also mentioned the need for platforms to give voice to young lawyers and the ELI's recently launched European Young Lawyers Award.

Upcoming Events - Save the Date!



The ELI's Mission

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.

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