



ELI
EUROPEAN
LAW
INSTITUTE

ELI Updates

December 2013



Welcome from the Secretary General of the Council of Europe

Dear Readers,

I am very pleased to be able to contribute to this month's edition of the European Law Institute newsletter. As the Secretary General of the Council of Europe, the continent's leading human rights organisation, I commend the ELI for its achievements in improving the quality of law in Europe.

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The Council of Europe includes 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states. The European Union is preparing to sign the European Convention on Human Rights, creating a common European legal space for over 820 million citizens.

The Council of Europe's work centres around three pillars: democracy, human rights and the rule of law. These pillars are inter-dependent, meaning that without the rule of law, the other two pillars cannot exist. The work of the ELI is an excellent contribution to strengthening the rule of law on our continent.

Let me highlight an important project by the ELI aiming at formulating a few practical key ideas regarding the case-overload of the European Court of Human Rights. This project was highly relevant to the on-going work done by the Council of Europe on the reform of the Court following the Interlaken (2010), Izmir (2011) and Brighton (2012) Conferences, as well as to the wider debate on the future of the European Court of Human Rights.

I should like to express the hope that ELI will continue to produce such high quality projects which can have an impact on the work of the Council of Europe by providing guidance for better law-making in Europe.

I look forward to ELI's ongoing contributions to our mutual aims.

Thorbjørn Jagland

Secretary General of the Council of Europe

Projects Committee Meeting

The ELI Projects Committee (PC), as appointed following the Council elections at the General Assembly in September, held its first meeting on 5 December. Twelve of the eighteen Committee members convened at the Secretariat in Vienna for a full day meeting.

The meeting enabled new members of the Committee to become acquainted, and elect a chair. Diana Wallis offered to take on this role and was accepted unanimously by the PC members. The first part of the meeting focused on organisational matters. The PC provisionally scheduled its 2014 meetings in conjunction with the meetings of the Executive Committee. This should ensure better coordination of the work of these Committees. Furthermore, those present discussed how to prepare and structure future meetings of the Committee.

One of the key topics on the agenda was how to ensure good communication between the PC and the project teams working on active projects. Without encroaching on the independent work of project team members, the PC wants to remain well updated of their progress, and be in a position to offer support whenever needed. It was also considered crucial to involve to a greater extent the extensive ELI network of experts and Institutional Observers in Institute's work.

Updates were given on current projects, including the Statement on *Collective Redress*/

Competition Damages Claims, whose project team is expected to produce its first results towards the end of January. To learn more about the project and members of the project team, please see pages 4 and 5 of this newsletter.



President Diana Wallis was elected Chair of the Projects Committee

Due consideration was given to the ELI project on Principles of European Copyright Law and the prospective joint project of ELI and UNIDROIT on civil procedure.

Furthermore, Marc Clément informed the Committee of the latest developments on the project *Towards Restatement and Best Practices Guidelines on EU Administrative Procedural Law*, being carried out jointly by the ELI and the Research Network on European Administrative Law (ReNEUAL). A workshop on the topic will be organised by the European University Institute in Florence at the end of February. It will provide a valuable opportunity for judges and practitioners outside of the ELI and ReNEUAL circles to voice their opinions on the first draft of the model rules, which were also presented at this year's Projects Conference in Vienna.



(From left to right) Christiane Wendehorst, Friedrich Graf von Westphalen, Hugh Beale and Remo Caponi were among the attendees of the meeting

Executive Committee Meeting

The Executive Committee has met for the first time since its election and inaugural meeting in September. Present at the meeting in Vienna on 6 December were President Diana Wallis, Remo Caponi, Marc Clément, Sjef van Erp, John Sorabji and Vice-President Christiane Wendehorst. Treasurer Johan Gerandt was unable to attend in person, but participated throughout the day via a video call.



The Executive Committee met at the Secretariat in Vienna

The day-long meeting provided a valuable opportunity to discuss the current challenges which the Institute faces, and to consider which strategies will help the ELI grow and achieve its ambitions.

The Committee expressed enthusiasm at the initial arrangements which have been made for the 2014 Projects Conference and General Assembly (to be held in Zagreb, Croatia, on 25 and 26 September 2014) and have entrusted staff at the Secretariat to continue discussions with partner organisers at the University of Zagreb. In addition, the Committee noted several points to discuss with their colleagues on the Council during the next plenary meeting on 28 February 2014, such as the best way to deal with outstanding membership fees and other funding matters.

During the meeting the Committee expressed their wish to see the ELI represented at conferences and congresses across Europe in the coming year, and arrangements for the ELI to play a part in the International Congress of Comparative Law in Vienna in July 2014 have been made.

German Hub Event in Berlin

The German Hub of the ELI, which gathered for an initial meeting in Marburg on the occasion of the *Tagung für Rechtsvergleichung*, a conference on comparative law organised by the German national committee of comparative law (*Gesellschaft für Rechtsvergleichung*), is holding a meeting in Berlin on 28 January 2014.

Council member and co-organiser Professor Friedrich Graf von Westphalen will provide some words of welcome while Professor Uwe Blaurock (University of Freiburg) will give a presentation on the German Hub. President Diana Wallis will attend the event, and will speak to the audience about how the ELI can contribute to European law. There will also be a discussion on new developments in European sales law (*Neue Entwicklungen im europäischen Kaufrecht*).

! The event will begin at 15:30 on 28 January 2014 at the *DAV Haus* in Berlin. Prior registration is necessary, and is possible until 20 January. Please click on the image to see the full agenda and registration form.

 European Law Institute ELI	
Neue Entwicklungen im europäischen Kaufrecht Fachveranstaltung der Deutschen Sektion des European Law Institute 28. Januar 2014 DAV-Haus, Littenstraße 11, 10179 Berlin	
15.30 Uhr	Begrüßung Prof. Dr. Graf von Westphalen, Rechtsanwalt, Vizepräsident des Deutschen Anwaltsvereins, Köln
15.35 Uhr	Die Deutsche Sektion des European Law Institute Prof. Dr. Uwe Blaurock, Universität Freiburg, Freiburg i. Br.
15.45 Uhr	How will the ELI contribute to European Law? Diana Wallis, Präsidentin des European Law Institute, Wien
16.00 Uhr	Stand des Gesetzgebungsverfahrens für das Europäische Kaufrecht – Perspektiven Prof. Dr. Dirk Staudenmayer, Referatsleiter „Vertragsrecht“, Generaldirektion Justiz, Europäische Kommission
16.45 Uhr	Empfang
17.30 Uhr	Ende der Veranstaltung
Anmeldung (bis 20. Januar 2014) per Fax: 030 / 726153 - 188 Ja, ich melde mich verbindlich zu oben genannter Veranstaltung am 28. Januar 2014 an.	
Name, Vorname _____	
Kanzlei/Firma _____	
Ort _____	
E-Mail _____	
Datum _____	Unterschrift _____
Eine gesonderte Anmeldebestätigung wird nicht erteilt.	
Mit freundlicher Unterstützung von:  	

Project on Collective Redress/Competition Damages Claims

The group of experts held a meeting in Vienna in October on the ELI Project on Collective Redress and Competition Damages Claims. The Project Team assesses the European Commission's "Proposal for a Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union" as well as the "Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law".

The first draft results will be released in January 2014. A second meeting was held in Brussels in November, where various provisions of the

proposals, such as *disclosure of evidence*, *the protection of corporate leniency statements in competition damages cases*, and *quantification of harm or funding of compensatory collective redress* were discussed. The meeting was attended by representatives of the European Commission: Jacek Garstka (DG Justice) and Filip Kubik (DG Competition), who provided insight on the rationale behind the Commission's proposals as well as the current status of the legislative process.

As a vote on the draft report of the European Parliament's Economic and Monetary Affairs Committee (ECON) is scheduled on 27 January 2014, the Project Team will aim at finalising its draft Statement at its January meeting, taking account of the ECON's draft

report and the latest developments at the Council.

There is now some uncertainty as to the text of the proposed Competition Damages Directive. The Council, while endorsing the Commission's proposal in principle, has adopted an amended text at its working group meeting earlier in December 2013. For example, the Council has deleted provisions on recognition of National Competition Authority infringement decisions and passing-on presumptions.

Professor Samuel Issacharoff from New York University will join the meeting as an observer, representing the American Law Institute.

People behind the Project



MARK CLOUGH

Head of competition law at Brodies LLP, Edinburgh. Advisory Board member of the British Institute of International and Comparative Law. Chairman of the Law Society's EU Committee.



YANNIS AVGERINOS

Managing Partner at AVGLaw. Member of the Hellenic Competition Commission.



ERDEM BÜYÜKSAGIS

Priv.-Doz. Dr. of law of obligations and comparative law at the University of Fribourg. Of Counsel to the law firm of Froriep (Geneva office). Member of the Istanbul Bar.



DUNCAN FAIRGRIEVE

Senior Fellow in Comparative Law, British Institute of Int. and Comparative Law. Maitre de Conférences, Sciences Po, Paris. Avocat at the Paris Bar. Barrister at One Crown Office Row, London.



FERNANDO GASCÓN INCHAUSTI

Professor of Law at the Universidad Complutense de Madrid, Head of the Department of Procedural Law.



ULRICH MAGNUS

Professor of Law (Emeritus), University of Hamburg. Member of the Max Planck Institute for comparative and international Private Law.



KEN OLIPHANT

Professor of Tort Law at the University of Bristol, Director of the Institute for European Tort Law, Vienna (until 31 December 2013).



TOMMY PETERSSON

Partner at Mannheimer Swartling. Co-chairman of its EU and Competition Law Group. Advisor of the Swedish Competition Authority.



DENIS PHILIPPE

Partner at Philippe and Partners avocats. Professor at the Catholic University of Louvain and visiting professor at the University of Paris X Nanterre.



ANNE-LISE SIBONY

Professor of EU law at the University of Liège. Co-director of the *Institut d'études juridiques européennes* (IEJE). Editor of the *Revue trimestrielle de droit européen*.



ASTRID STADLER

Professor of civil law, civil procedure law and comparative law at the University of Konstanz. Part-time Chair in Comparative Mass Litigation at Erasmus School of Law, Rotterdam.



IANIKA TZANKOVA

Legal practitioner at BarentsKrans in The Hague. Professor of Mass Claim Dispute Resolution at Tilburg University.



GERHARD WAGNER

Professor Gerhard Wagner holds a chair in Private Law, Commercial Law and Law and Economics at Humboldt University, Berlin.



DIANA WALLIS

President of the ELI, solicitor, mediator and Honorary Fellow at the University of Hull.

More Institutional Observers join the ELI



The Supreme Court of the Republic of Croatia has become an Observer of the ELI. On this occasion the President of the Croatian Supreme Court, Branko Hrvatin, says:

“As the President of the Supreme Court of the Republic of Croatia I am glad that by the recently gained status of the institutional observer at the European Law Institute we have broadened our cooperation with the European institutions and further positioned ourselves in the professional area.

Croatia entered the European Union six months ago. In the past few years the Supreme Court of the Republic of Croatia and Croatian judiciary have had very intense contacts with our colleagues from abroad, ranging from bilateral meetings to joint efforts on various projects and other ways of cooperation. These years of our EU membership preparations revealed to us the importance of such partnership work as well as mutual support and understanding.

We appreciate the possibility to take part in the European Law Institute’s activities in order to contribute to the European legal profession’s development in general, and thereby to further promote the judiciary as a profession that is being respected and esteemed.”



Becoming an Institutional Observer to the European Law Institute will represent for us an immense acknowledgement and honour.

The Faculty of Law of the University of Sarajevo will soon hopefully become the first institutional member of the ELI from Bosnia and Herzegovina (BiH). Our Faculty was founded in 1946 and is the oldest law school in Bosnia and Herzegovina. This might not be a fascinating fact for many European universities with a several centuries-long tradition; however it should be taken into account that the University of Sarajevo itself was only established in 1947.

It is not a secret that our country as a whole has difficulties on its way towards the European Union; however we are convinced that individual institutions and persons should neither give up on the European idea, nor on the preparations for potential future accession. Similar to the European legislator’s method of regulating certain legal issues in a pointillistic manner, the Faculty of Law, with its application for ELI membership, aspires to become one small island

with a European prefix in Bosnia and Herzegovina. We fully agree with the statement of one prominent German professor that without European education there cannot be European law; at the Faculty of Law in Sarajevo European law and generally European topics have been taught even before BiH assumed the obligation of adopting the *acquis* by signing the Stabilisation and Association Agreement. The first project on European consumer law was implemented in 1992. Since 2006, the postgraduate programme in European private law is in place.

European criminal law and the law of European integration are also topics studied in postgraduate and doctoral programmes. We consider that ELI membership will only deepen and further emphasise our orientation towards the research and lecturing in European law. Our Faculty will gladly contribute to the promotion of the ELI in South East Europe, both individually but also as a member of the South East European Law School Network (SEELS).

*by Prof. Dr. Borislav Petrović,
Dean of the Faculty of Law, University of Sarajevo*

Some Highlights from 2013

The ELI has grown in the past year both in terms of membership and the scope of its activities. Over 200 new Individual Members and over 30 new Institutional Observers, including many supreme courts, have joined the Institute over the past twelve months. At the beginning of the year, the MyELI platform was launched, helping to connect Institute's community of members, and facilitating the work of the ELI bodies and various project working groups. Four new projects were accepted by the Council ([Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law](#), [Principles of European Copyright Law](#), [Statement on Collective Redress/Competition Damages Claims](#), [Instrument on Rescue of Business in Insolvency Law](#)) and work has begun on each of these. At the General Assembly in September a new Council was elected and with it a new Executive Committee, lead by President Diana Wallis. Many changes have also occurred at the ELI Secretariat, which is now headed by Selma Povlakić. Below is a selection of images representing some of the activities of the ELI in 2013.



The Council and its Standing Committees held regular meetings



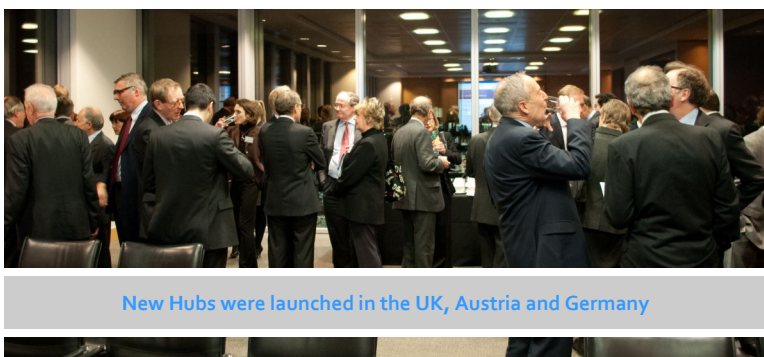
Numerous meetings of Project Teams were held



Fellows and Observers met at the General Assembly in Vienna



Three of the current projects were discussed at the 2013 Project Conference



New Hubs were launched in the UK, Austria and Germany



ELI and UNIDROIT organised a workshop on civil procedure

ELI-ReNEUAL Project on Administrative Procedural Law

2014 ReNEUAL Conference at the European Parliament in Brussels: SAVE THE DATE!



The European Ombudsman, Mrs. Emily O'Reilly, will host the 2014 ReNEUAL Conference at the European Parliament in Brussels.

The Conference will take place on 19-20 May 2014 and ELI Members are cordially invited to attend. The programme together with the invitation will be published in the "Events" section of the ELI website and on the MyELI platform as soon as it is available.

The Conference aims at discussing with members of the European institutions and other actors the updated version of the ReNEUAL Draft Model Rules on EU administrative procedural law, which shall be available in 2014. On the basis of the input received, the revised Draft Model Rules will be further discussed with members of the relevant ELI MCC (Membership Consultative Committee) and other ELI bodies.

Membership Fees

Dear Members,

We hope that you have enjoyed following the growth of the European Law Institute over the last year and taken pride in being part of its progress.

As this year comes to an end, we have a chance to reflect on the Institute's accomplishments and are reminded of the importance of our Members' support in helping us pursue our goals to successful completion. We are very grateful for your participation and your kind contribution of membership fees.

In the New Year the Secretariat will issue membership fee invoices for 2014. These must be paid within two months of receipt. As well as making an online transfer, it is also possible to pay your fees using the PayPal function on the ELI website.

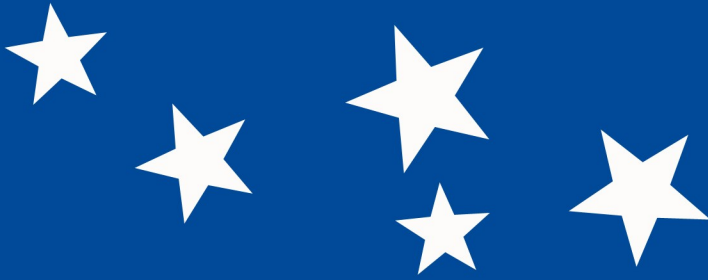
The funds raised by membership fees and donations help finance the ELI's activities, for example project team meetings and the annual General Assembly, to which all ELI Members are invited.

As well as relying on income from the annual fees of individual Members, the ELI Membership and Fundraising Committees are hard at work to secure new Institutional Observers, whose yearly financial contributions are essential to the ELI. Together with the Fundraising Committee we will also work hard in the New Year to seek sponsors for the 2014 Projects Conference and General Assembly to ensure that the event in Zagreb on 25 and 26 September will match the high standards set by our previous annual general meetings.

With best wishes,

The ELI Secretariat Team





The ELI Secretariat Team
sends its best wishes for a
joyous holiday season and a
prosperous start to the
New Year!



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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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