



ELI
EUROPEAN
LAW
INSTITUTE

ELI Updates November 2012

Message from the Treasurer



Dear Members and Friends of the ELI,

The ELI celebrated its first anniversary as an Association founded under Belgian law on 1st June 2012, reverberating the magnificent Inaugural Congress that took place on 1st June 2011 in Paris. The ELI Secretariat in Vienna, which is generously hosted by the University of Vienna, has celebrated its first anniversary only recently. The opening of the Secretariat took place on 17th November 2011 and European Commission Vice-President Viviane Reding travelled to Vienna to mark the occasion. She described her own mission as that of a builder of bridges, and that of the ELI Members as follows: *"You, the members of the European Law Institute, will provide practical advice to policymakers and authorities across Europe on how to build these bridges. Advice that will ultimately help to build the European area of law and justice for the benefit of our citizens. The institute must trace the path towards a European legal culture."*

Inside this issue:

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| Project Workflow | 2 | Much progress has been made since those early days, and the work of the ELI, and with it the work of the ELI Secretariat, has taken up speed. Two ELI publications have already seen the light of day, the Statement on Case Overload at the European Court of Human Rights and the Statement on the Proposal for a Common European Sales Law. They have received much attention from the EU institutions as well as from the European legal community and provided the exact practical advice that Viviane Reding envisaged. |
| Members Consultative Committee | 3 | |
| FAQ | 4 | With the wisdom of one year's experience under its wings, the ELI has also decided to restructure the Vienna Secretariat and to ensure its close contact with the Executive Committee. Consequently, from 1 st November 2012, I have been entrusted by the Executive Committee with coordinating the Secretariat's work. At least temporarily, this will be taking up most of my time. If you have any queries or suggestions concerning the Secretariat's work I would be the right person to contact. |
| Joint Project of the ELI and ReNEUAL | 5 | |
| ELI meets the Secretary General of UNIDROIT | 6 | The staff at the Secretariat will grow over the coming months. Two new members have just joined the team. Mary Penman, holding an Oxford degree and specialised in translation and communication strategy, will work together with Jelena Kopanja in the fields of public relations and office management. Oliver Kratz-Lieber is an Austrian lawyer who also works at the University of Vienna. He will be in charge of the MyELI platform and support the Secretariat in IT issues. Continuing in her position as the Project Officer Alina Waloszczyk, who is now working full time, will support reporters and project teams in fulfilling their tasks. Gerard Ehrismann, an intern who has just graduated from Maastricht University has been a great support to our team and will continue his work until the end of January. If you would like to contact the Secretariat, but are not sure who to address, you may always send your message to secretariat@europeanlawinstitute.eu . |
| ELI work on CESL continues | 6 | |
| ELI Presentation at the Council of the EU's CATS Committee and Legal Services | 7 | |
| ELI "hub" meeting in Paris | 7 | In this issue of the ELI newsletter we would like to especially focus on the ELI procedures relating to projects, in particular on the work of a Members Consultative Committee (MCC). We would like to urge all our Members to take advantage of this possibility to actively influence the progress of ELI projects and to contribute to a lively and vigorous European legal community. |
| Meetings of ELI Executive Committee and Projects Committee | 8 | |

Sincerely yours,

Christiane Wendehorst

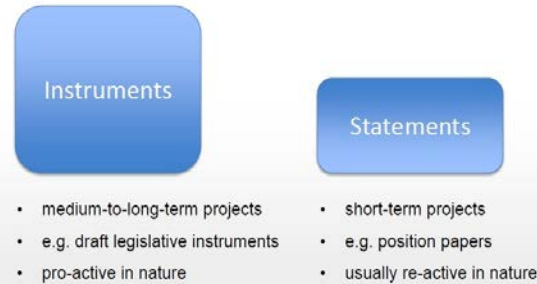
Project Workflow

There are two types of ELI projects: ELI Instruments and ELI Statements (slide 1). ELI Members as well as other interested parties may approach the Projects Committee with ideas for projects. The Projects Committee, as a standing committee of the ELI Council, will select which ideas will be submitted to the Council.

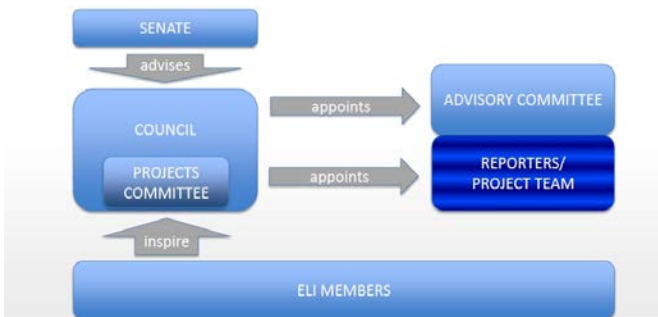
For carrying out projects the ELI has two statutory procedures: the regular procedure and, when a quick reaction is required, the accelerated procedure.

When a project is set up under the regular procedure (slide 2) the Council will appoint one or more reporters and other members of the project team who will be responsible for carrying out the project, and a number of advisors. After the acceptance of the project by the Council under the accelerated procedure (slide 3), it is the Executive Committee that will appoint the individuals who will conduct the project as well as the advisors who will support them.

1. ELI Projects: Types



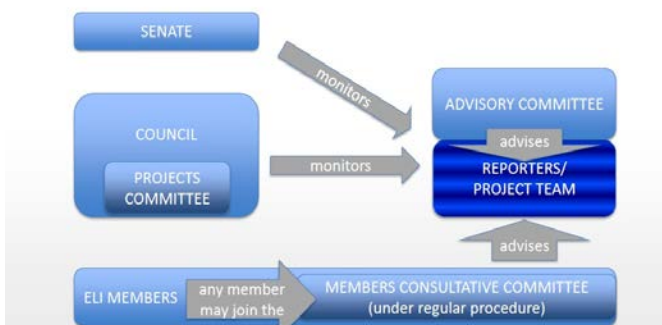
2. Setting up a Project (regular procedure)



3. Setting up a Project (accelerated procedure)



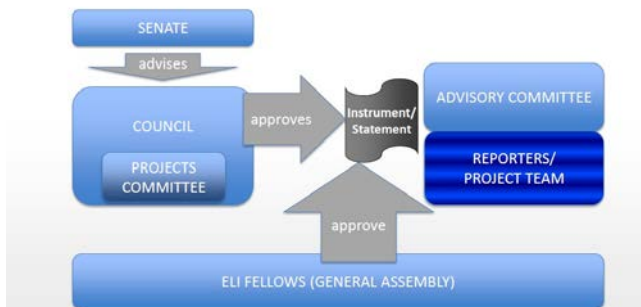
4. Working on a Project



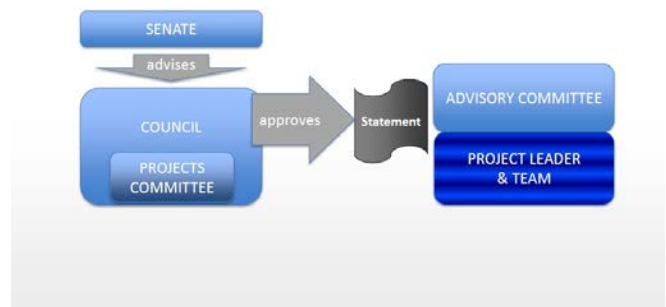
During the work on the project (slide 4) the reporters/project team will normally be assisted by the advisors (Advisory Committee), and a Members Consultative Committee – although, due to time constraints, the latter need not be established under the accelerated procedure.

Once a project is completed it is either subject to the approval of the Council and the General Assembly under the regular procedure (slide 5), or of the Council only under the accelerated procedure (slide 6). After a project has been approved it will be published.

5. Approval of Results (regular procedure)



6. Approval of Results (accelerated procedure)



Members Consultative Committees

One of the most important ways for ELI Members to participate in the ELI's work is to join a Members Consultative Committee (MCC).

For most ELI projects, the Council will establish an MCC shortly after the reporters or project leader and other members of the project team have been appointed. The MCC will comment on the project plan and on any preliminary project results that have been submitted. Any ELI Member who is interested in actively contributing to the development of a project is invited to join the MCC, irrespective of the Member's status as a Fellow, Individual Observer or Institutional Observer. There is no limit to the number of Members who can participate, and MCC members need not be experts in the relevant field. MCC members come from various legal professions and specialise in different areas of law. It is exactly this diversity which enriches the debating potential of the MCC and makes its contribution so valuable.



In order to enable as many ELI Members as possible to participate effectively in the work of the MCC, reporters and project leaders are urged to make extensive use of electronic communication, in particular the MyELI platform. Nevertheless, a physical meeting of the MCC must be held once every year on the day before the ordinary General Assembly of the ELI, at which most ELI Members will be present. Reporters may call as many additional physical meetings of the MCC as they deem appropriate, provided the results are also made accessible to those members who could not attend.

When an ELI project is conducted under the regular procedure (i.e. not the accelerated procedure), meaning that results may only be published on behalf of the ELI following approval of both the Council and the General Assembly, the relevant MCC will play an important role in providing the General Assembly with information on the project and its outcome before the vote.

So far the MCC for the project on Income Tax and Mobility of Individuals in Europe has been established, and another for the project on Restatements and Best Practice Guidelines of EU Administrative Procedural Law will be established soon. If you are interested in joining, and have not yet done so, please send an email to secretariat@europeanlawinstitute.eu.

FAQ

What is the difference between the Advisory Committee and the MCC?

The Advisory Committee consists of a limited number of high-ranking experts, who are appointed by the ELI Council after consultation with the project team. Strictly speaking, they need not be Members of the ELI, even though they usually will be. The MCC, on the other hand, consists of all ELI Members who would like to contribute to an ongoing ELI project or at least be kept in the loop. They must be Members, but they need not necessarily be experts in the field, and their number is not limited. It is usually, but not always, the case that members of the Advisory Committee work more closely with the project team than the MCC does.

What is the role of the MCC chair?

Depending on how many ELI Members are interested in participating, MCCs may be very large, and it may not be easy for MCC members to always act in a coordinated way. This is why there is a chairperson who speaks on behalf of the MCC and acts as a kind of link between the project team, the ELI bodies, and the MCC members. The MCC chair will arrange the dates and locations of MCC meetings with the project reporters and discuss any issues with them, e.g. if the MCC feels that more materials should be submitted. Furthermore the chair will make sure that the MCC work is not being dominated in an unseemly manner by any particular interest groups.

How is the MCC chair appointed?

The ELI trusts that MCC members are capable of organising themselves and deciding how to appoint a chair. In the event of several competing candidates, elections would have to be held, which would have to follow generally accepted principles of democratic decision making. When an MCC is established, the Projects Committee will often select a provisional chair to coordinate these early stages. It is then up to the MCC members whether they accept this chairperson as the permanent chair or whether they would prefer to appoint someone else.

Are recommendations made by the MCC binding on the project team?

No, they are not. It is within the discretion of the project team whether or not they will follow a particular recommendation. This follows from the very simple fact that there may, and often will be contradicting recommendations, and that it is ultimately the project team who must take responsibility for what they have produced when it comes to approval by the official ELI bodies.

Does every MCC member act as an individual, or is there a discussion and vote within the MCC, so that the MCC as a whole formulates a particular position?

Even though the establishment of MCCs is provided for in the ELI Statute, an MCC is not a formal body of the ELI, and there are no strict rules on how an MCC works. As MCC recommendations are not binding, majority votes are not of the essence, and it is normally the weight of the individual argument that counts. However, where an overwhelming majority of the MCC takes a particular view they may informally initiate a vote in order to enhance the persuasive authority of the point they wish to make.

If I am a member of the MCC, is the project team obliged to reply to my comments and to take my suggestions into account?

It is both a point of honour and an implicit obligation of any reporter not to ignore any plausible and well-founded comments raised by an MCC member. Such comments may receive an immediate reply, but as there will often be an avalanche of comments, some of considerable length and many overlapping or contradicting each other, project teams must be granted the liberty to wait and produce more general replies to the MCC comments that have been made within a particular period.

How time-consuming is it for me to be a member of the MCC?

The amount of time you wish to invest in the MCC's work is entirely up to you. Many MCC members will actively use this platform to formulate their views and try to influence the project results. Others may restrict themselves to reading materials submitted electronically by the project team and observing group discussions, thus following more closely the progress of the project than would be the case if they did not have access to MCC materials.

Do members of the MCC get reimbursed for their expenses?

No, they do not. The ELI is unfortunately not in a position to cover any travel or other expenses MCC members may incur. Reporters are urged to take this into account and to offer cost-efficient ways for MCC members to participate in the project. This implies, inter alia, that they must make an effort to use electronic communication platforms, and that no conference fee or similar fee may be charged for the participation in physical MCC meetings.

Joint Project of the ELI and ReNEUAL

ReNEUAL coordinators: Professors Herwig Hofmann, Jens-Peter Schneider and Jacques Ziller

Project background

The European Law Institute (ELI) has agreed to work with the Research Network on European Administrative Law (ReNEUAL) on EU Administrative Procedural Law and has established a joint project.

ReNEUAL was founded in 2009 and currently has over 80 members from all over Europe and beyond. It works on model rules for EU administrative procedural law. It is organised into working groups which are coordinated by the Steering Committee and individually led by academics in different European countries. ReNEUAL's activities are financed by universities and grants from national research agencies (Spain, Germany and Luxembourg).

The ELI will actively support the work of ReNEUAL by establishing a Members Consultative Committee (MCC) which all ELI Members interested in the project are welcome to join. The objective is to obtain contributions from a wide range of ELI Members, in particular active legal practitioners, e.g. lawyers and judges. In 2013 and 2014, the MCC will be invited to contribute to the project by critically reviewing and commenting on draft proposals prepared by ReNEUAL and by discussing various concepts at joint events. The results of the project must be approved by the ELI Council and General Assembly before they can be published as an ELI Instrument.

The joint project and its methods

The project addresses the substantial need for the simplification of EU administrative law, the body of rules and principles governing the implementation of EU policies by EU Institutions and Member States. EU administrative law is essential for establishing structures and defining procedures for cooperation between administrations as well as procedures for the supervision and review thereof. EU administrative law has evolved on a policy-by-policy basis in an unsystematic and non-transparent manner. Simplification can be achieved by the rationalisation and improvement of structures and methodology used across EU policy fields.

Results of background research will be published by ReNEUAL in the forms of books and/or articles in law journals such as the European Law Journal and European Public Law. Together the ELI and ReNEUAL will then develop restatements of existing approaches, and best-practice guidelines, both of which could possibly be condensed into legislative proposals. These restatements and best-practice guidelines of administrative procedure for the implementation of EU law and policies will be addressed to EU Institutions and Agencies with a view also to its application by Member States. The results may serve as a template or frame of reference for future case-law and general or policy-specific legislation. The objective of the ELI-ReNEUAL cooperation is to broaden an informed debate about European administrative procedural law. The objectives are to contribute to improving the quality of the implementation of EU law in Europe and protecting individual rights.

Members of the ELI will support this project by providing critical review and comments. The ELI will have the opportunity to adopt the results as an ELI Instrument if its bodies so decide.

Organisation and participants

ReNEUAL is organised into four working groups, each addressing a specific element of the overall project and each coordinated by experts in the field. These coordinators will be appointed by the ELI Council as reporters for the joint project. The first working group addresses executive rule-making and is chaired by Professors Deirdre Curtin and Joana Mendes (Amsterdam) and Herwig Hofmann (Luxembourg). The working group on single-case decision-making is chaired by Professors Giacinto della Cananea (Rome), Paul Craig (Oxford), Oriol Mir Puigpelat (Barcelona) and Marek Wierzbowski (Warsaw). The working group on administrative contracts is chaired by Professors Jean-Bernard Auby (Paris), Ulrich Stelkens (Speyer) and Jacques Ziller (Pavia). A fourth working group deals with systems of information management and is chaired by Professors Diana-Urania Galetta (Milano) and Jens-Peter Schneider (Freiburg im Breisgau.). The speakers for the network are Herwig Hofmann, Jens-Peter Schneider and Jacques Ziller.

Several preparatory conferences and workshops have taken place in the past years including a conference in the European Parliament in March 2012 co-hosted by the European Ombudsman Nikiforos Diamandouros and attended by representatives of the European Parliament, the Council and the Commission as well as European Agencies and Member State civil services. ELI Members will be invited to participate in future events of this kind.

EU administrative law: not only for EU officials!

Marc Clément, liaison officer of the PC for the joint ELI-ReNEUAL project

When a local community or an association receives a letter from the Directorate General for Regional and Urban Policy (DG REGIO) demanding a return of EU structural funds, they are faced with the impact of EU decisions on their daily activities. In the context of national law, they would most likely know how to react and possibly find the appropriate court to challenge such a decision. At the very least they would be able to find a lawyer to help them navigate the well developed procedural rules governing national administrative law.

The situation is totally different with EU administrative law. It is obviously still considered as a relatively remote subject which is not completely integrated in the professional reflexes of practitioners. This is due to many factors but mostly the absence of simple, explicit and clear principles makes its integration into national legal orders hard. Moreover, the set of rules applied in the decision making by EU bodies depends on the relevant sectors and organisations, something which increases complexity. Decisions in competition law, authorisations of the European Medicines Agency or grants allocated in the context of EU funding programmes are examples of domains in which specific administrative procedures have been developed.

Therefore, making EU administrative procedural law more comprehensible is not only an essential task to enable EU institutions to more easily identify the applicable rules, but it is also paramount for EU citizens, companies and national or local administrations, which are confronted with EU decisions and must be able to assess whether their rights have been violated. Administrative law plays a substantial role in guaranteeing the transparency and legality of the administration's actions. In the context of the financial crisis and the developments of more powers given to EU institutions - such as in the banking sector or for the control of Member States' budgets - this is not a minor issue.

ELI meets the Secretary General of UNIDROIT

On 30 October 2012, European Law Institute (ELI) Executive Committee Member Christiane Wendehorst met José Estrella-Faria, the Secretary General of the International Institute for the Unification of Private Law (UNIDROIT).

The meeting provided an excellent opportunity to discuss potential future cooperation between the ELI and UNIDROIT and resulted in several tentative proposals for joint projects.

It was envisaged that a joint workshop might be held in spring 2013 with the aim of developing one or two of these proposals further. The proposals will be discussed at the ELI Projects Committee meeting that will take place in Vienna on 7 December.



ELI work on CESL continues



During 2012 the Common European Sales Law (CESL) Working Party has been invited to discuss its work with a number of European Institutions. In March and September 2012, Sir John Thomas, Christiane Wendehorst, Matthias Storme and John Sorabji were invited to discuss the Working Party's draft Statement on the CESL with members of DG Justice. This enabled the Working Party to discuss both its proposals for the reform of the substantive provisions of the CESL and its proposals for effective implementation measures.

In October 2012 Christiane Wendehorst and John Sorabji were invited to present the ELI Statement on CESL at a meeting organised on behalf of the European Parliament's JURI Committee. The meeting was attended by a large number of lawyers, parliamentary aides and advisors and provided a valuable opportunity for the ELI Working Party to discuss its work at a time when the Parliament is focusing on the CESL.

In November 2012 Sir John Thomas has been invited to present the ELI Statement at a conference which is being organised by the European Parliament's JURI Committee. Christiane Wendehorst will also be holding follow-up meetings with Parliamentary aides and advisors to discuss specific aspects of the ELI Statement.

Presentation of the ELI at the Council of the EU's CATS Committee and Legal Services



On 20 November 2012, several representatives of the European Law Institute visited the Council of the European Union's Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) in Brussels.

The ELI was represented by the President Sir Francis Jacobs, the Vice-President Bénédicte Fauvarque-Cosson, the Treasurer Christiane Wendehorst and the Projects Committee's liaison officer for an upcoming ELI project in the field of criminal law John Sorabji.

Along with a general introduction to the Institute's work, the ELI's presentation highlighted the upcoming project on Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law. Following the meeting of the CATS Committee there was a meeting with the Council's Legal Services.

ELI "hub" meeting in Paris

In December, the European Law Institute (ELI) will take its first steps in implementing the ELI President Sir Francis Jacobs' idea to organise national "hubs" in different European countries.

The Institute will hold a meeting in Paris to discuss the creation of a French ELI "hub", a centre that will facilitate the exchange of information and knowledge amongst ELI Members in France.

As envisioned by Sir Francis Jacobs, ELI "hubs" will be established throughout Europe with the aim of facilitating and widening ELI's outreach to prospective members and institutions as well as increasing the Institute's visibility. Progress has been made in preparing national hubs also in other European countries, among them the UK, Germany and the Netherlands.

The meeting will take place on 5 December 2012 at 12 Place du Panthéon in Paris. Current and future projects of the ELI will also be presented at the meeting.

Should you wish to attend this meeting in view of becoming involved in the French ELI hub, please RSVP to secretariat@europeanlawinstitute.eu by 1 December 2012.

Institut européen du droit Présentation des activités et constitution de l'antenne française

Mercredi 5 décembre 2012

Appartement décanal, 12 place du Panthéon, escalier K, 3e étage

10:00 – 10:15

Ouverture de la matinée

Jean-Marc Sauvé, Vice-président du Conseil d'Etat, membre du Sénat de l'ELI

10:15 – 11:00

Présentation de l'ELI par des membres du Conseil de l'ELI

Statuts, mode de fonctionnement, secrétariat à Vienne, comités, adhésions, newsletter, site de l'ELI

Carole Aubert de Vincelles, professeur, Université de Cergy Pontoise ; **Marc Clément**, juge, Cour administrative d'appel de Lyon ; **Bénédicte Fauvarque-Cosson**, professeur, Université Panthéon-Assas ; **Denis Philippe**, avocat, Philippe and Partners, professeur à l'Université catholique de Louvain ; **Bernard Reynis**, ancien président du CNUE et président honoraire du CSN

Débats

11:00 – 11:20

Présentation des projets accomplis

1. Proposition de règlement sur le droit commun européen de la vente, Carole Aubert de Vincelles

2. La gestion du flux d'arrêts par la Cour européenne des droits de l'homme, Marc Clément

11:20 – 11:45

Présentation des projets en cours

Thèmes de ces projets: droit pénal, données personnelles, droit administratif, impôts sur le revenu et mobilité
Marc Clément et Bénédicte Fauvarque-Cosson

11:45 – 12:15

Constitution d'une antenne française de l'ELI (« hub »)

Groupes de travail et nouveaux projets

12:15

Cocktail à l'appartement décanal

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Building on the wealth of diverse legal traditions, the European Law Institute's (ELI) 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.

ELI Executive Committee meeting in Paris

The Executive Committee (EC) of the European Law Institute held a meeting on 21 November 2012 in Paris, France, in order to review the current state of affairs and set goals for the near future.

The main items on the meeting's agenda were the work of the Council's standing committees and current and upcoming projects. The efforts to continue raising awareness about the Institute's work through national hubs and the strengthening of public relations were also discussed.

The EC also began to consider the preparations for the next Council meeting, scheduled for early February 2013.

ELI Projects Committee to meet in Vienna

The Projects Committee (PC) will meet in Vienna on 7 December 2012.

The most important issues surrounding current, upcoming and future projects are on the meeting's agenda.

Further steps with regard to the ongoing project on Income Tax and Mobility of Individuals in Europe will be discussed with the project reporters.

Moreover the PC members who were given the mandate to act on its behalf on specific projects will report on the current status of the projects in the area of criminal and administrative procedural law as well as data protection.

The PC will also discuss further project ideas that were put forward by individual ELI Fellows at the September Conference in Brussels.