



# ELI

EUROPEAN  
LAW  
INSTITUTE

# ELI Updates

## November - December 2016

### MESSAGE FROM CHRISTIANE WENDEHORST, VICE-PRESIDENT OF THE ELI



Dear Members and Friends of the ELI,

We are looking back upon a year full of challenges for anyone with a European vision but also, I believe, upon a successful year for the ELI and its projects.

The ELI's influential work on contract law was continued with a Statement on the supply of digital content. Another two of the 'first generation' of ELI projects have entered their closing phase and are, I dare say, yielding stunning results: a team under the leadership of Katalin Ligeti, André Klip and John Vervaele has drafted legislative proposals to prevent and resolve conflicts of jurisdiction in criminal matters, and the work of a network chaired by Bob Wessels and Stephan Madaus will greatly help in providing a better legal environment for the rescue of businesses in distress. ELI projects that are equally in their final phase include support for judges dealing with the detention of asylum seekers, and a position paper on the relationship between the courts and alternative dispute resolution prepared jointly with the European Network of Councils for the Judiciary (ENCJ). An array of further ELI work is far advanced, particularly the European Model Rules of Civil Procedure, a collaboration with the International Institute for the Unification of Private Law (UNIDROIT), as well as a project on the empowering of European families through party autonomy. While trying not to count unhatched chickens, we are proud to announce that new projects are already being developed, notably on online intermediary platforms and on R&D tax incentives. I would also like to mention feasibility studies for a joint project with the Uniform Law Commission (ULC) on fiduciary access to digital assets, and for a project with the American Law Institute (ALI) on the new data economy; we are grateful to the Fritz Thyssen Foundation for their financial support.

It is hardly possible to close without mentioning that 2016 has seen the world change, and that this cannot leave the ELI unaffected. 2016 has been the first year where we have seen media falsely accuse the ELI of unduly influencing politics in Europe; a year during which we had to reassure individuals over and over again that the ELI is not restricted to the EU or, in fact, any other political boundaries; a year in which we had to discuss how to protect our individual Members in certain countries from harassment or worse; and a year in which we had to calm concerns by stressing that we expect our excellent relations with partners in the US to remain stable. It has been a year where a new debate on 'elites' and 'the people' has been sparked—wherever the ELI may be on that scale, it is an organisation that is strongly indebted to democratic principles.

I am convinced that if we had not founded ELI five years ago we would have to found it today, for its mission has become more important than ever.

With my warmest seasonal greetings,

Christiane Wendehorst, Vice-President of the ELI

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# Announcement!

## First ELI European Young Lawyers Award

### - CALL FOR PAPERS -

The ELI European Young Lawyers Award was officially launched at the Annual Conference 2016. The goal of this award 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 the future European legal experts and to help the ELI in fulfilling its core mission of improving the quality of European law.

#### REQUIREMENTS

The following are eligible to submit entries:

- Individuals currently undertaking a university law degree, whether undergraduate or postgraduate; and
- Individuals who are within five years of being awarded a law degree at the date by which entries must be submitted.

Where queries concerning eligibility arise, the decision of the ELI is final.

Candidates must submit a **unique and original paper** which was not previously published and is dealing with a European legal issue that could be improved. The contribution can be submitted in any of the EU official languages **along with the English translation**. You can find more detailed

instructions, including the ELI Stylesheet template, [here](#).

The **Jury** of the ELI European Young Lawyers Award is comprised of the ELI and other participating institutions. It will be selected by the ELI Executive Committee every two years.

The **awarded** candidate will be invited to present his/her paper at the ELI Annual Conference 2017 in Vienna.

The ELI will further cover his/her accommodation and travel expenses up to 1.000 EUR. This will provide the winner 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 website and its author will be awarded with two years of free ELI fellowship, which will allow this person to be involved in Special Interest Groups, present project proposals and participate in the Members Consultative Committees of the different ELI projects.

The papers have to be **submitted by 30 April 2017, 20:00 CET**, to the following address: [award@europeanlawinstitute.eu](mailto:award@europeanlawinstitute.eu)

**More  
information**

**Stylesheet**

## Criminal Law Instrument - findings available soon!

As cross-border crime grows, international and transnational criminal justice is often confronted with situations where various States have legitimate jurisdiction over the same case. This can result in both positive and negative conflicts of jurisdiction. Traditionally the exercise of jurisdiction was usually limited by a State's territory. Today however it extends beyond the principle of territoriality. There is, therefore, a significant need in both international and European criminal law to identify the most appropriate jurisdiction in which criminal cases should be tried. This is necessary in order to avoid, on the one hand, multiple prosecutions of the same crime, and, on the other hand, a failure to prosecute in any jurisdiction.

The ELI is delighted to receive from the Working Group of this Project an elaborated report, which can be said to be groundbreaking as it produces legislative proposals in a field that is today under-developed and under-regulated at EU level. The

Reporters have also chosen an innovative way of presenting their findings. Because there is no legislation in place, it is clear that there are political choices to be made if an instrument on jurisdictional conflicts in criminal law was to be enacted. Rather than present a single proposal, which would have involved an indirect political choice, the Reporters have prepared three distinct, fully formed legislative proposals. Each representing a different political choice. As stated by the Reporters: "[the suggested] approaches only propose building blocks for a future legislative text. They are not blueprints for future legislation but rather contain the most important elements of the mechanism they represent and thereby offer various implementation options for the EU legislator."

We look forward to bringing the final proposal to a vote of all ELI Fellows shortly and encourage everyone to read the ELI Instrument carefully.

## Update on Projects

### ELI-UNIDROIT Joint Meeting of the Steering Committee with Working Group Reporters, Members, Advisers and Observers, 21-22 November, Vienna



Participants of the meeting

On 21-22 November, the Members of the ELI-UNIDROIT Project 'From Transnational Principles to European Rules of Civil Procedure' met in a remarkably captivating building on the premises of Palais Trautson in Vienna. The meeting was kindly hosted by the Federal Ministry of Justice of Austria, and its aim was to discuss the advanced drafts of the three initial Project Working Groups (WG), 'Access to information and evidence', 'Service and due notice of proceedings', and 'Provisional and protective

measures', and to plan the work of the horizontal Group 'Structure'.

Over 30 experts in civil procedure law, including academics, practitioners and policy-makers came to the Austrian capital to attend the meeting, with some representing international organisations, European Union institutions, as well as private practice. The meeting comprised four separate sessions, each beginning with presentations by Co-Reporters of the WGs, and ending with a general discussion of the draft rules.

After the opening address given by ELI President, Diana Wallis, and UNIDROIT Deputy Secretary-General, Anna Veneziano, the participants of the two-day meeting immediately moved to the presentation of the draft rules on 'Access to information and evidence'. The Group's Co-Reporter, Fernando Gascón Inchausti, presented the three parts of the

draft set of rules, which focus around such topics as: general provisions on evidence, presentation, management and evaluation of evidence; access to evidence orders; and finally, types of evidence.



Participants of the meeting

In the subsequent presentation looking at the work produced by the WG 'Service and due notice of proceedings', Eva Storskrubb, a Co-Reporter of the Group, addressed such crucial issues as: scope of application and structure of the rules on service, and elaborated on the approach of the WG towards the harmonisation and the depth of precision in formulating the rules.

The joint meeting continued on Tuesday, 22 November. During the morning session, Xandra Kramer, Reporter of the WG 'Provisional and protective measures' explained how the Group has been developing its work. She mentioned that the current version of the rules was based on the earlier drafts, which were revisited by the Team in autumn 2016. Xandra Kramer also discussed with the participants some important issues pertaining to the proposed terminology, the approach to drafting the rules, the formulation of definitions, function and scope of provisional measures and other matters.

The final session focused on the work of the recently established WG 'Structure' – a group, whose role is to coordinate the emerging draft rules within a functional whole and oversee the linguistic issues. The presentation of this Group was delivered by one of its Co-Reporters, Loïc Cadiet, who spoke on the short- and long-term strategies of the 'Structure' Group to consolidating the final output. He also stressed that there might exist a risk of overlap and

border-issues in relation to the work produced by, for instance, the WG 'Obligations of parties, lawyers and judges' and WG 'Parties'; or between '*Res judicata* and *lis pendens*' and 'Judgments', and 'Provisional measures' Groups. He informed that the first attempt to harmonise the three different drafts of rules in terms of style, terminology and structure will be made as early as at the beginning of 2017. The final versions of the three sets of rules are expected to be delivered in the second half of 2017.

The two-day meeting was concluded by an internal meeting of the 'Structure' Group with the Co-Reporters of other WGs, during which the Members exchanged their ideas on the best way to tackle the issues arising from the drafting process.

The meeting was chaired by the Steering Committee of the Project, and was attended by the Members and Co-Reporters of all the Working Groups, as well as Observers and Advisers of the Project, Representatives of the European Commission, European Parliament, the Council of Bars and Law Societies of Europe, the Hague Conference on Private International Law, Members of the UNIDROIT Governing Council, private practitioners, and academics. The event greatly benefited from the valuable remarks and comments from the participating experts.



Participants of the meeting

The next joint meeting of the Steering Committee with the Members and Co-Reporters of the Working Groups is scheduled for April 2017 in Rome.

For more information about the background of the project, go to the ELI [website](#).



This project is co-funded by the European Union

## Four ELI-UNIDROIT Working Groups held their meetings in November and December

On 4-5 November, Members of the Working Group (WG) 'Obligations of parties, lawyers and judges', Magne Strandberg, Alan Uzelac, Remco van Rhee, John Sorabji, Walter Rechberger, and Emmanuel Jeuland, convened in Paris to hold their fourth working meeting of 2016. The meeting was chaired by the Co-Reporters of the WG, Remco van Rhee and Alan Uzelac, who opened the meeting by thanking Emmanuel Jeuland (Université Paris 1 Panthéon-Sorbonne) for kindly hosting the event.



Meeting of the Working Group 'Obligations of parties, lawyers and judges'

As a result of the previous meetings in 2015 and 2016, the WG developed a set of rules in the English language version. Therefore, the focus of the November meeting in Paris was on the translation of the rules into French. The terminology used and some particular linguistic issues constituted a main subject of the discussion, which gave rise to amendments of both the suggested French translation and the English text that was produced as a result of the previous meetings.

One week later, on 11 November, another meeting was held by the WG 'Provisional and protective measures' at the Erasmus University Rotterdam, the Netherlands. The Members of the WG, the WG Reporter and the Chair of the meeting, Xandra Kramer, met to discuss the work-in-progress and revisit previous versions of the draft rules. The WG discussed important issues pertaining to the structure of the draft rules, their scope and terminology. As a result of this meeting, the draft was fundamentally reviewed, revised and shaped for the presentation at the [Joint Meeting](#) in Vienna.

The two remaining Working Groups met on the occasion of the second Joint Meeting held in 2016 in Vienna. The WG 'Access to information and evidence' and the WG 'Parties' held two separate meetings on 20 November in the ELI Secretariat.

The Members of the WG 'Access to information and evidence', Viktória Harsági, Michael Stürner, Laura Ervo (who participated in the meeting remotely) and the Reporter of the WG, Fernando Gascón Inchausti, met for the second time this year and were finalising the draft of their advanced rules, which were later presented to the participants of the joint ELI-UNIDROIT event on 21 November.



Meeting of the Working Group 'Access to information and evidence'

On 20 November, the WG 'Parties' had their first meeting to discuss the strategy of the Working Group and to plan the work for the forthcoming months. Members of the WG, Ianika Tzankova, Vincent Smith, Istvan Varga, and two Co-Reporters of the WG, Astrid Stadler and Emmanuel Jeuland, took part in the meeting.

### Conference on 'Topical issues of civil procedure' at the University of Latvia, 2 December, Riga

On 2 December 2016 Professor Alan Uzelac presented the ELI-UNIDROIT Project at the Conference on 'Topical issues of civil procedure', organised by the Faculty of Law of the University of Latvia and the Latvian Ministry of Justice.

In his presentation, Prof. Uzelac, one of the Project's Reporters and a member of the working group, explained the background and the purpose of the Project.



Alan Uzelac at the Conference in Riga

ELI and UNIDROIT aim at developing the European rules of civil procedure, taking as a starting point the adjusted Principles of Transnational Civil Procedure, elaborated in the past by the American Law Institute and UNIDROIT.

## Business Rescue Conference, Leiden 16-17 November 2016

Over 30 academics, practitioners and judges participated in the ELI Business Rescue Conference, which took place on 16 and 17 November 2016 in Leiden, the Netherlands. The experts discussed insolvency and restructuring regimes in Europe as well as the draft recommendations of the Business Rescue Project.



Project Reporters, Bob Wessles and Stephan Madaus

During the first day, recent and upcoming legislative developments in the insolvency and restructuring regimes of several European countries (namely: Belgium, France, England and Wales, Germany, Greece, Italy, the Netherlands, Poland and Spain) were discussed. Presentations were given by National Correspondents and Members of the Advisory Committee to the project present at the meeting.

On the second day of the Conference, Stephan Madaus, one of the Project Reporters, held a presentation on implementing, modifying and revoking confirmed restructuring plans. During an interactive session, he discussed with the participants, among other things, national approaches to supervising the implementation of restructuring plans. Though the approaches differ amongst European countries, together with the participants Stephan Madaus was trying to find

## UNCITRAL Working Group V – Insolvency Law

Between 12-16 December, United Nation Commission on International Trade Law (UNCITRAL) Working Group V on Insolvency Law held its 50<sup>th</sup> session in Vienna. The meeting was focused on drafting two instruments. Firstly, a draft model law on how to facilitate cross-border insolvency of multinational enterprise groups; and secondly, a draft model law on the recognition and enforcement of insolvency-related judgments.

This session was of clear interest to the ELI as its Project on Rescue of Business in Insolvency Law. From the first stages of the Project, the Reporters have followed all international and regional

room for further approximation of laws.

Bob Wessels, another Project Reporter, discussed the actors in insolvency and restructuring proceedings and deliberated on their roles. He stressed that there are many regimes in Europe with regard to rules on actors, in particular courts and practitioners. Bob Wessels made some suggestions for furthering the profession of insolvency practitioners, based on the deontology of their work. Concerning courts, he suggested several directions for enhancing their role, including the training of judges, introducing professional insolvency standards and court specialisation.



Participants of the Conference

The Conference was a great opportunity for lively discussions and for an exchange of views with regard to the different approaches towards rescuing distressed businesses in Europe. Due to the in-depth debate, the conference also provided food for thought for the Project Reporters, who are finalising their Report in 2017.

You can find more information about the project on our [website](#).



This project is co-funded by the European Union

developments in insolvency law closely, including those at UNCITRAL.



Gert-Jan Boon at UNCITRAL

Gert-Jan Boon, researcher for the Rescue of Business in Insolvency Project, attended the session on behalf of the ELI, which is an Observer

to the UNCITRAL. Gert-Jan has also supervised the compilation of international soft-law instruments on insolvency for the Business Rescue Project. These new developments will no doubt be reflected in the Reports of this ELI Project.

## Meeting of the Project Team of the ELI-ENCJ Joint Project on The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution (ADR)

On 28 November, the ADR Project Team had a working meeting in Vienna. This was the third physical meeting of the team. Already large strides have been made with the Project. To date, they have produced a list of suggested ADR literature and international documents, an overview of different types of ADR, terminology and taxonomy and a summary of the main international guidelines and soft law and the principles that can be deduced from them.

At the meeting, the team worked on a joint position paper of the ELI and ENCJ, titled: The Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution. The aim of the work is to consider the concerns that have arisen as a result of the exponential growth of numerous different forms of ADR in Europe. In particular, thought needs to be given to the interaction between ADR processes and court-based dispute resolution processes, so that the two can work together as seamlessly as possible.



Meeting of the ADR Project Team

Often, the main concern is a potential for imbalance of power between actors in the ADR case. During the particularly productive drafting session, a near to final version of the position paper was produced. The intention is to disseminate the paper in January 2017, to gather comments and views from stakeholders that could help streamline the next phase of the project and its output.



This project is co-funded by the European Union

## Developments in the ELI Project on 'Empowering European Families - Towards More Party Autonomy in European Family and Succession Law'

The Working Group of the ELI Project 'Empowering European Families' is progressing as planned and held a meeting on 6 - 8 November in Utrecht in order to finalise Workstream 1 of the Project. The goal of this Workstream was to develop a set of model dispositions concerning choice of court, choice of applicable law and submission to family mediation, and is now achieved with the two templates ready. The results will be accessible to the broad public by the end of the project.

On 15-16 December the Group met again in Utrecht, this time to initiate Workstream 3. The focus of this Workstream is on the EU Member States' approaches to *de facto* cohabitation.

This issue is of great importance to many couples, who have been living together for years. The aim of the ELI Project in this regard is to ensure more security and legal certainty when specific situations

take place, for instance when one of the partners has cared for the children while the other has pursued a career and accumulated a fortune, and then the relationship breaks down.

The topic is particularly difficult, because there is such a broad range of different national solutions. The Working Group will therefore prepare a questionnaire to be sent out to the national correspondents concerning informal (cohabiting) couples. The Group hopes to get the relevant data enabling further research and development of a set of model cohabitation agreements, which would be enforceable in as many Member States as possible.

You can find more information about this ELI Project [here](#).



This project is co-funded by the European Union

## SIG Updates

### Workshop on Internet Jurisdiction - Thinking outside the box(es) - Vienna, 28 November

The ELI Special Interest Group on Intellectual Property Law, together with the Centre for Commercial Law Bond University, Australia, organised a workshop on the topical issue of 'Internet Jurisdiction'. Esteemed experts gathered in Vienna on 28 November to discuss ways forward and solutions to the paradox of the territoriality as a principle ruling the 'borderless' Internet.

The workshop was structured around four thematic sessions. The first one, on the territorial scope of data privacy law online, aimed at discussing the consequences of 'extraterritorial' reach of data privacy laws introduced by more and more countries. A second session on cross-border law enforcement online focused on finding a balance between different interests in cases of cybercrime.

The future of geo-location and the question whether geo-location should be regulated was discussed during the third session. The last session analysed the consequences of online activities – participants examined whether being exposed to various laws and jurisdictional claims, while engaging in online activities, undermines the rule of law.



Participants of the Workshop

You can find more information about this event [here](#).

## ELI Representation

### ELI at the Second European Forum on ADR in Madrid

On 3 November, ELI President Diana Wallis was a speaker at the Second European Forum on Consumer ADR, organised by ADICAE (Asociación de Usuarios de Bancos, Cajas y Seguros de España) and held in the premises of the European Commission Representation in Madrid, Spain.

Esteemed panellists from all over Europe discussed the implementation of the new regulation on Alternative Dispute Resolution.

Diana Wallis represented the ELI and spoke on the weakness of the resulting legislations after the Transposition of Directive 2013/11, during the agenda item 'Resulting experiences from the transposition of the ADR Directive'. President Wallis was joined in this panel by Aura Esther Vilalta (University Oberta Catalunya), as well as by Bartolomeo Grippo (Legal Advisor, Federconsumatori), Sonia Passos (Head of Department, General Administration of Consumers, Portugal) and Marine Cornelis (Secretary General of the National Energy Ombudsmen Network).

This conference was part of a project entitled 'The European regulation on consumer dispute

resolution and its transposition in Spain, a chance to improve consumers' rights', which ADICAE started implementing in July 2016, in collaboration with the Spanish Agency for Consumer Affairs.

The Forum was an opportunity to exchange views about the current state of alternative consumer dispute resolution in Europe, but it was also a meeting point, where innovative initiatives could be proposed to improve consumers' rights. More information on the Forum can be found [here](#).

### ELI in Riga, Latvia

On 16-17 November, ELI President Diana Wallis was in Riga, Latvia, for a range of events that included meetings with Supreme Court Judges Dzintra Amerika and Rūdiņa Vidusa, as well as the Director of the Latvian Court Administration, Edvins Balsevics, and the Dean of the Law Faculty of the University of Latvia, Anita Rodiņa.

Diana Wallis spoke during the Opening of the VI International Scientific Conference organised by the University of Latvia's Faculty of Law, titled 'Constitutional Values in Contemporary Legal Space' on 16 November, moderated by Janis Rozenfelds and hosted by the Dean of the Law Faculty, Anita

Rodiņa. Esteemed panellists from 15 different countries took part in the discussions and included the President of the Constitutional Court of Latvia, Aldis Laviņš, and the Deputy State Secretary on Court Matters, Irena Kucina, to discuss various topics



Diana Wallis at the Conference 'Constitutional Values in Contemporary Legal Space'

such as the interaction between international law and constitutional values or the role of private law in reinforcing constitutional values. President Wallis noted the importance of an independent judiciary; referring to recent developments in the UK. She also underlined the role of an Institute, such as the ELI, in the improvement of law-making in Europe. The programme of the event can be found [here](#).

President Wallis was invited to take part in a mediation round table on 17 November, hosted by the Latvia Court Administration, to review the implementation of the Mediation Directive and to propose further steps in improving mediation in Latvia. The round table discussion included the Deputy State Secretary on Court Matters of the Ministry of Justice, Irena Kucina, presidents of the Riga Regional Court, representatives from the Council for Mediation, the Latvian Chamber of Commerce and Industry, the Latvian Collegium of Notaries and the Director of Latvian Judicial Training Centre, Solvita Kalnina-Caune. President Wallis presented the ELI-ENCJ Joint Project on 'The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution' and noted the importance of knowing when (and when not) to use mediation.

More information on the ELI-ENCJ project can be found [here](#).

## ELI at the World Bank's 2016 Law, Justice and Development Week

Member of the Executive Committee, Sjef van Erp participated in the World Bank's 2016 Law, Justice and Development Week, this year held from 5 – 8 December in Washington, DC. The ELI is one of the co-founders of the Global Forum on Law, Justice and Development. This year, Sjef van Erp organized and chaired a panel discussion about "Will Blockchain Technology Simplify Cross-border Property Transactions?" Panelists were representatives from companies developing blockchain technology to be used by land registries (Factom and Chromaway), the Union Internationale des Huissiers de Justice, Conseil Supérieur du Notariat Français (also representing the Union Internationale du Notariat Latin), Netherlands Cadastre, Land Registry and Land Mapping Agency and the Deutsche Gesellschaft für Internationale Zusammenarbeit. Peter Sparkes from Southampton University presented a study prepared for the European Parliament, which he co-authored, on "Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens".

The panel discussed, among other themes, whether blockchain technology could take over the whole process of transferring or seizing ownership of land in such a way that this process, complemented by so-called "smart contracts", would make the intervention of (civil law) notaries, land registrars and judicial enforcement officers unnecessary. The panel concluded that blockchain technology will definitely become part of the infrastructure, but will not become the whole infrastructure. This does, however, imply that the role of notaries, land registrars and judicial enforcement officers might change from an overall leading role towards a more supervisory role in the process.

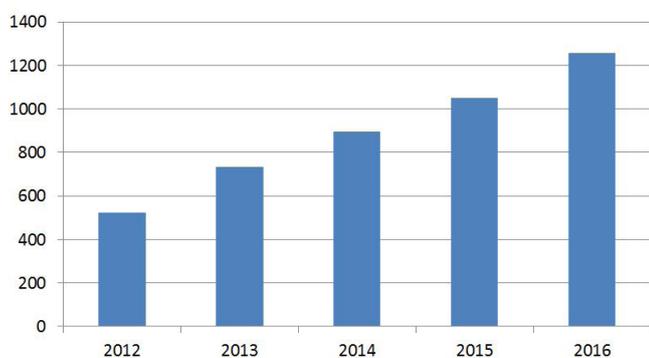
Partly based on the results of this panel the World Bank, in its annual 2017 Land Law and Poverty Conference (March 20-24, also to be held in Washington, DC), will devote probably two panels to the impact of blockchain technology on land transfer.

## A look back at 2016

As the ELI comes to the end of its fifth full year of existence, the Institute can look back on 12 months full of positive developments and progress.

### Strengthening the network

The ELI membership has grown ever since its inception in 2011 and 2016 was no different. At the end of 2016, the ELI can count over 1250 individual members, while the number of Institutional Observers has reached the milestone of over 100 this year. Law faculties, research centres, bar associations, law firms, a supreme court and supranational as well as international bodies joined the ELI as Institutional Observers in 2016.



ELI Membership growth

Encouraging and maintaining diversity amongst members has been a key aim of the Membership Committee this year, with a special focus on attracting colleagues with expertise in Tax Law, Criminal Law and Labour Law in the first half of the year with subsequent focus on Administrative and Constitutional Law, as well as on colleagues with professional backgrounds as judges and notaries in the second half of 2016.



Hungarian Supreme Court, Judge Osztvits

Apart from increasing the number of Institutional Observers, the ELI has strengthened its cooperation with existing and new Institutional Observers, such as the European Networks of Councils for the Judiciary (ENCJ), with whom the ELI is collaborating on a Project on Alternative Dispute Resolution. The cooperation with UNIDROIT continues with the

Joint Project on European rules of civil procedure, for which a conference was co-organised by another of the ELI's Institutional Observers, the Hungarian Supreme Court (Kúria), in Budapest, Hungary.

### ELI bodies: a driving force of the organisation

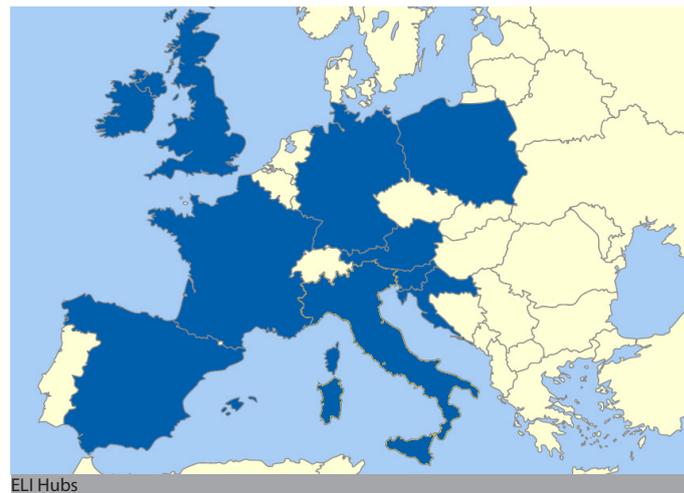
2016 was also a fruitful year for the ELI bodies. In February, the Council, the Executive Committee and the Membership and Fundraising Committees met in Vienna and addressed several different issues concerning the present and future of the Institute, its strategy on projects and its international relations in general. The Executive Committee also held meetings in June, September and December, and one jointly with the Senate, just before the General Assembly and Annual Conference, this year in Ferrara (Italy). A further meeting of the Council and the Membership Committee was also held in Ferrara this year.

### SIGs and Hubs



ELI Council meeting in Ferrara, September 2016

Special Interest Groups (SIGs) were created in late 2015. 2016 was an active year for SIGs with meetings and conferences organised. Further, members of SIGs were also able to meet as part of the Annual Conference programme in Ferrara.



ELI Hubs

The number of ELI Hubs is also growing, expanding the national networks of the ELI by two in 2016. In May, the Spanish Hub was formally launched, and in September, during the Annual Conference, the Italian Hub was inaugurated, joining the seven existing national Hubs (Austria, Croatia, France, Germany, Slovenia, Poland and the UK). Many events took place in 2016, organised by the Spanish, French, Italian and German Hubs.



## ELI Projects

ELI Project Teams worked intensively throughout the year to yield excellent results.

The [ELI Statement](#) on the European Commission's proposed Directive on the supply of digital content to consumers COM (2015) 634 final, was approved by the ELI Council on 7 September 2016 (CD 2016/6). The Statement focuses on the proposal of the so called 'Digital Content Directive' (DCD) and the Project Team identified a number of issues where it believes the draft DCD still needs to be improved.

The ELI Project on 'Rescue of Business in Insolvency Law', a long-term endeavour which will result in the publication of an ELI Instrument, has also made great progress this year. Led by Project Reporter Bob Wessels, the Team presented some of their results at the Annual Conference in Ferrara and were able to discuss their findings with practitioners in a dedicated conference, hosted by the University of Leiden, the Netherlands, from 16 to 17 November. Further, the Reporters presented the Project at the INSOL Europe Conference in Cascais, Portugal from 22 to 25 September and at various other events.

Experts working on the ELI-UNIDROIT Joint Project 'From Transnational Principles to European Rules of Civil Procedure' were also kept busy in 2016, with several meetings of the Working Groups and Steering Committee. At the ELI Annual Conference, two panel discussions were dedicated to this Project. The Steering Committee of the ELI-UNIDROIT



ELI-UNIDROIT Steering Committee meeting

Project met twice this year (21-22 April in Rome, Italy; 21-22 November in Vienna, Austria). During the Steering Committee meeting in Vienna, Members of the Project Teams, the Advisory Committee as well as Observers of the Project were able to provide thoughtful input on the advanced drafts of the three initial Working Groups, 'Access to information and evidence', 'Service and due notice of proceedings', and 'Provisional and protective measures.

The ELI Project Team on 'Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law' has also been working diligently this year to finalise the ELI Instrument. Prof. André Klip presented the Project during the Council meeting in Vienna in February and the Project Team was able to receive input during their Annual Conference panels before completing this ELI Instrument.



ELI-ENCJ Project on ADR presented at the ELI Annual Conference

2016 saw the start of the ELI-ENCJ Joint Project on 'The Principled Relationship of Formal and Informal Justice through the Courts and Alternative Dispute Resolution', which has been more dynamic than anticipated and has already reached an advanced drafting phase after several Working Group meetings in Brussels and Vienna.

The Working Group of the 'Empowering European Families' Project finalised Workstream 1 and initiated Workstream 3 of the Project. The Group developed

a set of model dispositions concerning choice of court, choice of applicable law and submission to family mediation and will now on the EU Member States' approaches to *de facto* cohabitation.

The Project on 'Detention of Asylum Seekers and Irregular Migrants and the Rule of Law', had meetings in Vienna throughout the year. During the Annual Conference, a draft of the Statement was presented to the audience. During the ERA Annual Conference on European Migration Law, Project Reporter and High Court Judge of Slovenia, Boštjan Zalar, presented the Project to a wider audience. At a workshop by the Centre of Judicial Cooperation of the European University Institute in Florence in June, the results were further tested.

The third quarter of the year also saw two new ELI Projects born, as reported in September-October Newsletter: the Projects on Online Intermediary Platforms and on R&D Tax Incentives in Europe were approved by the Council on 7 September. A Joint Project with the American Law Institute on Data as Assets and Tradeable Items in the 21st Century is being prepared.

## Annual Conference

One of the most important events of the year was the ELI Annual Conference, which took place in Ferrara from 7 to 9 September. The Conference gathered more than 350 experts from different legal and geographical backgrounds (an unprecedented number of participants) and provided a forum for lively discussions on law, policy and the role the ELI has to play in improving European law.

Koen Lenaerts, President of the Court of the European Union, gave an inspiring keynote lecture



Participants of the ELI Annual Conference, Ferrara 2016



Marta Cartabia at the ELI Annual Conference 2016

on 9 September, noting the importance of the ELI as a network of experts representing different legal traditions, which enables valuable exchange of experiences about the strongest parts of the respective national systems.

Marta Cartabia, Vice-President of the Italian Constitutional Court, gave a keynote lecture during the opening ceremony, highlighting the importance of including a broad spectrum of people in the legal domain, especially young people.



Koen Lenaerts and Marta Cartabia at the ELI Annual Conference

Panel sessions were held during the Conference, focusing on diverse fields of law, such as Digitalisation and the Digital Single Market, e-Justice, European Rules of Civil Procedure, Family and Succession Law, Rescue of Business in Insolvency Law, the Rule of Law and Migration, Alternative Dispute Resolution and Criminal Law.

This successful event encouraged ELI bodies and the ELI Secretariat to continue working hard in the organisation of the ELI 2017 Annual Conference, which will take place in Vienna, Austria, from 6 to 8 September.

For further details on the events and milestones of the past twelve months, you can access the previous ELI Newsletters on [this page](#) of the website.

## Membership

### Institutional Observers: Another Milestone

The ELI membership has grown continuously every year since its creation. We recently welcomed the 100th Institutional Observer. Among our Institutional Observers are a number of Supreme Courts, supranational organisations such as UNIDROIT, UNCITRAL and law firms, universities, think tanks and research centres as well as a number of professional organisations.

Institutional Observers can contribute to the work of the ELI by suggesting new projects for the institute and by actively taking part in our project work and in the ELI meetings.

There are active collaborations with a number of Institutional Observers and the ELI looks forward to strengthening this network further.

### TO ALL MEMBERS

Membership fees: if you have not yet paid your membership fee for 2016, please do so by bank transfer, PayPal/credit card or by initiating a SEPA Direct Debit mandate. Please visit our [website](#) for further information on these possibilities of payment. Kindly contact the [Secretariat](#) with any questions arising in this context.

Please note that the current focus in membership lies in colleagues with experience in constitutional and administrative law and with professional backgrounds as judges or notaries. This particular effort is aimed to address potential imbalances in

ELI membership early on. Maintaining and further growing our broad, representative and diverse membership is key to the ELI's mission. Please suggest appropriate candidates.

## 2017 Annual Conference and General Assembly - save the date!

The ELI 2017 Annual Conference and General Assembly will take place in Vienna, from 6 to 8 September 2017.

The Conference will be co-organised by the ELI, the City of Vienna and the University of Vienna. The event will start during the day of Wednesday 6 September. The General Assembly will convene on 6 September and will feature reports from the President, Treasurer and other featured members of the Institute and will include the election for 30 seats of the ELI Council.

Following this, the project sessions will provide ELI members and external participants with the opportunity to discuss the most topical legal issues in the European

landscape. Panel sessions will be devoted to ongoing and future ELI Projects.

During the Conference, ELI Project Teams, especially the ones focusing on Rescue of Business in Insolvency Law, civil procedure, will present the outcome of their work to participants.

More information on the programme, accommodation and other arrangements will be provided in the February issue of the Newsletter. Please save the date and do not miss this opportunity to meet the European legal community in Vienna next September!



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City of  Vienna



## Some of the upcoming events - Save the date!

MAR 2017

- **30-31 March, Hull:** Conference on Digitalisation of Law
- **31 March - 1 April, Hull:** ELI Council meeting

JUN 2017

- **18-20 June, Utrecht:** Public Workshop on Family Law

SEP 2017

- **6-8 September, Vienna:** ELI 2017 Annual Conference and General Assembly

NOV 2017

- **30 November - 1 December, Trier:** Public Workshop on Family Law



*Dear ELI Members and Friends,*

*In warm appreciation of the ELI's progress in the past year, on behalf of myself and the whole Executive Committee, I would like to extend my very best wishes for the holidays and for the New Year,*

*Diana Wallis*



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### ***The ELI 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.*