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ELI Updates October 2012

Message from the President



Dear Fellows, Observers and Friends of the ELI,

The ELI Project Conference and the General Assembly that took place at the end of September at the Royal Flemish Academy of Belgium for Science and the Arts in Brussels provided me with a wonderful opportunity to meet many Fellows of the Institute as well as colleagues interested in following our activities. I also had a chance to speak with many of them and I am grateful for their valuable input.

It was excellent to have such a high degree of interest in the work of the European Law Institute, whose first projects, on the proposed European Sales Law and on the European Court of Human Rights, have been positively and enthusiastically received. The Institute has already proved its worth by the high quality of its work, and by the high quality of those who are contributing to that work.

ELI was founded on both high hopes and expectations of many prominent leaders in the European legal community. As with any young institution, its beginnings were not without challenges. We recognise the concerns that some of our Members have raised, and we have taken them on board.

Much has been accomplished over the past year, and I would like to take this opportunity once again to thank our committed Members for their contributions. Looking ahead, we have several new initiatives planned in new fields of law. And with the creation of national communication hubs, we hope to establish links with local legal communities that will not only help publicise the Institute's work but also attract new Fellows from those communities.

I am confident that we can build on the enthusiasm and success of the 2012 Conference and the General Assembly to channel the skills and the commitment of our Members and colleagues into projects that will leave their mark on the European legal landscape.

Sincerely yours,

Sir Francis Jacobs

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First Two ELI-Projects published: ECHR and CESL Statements available to Public

The European Law Institute has published its first two projects: the Statement on the Proposal for a Regulation on a Common European Sales Law (CESL) and the Statement on the Case Overload at the European Court of Human Rights (ECHR). Both are available on the website of the ELI at www.europeanlawinstitute.eu/projects/publications/.

CESL

The Statement makes a number of significant recommendations, set out in suggested textual revisions, for the improvement of the European Commission's Proposal for a Common European Sales Law. It recommends, amongst other things, that the Proposal be revised so that it is a single instrument, rather than a Regulation addressed to Member States with the substantive contract law contained in an Annex.

It recommends that the restriction to SMEs be abandoned; that the cross-border requirements be revised; that it is made easier for consumers to opt into the proposed law and that the Standard Information Notice should be replaced by a far more effective form of notice. In addition to this the working party makes numerous suggestions how the Proposal can be simplified and restructured to render it shorter, clearer and more user-friendly. It seeks to improve consumer protection, in particular in the context of E-commerce, digital products, services, and unfair contract terms. Further substantive revisions are recommended in respect to the Proposal's provisions concerning termination, restitution, and good faith.

The ELI Statement also makes a number of recommendations, which if adopted, would secure the effective implementation of the Proposal. In particular it recommends the introduction of an Advisory Body and Official Commentary, Case law Database and Digest, and makes important suggestions how they can be made to work well in practice. It also calls for further judicial co-operation and further work on Alternative Dispute Resolution and Online Dispute Resolution.

The CESL working group had the second full day discussion of the ELI Statement with experts from the Cabinet of EU Justice Commissioner Viviane Reding and the Directorate General for Justice in Brussels on 21 September 2012. Workshops with the European Parliament followed in October and will continue over the next month.

ECHR

The Statement seeks to address a serious and immediate practical problem. Citizens are entitled to expect that their applications to the Court are handled within a reasonable time frame: "justice delayed is justice denied", to cite the well-known dictum. The deficit between applications introduced and applications disposed of, leading to a festering backlog of cases in the Court's huge and ever-growing caseload is one of the major reasons for fearing a paralysis of its functioning. If the number of the applications not processed within a reasonable time continues to increase, the effectiveness and viability of the protection system under the European Convention on Human Rights will be compromised. But there is also the risk that measures adopted to reform the Court's procedures may undermine its independence.

The project group did not have as its objective to assess all the various solutions proposed for ensuring the effective functioning of the Court; rather the aim was to recommend measures capable of enhancing the working capacity of the Court while at the same time guaranteeing a high level of protection for European citizens. The project takes account of the work done on the same subject by the member States of the Council of Europe, including the recent "Brighton Declaration". It examines a series of practical measures to help meet the problems confronting the Court.

The Statement does not preclude further work by the ELI on the subject of case overload in the future, as the wider debate on possible reform of the Convention system continues. It is in the interest of European citizens that the caseload of the European Court of Human Rights be acknowledged as an obstacle for the effective protection of human rights in Europe. The ELI Statement does not claim to provide an all-encompassing solution but seeks to contribute to a discourse which is both necessary and challenging. It is hoped that the paper will serve as a basis for stimulating the on-going debate both inside and outside the ELI.

ELI Project Conference and General Assembly showcase Members' commitment to Institute's work



Presentation of the ECHR Statement at the ELI Project Conference on 28 September 2012

The 2012 ELI Project Conference and the General Assembly held in Brussels have brought together close to 150 legal professionals and academics from all over Europe and beyond for a weekend of exchange and reflection on the young Institute's accomplishments of the past year.

With two completed projects under its wings, just a year after its inception, the European Law Institute has already been recognized as an important interlocutor in the European legislative arena. ELI President Sir Francis Jacobs was very pleased with the feedback received from the Conference attendees.

"Many of our members have passed to me their congratulations on an extremely successful event, and a highly promising start to the life of the ELI," he said.

At the Project Conference on 28 September 2012, the attendees had an opportunity to learn more about the Institute's completed projects, the ELI Statement on the Proposal for a Regulation on a Common European Sales Law (CESL) and the ELI Statement on the Case Overload at the European Court of Human Rights (ECHR). Both projects have had and continue to have significant impact on the debates surrounding the issues at hand.

The ELI Conference opened with a keynote from former MEP Diana Wallis. Mrs. Wallis said:

"The EU law-making process can have a propensity to resemble a multi-directional tug-of-war; between lobbyists and MEPs and national Ministers, European Parliament committees and political families and then finally between the EU institutions, Parliament, Council and Commission and to which mix post Lisbon Treaty one can also add national parliaments! This at times almost 'sportive' art form could certainly benefit from more legislative science and whilst internal impact assessments and health checks are helpful some external assistance from an organisation like the European Law Institute would not go amiss."

The topics of potential future projects of the Institute were presented later in the day with presentations followed by lively question and answer sessions that showcased tremendous interest amongst the attendees – representatives of diverse branches of law – in contributing to the Institute's activities.



Diana Wallis during the opening keynote lecture

At the General Assembly on 29 September, important decisions were made, *inter alia*, regarding the creation of national communication hubs that would facilitate and widen ELI's outreach to prospective members and institutions as well increase the Institute's visibility.

The President of the European Court of Justice Vassilios Skouris lent a concluding note to the successful event.

More information as well as a photo gallery will be available soon on the ELI website at www.europeanlawinstitute.eu.

ELI Council meets in Brussels



Meeting of the ELI Council

The Council of the European Law Institute met at the Royal Flemish Academy of Belgium for Science and the Arts (KVAB), on 29 September 2012.

In his opening speech, Sir Francis Jacobs, President of the ELI, underlined the need for new projects to be undertaken and for the Institute's visibility to be increased through the development of national hubs. The new candidates for the Council were presented and the Council invited them to become new members. The Council and Senate Composition Committee was dissolved and a new standing committee – the Council Composition Committee – was established. The committee will be responsible for procedural issues relevant to the Council elections, which will be held at the General Assembly in 2013.

After a presentation of the report from the Executive Committee, the Council appointed new Council Members to the following committees: Membership Committee, Projects Committee, International Relations Committee and the Fundraising Committee.

The chair of the Common European Sales Law project's Working Party, Sir John Thomas, reported on the group's work and thanked its members, in particular Christiane Wendehorst, for their efforts. He mentioned the discussions with the European Commission, notably the fact that the Commission has asked the group to work on digital content and on how the suggested changes should be implemented. Sir John Thomas declared that the group is ready to continue working and the Council gave it the mandate to do so.

The chair of the Projects Committee, Hans Schulte-Nölke, suggested a more formalised working structure for this very important committee. The members of the committee will meet more regularly, and certainly about 6 weeks ahead of and at the Council meetings (at least 4 times a year).

Hans Schulte-Nölke presented the project on administrative law. The Council decided that the project will be carried out under the auspices of the Institute in cooperation with the Research Network on European Administrative Law (ReNEUAL Group), subject to the clarification of some open questions. Hans Schulte-Nölke then presented the project on tax law. The proposal was accepted and it was decided that the project will be carried out under the regular procedure. The Council appointed two reporters who will continue the work on this project. Projects on criminal law and data protection and privacy were also discussed and it was decided that both project proposals required further work in order to be accepted by the Council.

Several other project ideas were examined at the Council meeting, including a Statement on the Proposal for a Regulation on the Statute for a European Foundation (FE), welcomed by both the Senate and the Council and identified as a project to be carried out under the accelerated procedure. Both an Insolvency project and a new project idea put forth by the ELI Senate under the working title "Common Constitutional Principles of Europe" raised great interest among the Council members. Sir Francis Jacobs suggested that the work on these projects continues.

The ELI Council welcomed the following new Members:

Anne Birgitte Gammeljord

Marek Wierzbowski

Mark Clough

Bernard Reynis

Maarten R. Meijer

Radim Neubauer

Diana Wallis

At the Council Meeting on 29 September, the following Council Members were appointed to serve on the Standing Council Committees:

Council Composition Committee:	Sjef van Erp (chair), John Sorabji, Matthias Storme
Membership Committee:	Marc Clément, Walter Doralt (chair), Anne Birgitte Gammeljord and Lech Garlicki
Projects Committee:	Hugh Beale, Remo Caponi, Marc Clément, Bénédicte Fauvarque-Cosson, Lech Garlicki, Janis Neimanis, Hans Schulte-Nölke (chair), John Sorabji, Matthias Storme, Radim Polčák, Christiaan Timmermans, Diana Wallis, Christiane Wendehorst, Friedrich Graf von Westphalen, Marek Wierzbowski, Boštjan Zalar
Fundraising Committee:	Johan Gernandt (chair), Maarten R. Meijer
International Relations Committee:	Gianmaria Ajani, Mark Clough, Sjef van Erp, Bénédicte Fauvarque-Cosson (chair), Anne Birgitte Gammeljord, Wim Louwman, Denis Philippe, Christiane Wendehorst, Fryderyk Zoll

The members of the committees will elect a chair. Until a new chair has been elected, the persons indicated above as chairs of the respective committees will act as chairs.

Meeting of the ELI Senate

On 27th September 2012, the Senate – the ELI’s advisory body – met for the second time. The key issues on the agenda were the ELI’s organisational structure and the status of the current projects.

With regards to the organisational structure, the Senate welcomed the Executive Committee’s decision to delegate its power to lead, supervise, and give directions to the Secretariat and its staff to Christiane Wendehorst, as the member of the Executive Committee who is based at the same location as the Secretariat. To ensure that the Council committees deliver their functions more reliably, the Senate suggested that the Executive Committee should get involved in the selection of the committees’ members and their chairpersons.



Meeting of the ELI Senate

After discussing the pros and cons, the Senate recommended that the ELI should not accept financial support from the European Commission but maintain its full independence.

With regards to the current projects, the Senate congratulated the Executive Committee on the high quality of the first ELI Statements and offered to suggest addressees for the documents. Furthermore, the Senate recommended pursuing the ReNEUAL project as well as the Income Tax and Mobility project. The open question of future editions or updates to the results of the ReNEUAL project does not have to be solved immediately but could be addressed at a later time. The chairman of the Projects Committee informed the Senate that some uncertainties about the possible outcome of the Criminal Law project and the Data Protection project have to be clarified before taking a decision. The Senate stressed that it did not suggest furthering the project on state liability for financial supervision.

New ELI Projects: Current State of Play

During the meetings in Brussels at the end of September, the ELI Council and the ELI Senate discussed the project proposals and project ideas submitted by the Projects Committee. The following information presents the current state of play and summarises the results of these deliberations.

Income Tax and Mobility of Individuals in Europe

The project proposal has been welcomed by both the Council and the Senate. It has been given approval, as a first step, as far as it relates to the work on pension schemes. It is subject to the regular procedure, therefore being the first "ELI Instrument" (as contrasted with "ELI Statements") carried out under the auspices of the ELI. Two internationally renowned experts, Bertil Wiman (Uppsala) and Peter Essers (Tilburg), were appointed the project reporters. As a next step, Bertil Wiman and Peter Essers will make proposals for further individuals to join the working group. The Council will also appoint, in consultation with the reporters, an Advisory Committee in accordance with the ELI Project Guidelines.

The Members Consultative Committee is hereby established and the Secretariat invites the ELI's Members to join the Committee and participate in the work that will be conducted on the project. Anyone wishing to join is invited to notify the Secretariat within the next three weeks by sending an email to secretariat@europeanlawinstitute.eu

The establishment of the MCC is compulsory for all ELI projects carried out under the regular procedure (normally medium-to-long-term projects; so called "ELI Instruments"). The members of the MCC will be actively involved in the work conducted on the project. They will be consulted by the reporters on the content of the project and invited to submit their comments at various stages of the work. Normally, the ELI cannot reimburse the members of the MCC for their expenses associated with the work on the project. Therefore, most of the MCC's work will occur via electronic platforms and/or electronic mail. Physical MCC meetings will normally be held before the ELI General Assembly in order to limit expenses as much as possible.

Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law

The ELI Council decided that the project proposal presented by the Projects Committee should be developed further. The work of the Projects Committee (PC) continues. The PC gave a mandate to one of its members, John Sorabji, to revise the proposal so it is aligned with the requirements of the ELI Statute, the Project Guidelines and recommendations of the Council. The revised proposal is being discussed with its potential reporters, Professors Katalin Ligeti and John Vervaele, who presented the project during the Conference in Brussels. The proposal should be finalised soon, following which it will be reviewed by the PC and subjected to an electronic decision of the Council.

Towards Restatement and Best Practices Guidelines on EU Administrative Procedural Law

The ELI Council has, in accordance with decisions taken in earlier meetings, identified principles of EU administrative procedural law as a topic of high priority. ReNEUAL has since 2009 established a project with the aforementioned title and set up working groups, a Steering Committee and Advisory Committee. ELI recognises that, in the light of the achievements of ReNEUAL in the field and the excellence and international reputation of the researchers involved, it would not be apposite to set up a working group of its own. On the basis of an agreement signed in July 2012, ELI and ReNEUAL will cooperate on this project. Being a collaborative venture, the ELI Project Guidelines apply to this project only with appropriate adaptations.

Data Protection and Enforcement of IP Rights

As per recommendation of the PC, the Council suggested a revision of the project proposal. The revised proposal should take into account recent developments of the European data protection regime. The PC will give a mandate to one or two of its members, who will coordinate the efforts to prepare a new draft of the project proposal.

European Foundation/Association

Both the Senate and the Council were very positive about the project. The ELI Statement on the Commission's proposal for a Council Regulation on the Statute for a European Foundation will be conducted by the ELI according to the accelerated procedure. In accordance with article 12(4) of the Statute, the Executive Committee will appoint a project leader and advisors.

Further project ideas discussed

During the September Council and Senate meetings, further project ideas were discussed and received positive feedback. They include: the Rights of the Child, the Prospects of Modernization and Harmonization of European Insolvency Law, the Optional Instrument for Services (Model Law) and Common Constitutional Principles. The Projects Committee will continue its work on the preparation of the project proposals, which would be presented to the Council at its meeting in February 2013. For each of the projects, the PC will give a mandate to one of its members to coordinate its further work and identify potential experts in the field, who could contribute in preparations of those project proposals. Further project ideas have been put forward by individual ELI Fellows, eg European Principles of Civil Procedure or of Financial Service Contracts, and will be discussed by the ELI bodies in charge over the coming months.

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Building on the wealth of diverse legal traditions, 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, 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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Members' Corner

"Global Administrative Law: The Casebook", 3rd edition, ed. by S. Cassese, B. Carotti, L. Casini, E. Cavalieri and E. MacDonald, IRPA-IILJ, 2012 has just been published.

This third edition of the GAL Casebook aims to offer the most refined resource for the study and practice of global administrative law. It collects over 150 cases, with over 60 authors from different parts of the world: they include professors and fellows from the US, Australia, Germany, Portugal, Canada, the UK, Greece, Italy, Spain, the Netherlands, Singapore, France, Poland, Colombia, and many others; with the involvement of leading institutions such as the University of Oxford, New York University School of Law, the Max Planck Institute in Heidelberg, the EUI in Florence, the National University of Singapore, Universidad de Los Andes, the University of Amsterdam, University of Rome Sapienza, and Sciences-Po in Paris .

The book is available on www.amazon.com.

