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Message from Bente Angell-Hansen President of the EFTA Surveillance Authority (ESA)

Dear ELI Members

ESA joined the European Law Institute (ELI) as an Institutional Observer in 2016. In that short time, ESA is proud to have seen the valuable work that ELI and its network are doing. In the same short timeframe, however, ESA – as an organisation charged with securing compliance with EEA law by the EEA EFTA States – has seen significant changes in how nations engage with each other. These changes are for the most part troubling: a retreat from the consensus of multilateralism and a rise in nationalism and national exceptionalism. Yet, voters across the EU turned out in their numbers to show support for environmental causes and for parties that put European ideals at the front and centre of their policies. There is also a sense that now is the time to pay attention to and protect what we have.

Many things that are precious cannot be easily seen or grasped, and can be all too readily taken for granted. European cooperation through the EU and the EEA affects the lives of 500 million citizens for the better. And yet the benefits are not always easily visible. Much time has been spent articulating the importance of the EU to those seeking to live, study or work in another European country. However, we need to remind ourselves that there is also a web of European legislation bringing benefits such as safe food, clean water, consumer protection and workers' rights to people who do not exercise their right to move abroad (even for a holiday).

What sets the EU and EEA apart from other forms of multilateral engagement

is that individual citizens and businesses are not only given abstract rights, but also the concrete means to enforce those rights directly in the national courts of the countries concerned – instead of having to seek a bilateral or state-level remedy. This evidently simplifies matters considerably for lawyers and their clients, but it also produces an effect whereby local courts become the guardians of the European acquis and are drawn into a wider judicial dialogue involving the national courts across Europe, bolstering mutual trust and understanding. At the same time, this underlines the fundamental importance that we seek to protect the integrity of local and national courts – not simply because the rule of law is worth protecting in and of itself (which it evidently is) but because without it, the law becomes unenforceable and the benefits are in danger of being lost.

The ELI has come to provide a key forum for developing European legal thinking and polity. Complementing judicial dialogue and the dialogue between the States and organisations such as ESA, the ELI facilitates the crucial dialogue between academics, practitioners and institutional actors that is necessary for building and maintaining trust and confidence in the common project of a Europe ruled by law. In difficult times, it is important that every member of ELI, and all those who deal with European law on a regular basis, work to articulate what this unique model of international cooperation means to people living in Europe.

Greetings from Bente Angell-Hansen



ESA | EFTA
Surveillance
Authority

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Bente Angell-Hansen



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ELI Council and Executive Committee Elections 2019: Serving the ELI

In 2019, the ELI Membership will elect 28 new Council members among their Individual Fellows. If you wish to shape the future of the ELI, please consider running for the Council and Executive Committee.

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Council Elections

Any ELI Individual Fellow is eligible to stand for the upcoming Council elections, provided they have not already served a period of eight years.

To run, the candidate must submit a nomination form containing a short CV, a statement of interest (max 400 words), specifying inter alia how they could contribute to the aims of the ELI, and a portrait photograph. In addition, the

candidate must be endorsed by five ELI Fellows. The elections will be held on 4 and 5 September 2019 during the ELI Annual Conference and Meetings. More information is available [here](#).

Executive Committee Elections

Newly elected ELI Council will elect a new Executive Committee consisting of the President, two Vice-Presidents, the Treasurer and three ordinary members. More information is available [here](#).

ELI Council Adopts Revised Statute and Election Byelaw

The ELI Council recently adopted revised ELI Statute and Election Byelaw.

There are several reasons for the changes, one of which being a change in Belgian law, which would make compliance difficult were no changes to the ELI's governing structures made. The Council, which meets more frequently, has now taken over some competencies of the General Assembly (which has become 'the Membership') to facilitate the administration of the Institute.

A further change is that voting rights have now been given to Institutional Observers (including ex-officio Council members). This is in light of the important insight both groups can offer the ELI, especially given its growth. As such, a new category of Institutional Fellow was created. Unlike Institutional Observers, the latter are members that

have chosen to have voting rights.

Other changes are in respect of the composition and election of the Executive Committee. Due to increasing workload at the ELI, the office of a second Vice-President has been instituted. In future, all Individual Fellows can be nominated for the positions of the President, Vice-Presidents and Treasurer, who will become ex-officio Council members. As a corollary, the number of elected Council members has been reduced to a maximum of 56. A system of incoming President, Vice-Presidents and Treasurer has also been introduced but will apply from 2021 onwards.

Please take the time to read the revised [ELI Statute](#) and [Election Byelaw](#).

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Imprint

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The ELI Turns Eight

On 1 June, the ELI marked its eighth birthday.

With currently around 1,450 Individual Members and 100 Institutional Observers, the ELI continues to grow from strength to strength.



As the ELI turns another page, it looks back to its establishment and the shoulders upon which it stood, enabling it to appreciate more and further the potential impact it could have on the daily lives of European citizens, companies and institutions. The ELI wishes to thank all its Founding Members, both individual and institutional, for helping it to realise its ambition of improving the quality of law in Europe.

Many of these Founding Members went on to serve in key bodies of the ELI, shaping it still further. It is to the above and to subsequent visionaries and contributors that the ELI owes special thanks to its achievements to date.

Since its foundation in 2011, the ELI has embarked on almost 20 projects: nine having been successfully completed, a further nine being currently in progress (including three to be finalised soon) and several brewing in the pipeline.

As it looks back, the ELI can confidently say that it has and continues to make its mark on the European legal landscape, thanks entirely to the people that believe in it and in its causes.

Founding Individual Members

- Gianmaria Ajani
- Gabriel Alonso Landeta
- Carole Aubert de Vincelles
- Jean-Bernard Auby
- Hugh Beale
- George A Bermann
- Snezhana Botusharova-Doicheva
- Fabrizio Cafaggi
- Remo Caponi
- Marc Clément
- Georges-Albert Dal
- Walter Doralt
- Bénédicte Fauvarque-Cosson
- Spyridon Flogaitis
- Lech Garlicki
- Johan Gernandt
- Friedrich Graf von Westphalen
- Irmgard Griss
- Stefan Grundmann
- Herwig Hofmann
- Claire Huguenin
- Rafael Illescas Ortiz
- Francis Jacobs
- Carmen Jerez Delgado
- Rudolf Kaindl
- Yves Kreins
- John Lord Thomas
- Ole Lando†
- Jonathan Lord Mance
- Imelda Maher
- Hans-W Micklitz
- Valentinas Mikelenas

- Horatia Muir-Watt
- Leo Netten
- Savvas Papasavvas
- Denis Philippe
- Miguel Poiaras Maduro
- Radim Polcak
- Bernard Reynis
- Marek Safjan
- Hans Schulte-Nölke
- Reiner Schulze
- John Sorabji
- Matthias Storme
- Christiaan Timmermans
- Verica Trstenjak
- Sjef van Erp
- Paul Varul
- Christian von Bar
- Christiane Wendehorst
- Reinhard Zimmermann
- Fryderyk Zoll

Founding Institutional Observers

- The International Union of Judicial Officers (Union Internationale des Huissiers de Justice, UIHJ)
- The Council of the Notariats of the European Union (CNUE)
- The Council of Bars and Law Societies of Europe (Conseil des Barreaux Européens, CCBE)
- The European Land Registry Association (ELRA)

Tentative Agenda of the Annual Conference

WEDNESDAY | 4 SEPTEMBER

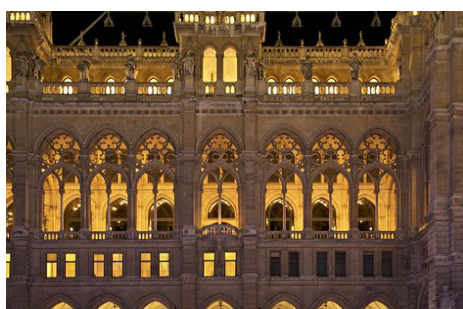
VENUE: VIENNA CITY HALL
ENTRANCE LICHTENFELSGASSE | 1010 VIENNA

- 08:30 - 09:55 Registration (Council Only)
- 10:00 - 12:00 Council Meeting
- 10:10 - 12:00 Registration (All Others)
- 12:05 - 12:45 **Membership Meeting**
- 12:50 - 13:55 Lunch Break
- 14:00 - 14:30 **Welcome Address**
- 14:30 - 16:00 **European Rules of Civil Procedure I**
(Presentation of Consolidated Draft and Comments for the Solicitation of Feedback)
- 16:00 - 16:25 Coffee Break
- 16:30 - 18:00 **European Rules of Civil Procedure II**
(Presentation of Consolidated Draft and Comments for the Solicitation of Feedback)
- 19:00 - 22:00 **Evening Reception and Presentation of the ELI Young Lawyers Award and Hub and SIG of the Year Awards**
Welcome Address by Vice-Chancellor, Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice Clemens Jabloner
- Principles for a Data Economy**
(Presentation of Preliminary Draft No 3 for the Solicitation of Feedback)
- Artificial Intelligence and EU Administration**
(Presentation of the Project Proposal)
- VENUE: PALAIS TRAUTSON, AUSTRIAN MINISTRY OF JUSTICE | MUSEUMSTRASSE 7, 1070 VIENNA**

THURSDAY | 5 SEPTEMBER

VENUE: VIENNA CITY HALL
ENTRANCE LICHTENFELSGASSE | 1010 VIENNA

- 08:00 - 09:00 Registration
- 09:00 - 10:15 **The Protection of Adults in International Situations**
(Presentation of Draft Final Project Output for the Solicitation of Feedback)
- 10:15 - 10:45 Coffee Break
- 10:45 - 12:00 **Plenary Session: Model Rules on Online Intermediary Platforms I**
(Presentation of Final Results and Voting on ELI Instrument)
- 12:05 - 12:45 **Keynote Speech: UNCITRAL Secretary Anna Joubin-Bret**
- 12:50 - 13:55 Lunch
- 14:00 - 15:15 **Plenary Session: Model Rules on Online Intermediary Platforms II**
(Presentation of Final Results and Voting on ELI Instrument)
- 15:15 - 15:40 Coffee Break
- 15:45 - 17:00 **Blockchain Technology and Smart Contracts**
(Presentation of Project Output for the Solicitation of Feedback)
- 17:05 - 17:30 Announcement of the Council Election Results
- 17:30 - 18:45 ELI Council Meeting (in its New Formation – Election of the Executive Committee)
- 19:30 - 22:00 **Gala Dinner**
- VENUE: HOTEL SACHER | PHILHARMONIKERSTRASSE 4 | 1010 VIENNA**
- R&D Tax Incentives**
(Presentation of Draft Project Output for the Solicitation of Feedback)
- Common Constitutional Traditions in Europe**
(Presentation of Draft Project Output for the Solicitation of Feedback)



Tentative Agenda of the Annual Conference

FRIDAY | 6 SEPTEMBER

VENUE: JURIDICUM
SCHOTTENBASTEI 10-16 | DACHGESCHOSS | 1010 VIENNA

09:00 - 10:40 **Business and Financial Law SIG Panel**
Company Law, Prudent Management and Corporate Sustainability
[Agenda](#)

09:00 - 10:40 **Intellectual Property Law SIG Panel**
The Remedies in Intellectual Property Law: Do We Need Common European Principles?
[Agenda](#)

10:45 - 11:10 Coffee Break

11:15 - 12:40 **Italian Hub Panel**
New Technologies and the Law: The Impact on Rules of Torts, Contracts and the Insurance Market
[Agenda](#)

11:15 - 12:40 **Intellectual Property Law SIG Panel**
(Continued)

12:45 - 13:55 Lunch

14:00 - 16:00 **Digital Law SIG Panel**
Algorithmic Regulation and Legal Services
[Agenda](#)

14:00 - 18:00 **Intellectual Property Law SIG Panel**
(Continued)

16:00 - 17:00 **Family and Succession Law SIG Panel**
New Challenges of European Family and Succession Law
[Agenda](#)

19:00 - 22:00 **Social Event**
VENUE: HEURIGER PFARRWIRT | PFARRPLATZ 5 | 1190 VIENNA

Register Today!

The Annual Conference will bring together representatives of European institutions as well as jurists from different legal vocations and geographical quarters.

We are delighted to confirm that this year's keynote speeches will be delivered by UNCITRAL Secretary Anna Joubin-Bret and Austrian Vice-Chancellor and Minister of Justice Clemens Jabloner.

The tentative [agenda](#) is available online.
To register please follow the [link](#).

Sponsors and Supporters



This project is co-funded by the European Union



Panels in a Nutshell

Plenary Session: European Rules of Civil Procedure

This flagship ELI-UNIDROIT (International Institute for the Unification of Private Law) project that aims at developing European rules of civil procedure entered its final stage. The Team produced the Consolidated Draft, which includes Rules and Comments, and will be presenting its work with a hope of receiving feedback at the ELI Annual Conference in Vienna. Two panels will be devoted to this project and the focus will be on some of the most critical parts of its output, namely 'Case Management and Pleadings', 'Evidence', 'Collective Redress' and 'Appeals'. With the participation of representatives of all the project's Working Groups as well as external experts, it is hoped that the discussions at these panels will help the Team to fine-tune the output before it is put to the vote by ELI bodies in February 2020.

Principles for a Data Economy

With the rise of an economy in which data is a tradeable asset globally, more certainty is needed with regard to the legal rules that are applicable to the transactions in which data is an asset. Critical questions arise such as who has which right with regard to the data generated by connected devices? They need to be answered urgently, as lack of clarity in this field potentially hinders innovation and growth and, more importantly, troubles consumers, data-driven industries, and start-ups. To address this problem, the American Law Institute (ALI) and ELI decided to produce a set of transnational principles for a data economy. The effect of their work will be presented by members of the Project Team during a panel on Principles for a Data Economy at the ELI Annual Conference 2019 in a form of a thoroughly revised Preliminary Draft No 3, with reactions from experts in the field.

Artificial Intelligence (AI) and EU Administration

AI and algorithms more generally are transforming governments and institutions. Transparency, non-discrimination, accountability are some of the characteristics to build a trustworthy AI in Europe. However, administrations face more specific challenges in this regard. The panel and proposed ELI project aim at developing model rules that could be applied in the context of the use of algorithms and artificial intelligence by EU and Member State administrations.

Common Constitutional Traditions in Europe

First used by the Court of Justice of the European Union (CJEU) in the judgment on the *Internationale Handelsgesellschaft* case and currently included in Article 6 of the Treaty on European Union, the term 'constitutional traditions common to the Member States' gets more and more attention. Reflection on what are the common constitutional traditions in Europe has never been more urgent than now. With various challenges we are facing in Europe, be it with regard to the rule of law, but also when it comes to ensuring effective access to justice and protection of fundamental rights, just to name but a few, it is essential to analyse what these values and traditions are and whether we have similar understanding of their content. This panel will aim at discussing those issues and presenting the developments in the Common Constitutional Traditions in Europe project.

Plenary Session: Model Rules on Online Intermediary Platforms

The project on Draft Model Rules on Online Platforms is entering its final stage. This project aims at ensuring

better protection of consumers and other platform users by providing clear solutions with regard to online platforms. The latter increasingly shape our economy as the number of platforms as well as their users is rapidly rising. The few provisions on platforms in the forthcoming new EU legislation can only be a first step. The next Commission will have to broaden and deepen the regulation of the platforms-based economy. Two sessions will present the rules elaborated by the Project Team and discuss them with the membership and stakeholders in advance of a vote on the project by ELI members.

The Protection of Adults in International Situations

The increasing mobility of adults who are unable to protect their interests because of an impairment or insufficiency of their personal faculties has become an international concern. The difficulties arising out of the diversity of legal systems and the limited number of contracting parties to the Hague Convention of 13 January 2000 on the International Protection of Adults are among the reasons why the ELI embarked on such a project.

The project builds on the Resolution whereby the European Parliament requested the Commission to present a legislative proposal on the matter, and aims at determining concrete measures that the EU could adopt to enhance the operation of the Convention. The panel will discuss the proposals elaborated by the expert group in light of the most recent developments, including the decision by the Council on General Affairs and Policy of the Hague Conference on Private International Law to convene a Special Commission to discuss the practical difficulties of the Hague Convention of 2000 and promote its ratification.

R&D Tax Incentives

Research and Development (R&D) is one of the areas of particular interest for the EU. There are various methods of incentivising enterprises active in the field of R&D, ie through tax incentives. The R&D tax incentives that are currently in place are not harmonised within Europe. The European Commission proposed a Common Consolidated Corporate Tax Base (CCCTB), including a super deduction for qualifying tax expenses, with the aim of providing a common corporate tax base for EU Member States. Even if the future of the CCCTB is uncertain, it remains fundamental to establish a common definition of R&D in the tax field. EU super deduction and its possible relation with national tax incentives was widely debated, with the issue of the definition of qualifying R&D expenses eligible for super deduction at its centre. Following the approval by the ELI Council of this ELI project in November 2017, the Team is now ready to present its Statement, which provides for a general framework detailing what could be eligible for R&D tax incentives.

Plenary Session: Blockchain Technology and Smart Contracts

Blockchains are technologies for storing and transmitting data, allowing the constitution of replicated and distributed ledgers, without a central monitoring body, secured by cryptography, and structured by blocks linked to each other, at regular intervals of time. Smart contracts are auto enforceable code, running on top of a blockchain. Both technologies are profoundly changing many areas of private law transactions. Whether the current system of private law can readily cope with these novel forms of 'self-executing' agreements, or whether new solutions are required, are fundamental questions, which the ELI project on Blockchain Technology and Smart Contracts, as well as this panel, will try to answer.

Business and Financial Law SIG: Company Law, Prudent Management and Corporate Sustainability

The panel will provide analyses and evidence related to the ELI Business and Financial Law SIG's project idea on corporate sustainability and company law from a variety of legal, economic and accounting perspectives. The draft focuses on the relation between corporate sustainability, extant company law on limited liability, and the regulations governing company capital maintenance and related company disclosures (including for general purpose financial statements) within the European Union.

Intellectual Property Law SIG: The Remedies in Intellectual Property Law

Remedies, such as injunctions, damages, or claims for information, are increasingly of relevance in the policy debates in the intellectual property law. Intellectual property rights are believed to incentivise the creation and dissemination of new technical solutions and help to disclose their workings to the public in exchange for limited exclusivity.

Many books and articles have been written about different aspects of the intellectual property system. Surprisingly, however, despite its high practical relevance, the issue of drafting, granting and enforcing remedies remains less clear in comparative legal literature. This is in stark contrast with their policy relevance.

The panel will aim at discussing remedies as they are increasingly becoming important policy levers when adjusting the intellectual property system to quickly changing industries and business practices.

Italian Hub: New Technologies and the Law: The Impact on Rules of Torts, Contracts and the Insurance Market

The panel will focus on the impact of new technologies on legal categories such as liability rules and contracts. It will adopt insurance law as a case study, focusing on motor liability insurance and the use of black boxes, parametric insurance, big data analytics and information asymmetries, as well as the effects and intersections on the distribution system.

Digital Law SIG: Algorithmic Regulation and Legal Services

The rapid pace of technological innovation has a disruptive impact on the market for legal services. Legal Tech startups promise to offer easy and automated access to justice and challenge traditional providers of legal services. Legal text analytics powered by artificial intelligence and data-driven prediction of court decisions have the potential of changing the way our legal system works. The panel brings together leading experts from law and computer science and offers an overview of innovative research projects in the field.

Family and Succession Law SIG: New Challenges of European Family and Succession Law

The panel aims at highlighting the current issues of EU Family and Succession law. In both areas EU regulations and national substantive laws closely intertwine and influence each other. The panel will focus on the new perspectives of international family law as well as on the impact of the EU Regulation (No 650/2012) on succession law.

Towards the Global Implementation of the 2000 Hague Convention on the International Protection of Adults

by **Philippe Lortie**

First Secretary Permanent Bureau, Hague Conference on Private International Law (HCCH)

Introduction

The aging of the world's population accompanied by an increase in the incidence of illnesses linked to old age, combined with greater international mobility, has created the need for improved international legal support for vulnerable adults. As international travel becomes easier, many retirees choose to spend the last part of their lives abroad. Furthermore, an increasing number of persons with disabilities travel across borders for work, vacation or to benefit from better support in other countries.

Private international law issues concerning, for example, the management or sale of goods belonging to persons suffering from an impairment in their personal faculties are arising with greater frequency. Where adults have made arrangements for their future should they not be in a position to look after their own interests, such as by appointing a representative, it is important that such arrangements have effect abroad. Questions arise as to which law should apply and who may represent the adult, and with what powers. In these circumstances, it is important to have clear rules concerning the authorities which are competent to take any necessary measures to support the adult or protect his or her property and the law that will be applicable.

The [Hague Convention of 13 January 2000 on the International Protection of Adults](#) (hereinafter, the '2000 Convention') addresses many of these issues by providing rules on jurisdiction, applicable law and international recognition and enforcement of measures ordered by competent authorities. It also establishes a mechanism for cooperation between the authorities of Contracting States. The 2000 Convention

applies to 'the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests' (Art 1). The measures to support such adults found in the 2000 Convention include 'the designation and functions of any person or body having charge of the adult's person or property, representing or assisting the adult' (Art 3(d)).

Promotion and Awareness Raising

With a view to promoting the implementation of the 2000 Convention, the European Commission (EC) and the HCCH organised a [Joint Conference](#) on the subject held in Brussels in December 2018. Approximately 130 experts from more than 35 States representing all continents gathered at the event and adopted 17 [Conclusions and Recommendations](#) (C&Rs) which deal with issues such as promotion, cooperation among organisations in this field (including the ELI), the current state of play and future work. The first C&R invites States that are not yet Contracting Parties to join the 2000 Convention.

Relationship with the 2006 UN Convention of the Rights of Persons with Disabilities (UNCRPD)

The second C&R states that the 2000 Convention and the 2006 UNCRPD are complementary. Furthermore, in C&R No 7, it was noted that a number of States have put in place 'guardianship' or 'curatorship' institutions based on 'supported decision-making' mechanisms as the 2000 Convention makes reference to such institutions (Art 3(c)). The EC-HCCH Joint Conference went as far as adopting a C&R stating that '[c]ross-border measures that the State of enforcement considers not to be

in conformity with the 2006 UNCRPD could be subject to adaptation under the law of that State (Arts 13 and 14 of the 2000 [...] Convention) to ensure that international situations are treated in a manner similar to domestic ones' (C&R No 8).

Providing for Party Autonomy

Since September 2017, the ELI has been working towards the possibility of [improving the operation of the 2000 Convention in Europe](#). On 22 March 2019, a [Seminar](#) devoted to the subject was organised by the ELI in Milan. On that occasion and as at the EC-HCCH Joint Conference, representatives from various Central Authorities were invited to share their experiences. No concerns were mentioned in relation to the provisions of the 2000 Convention dealing with party autonomy. As stated in its preamble, the 2000 Convention 'affirm[s] that the interests of the adult and respect for his or her dignity and autonomy are to be primary considerations'.

In the context of a power of representation an adult may designate as applicable the laws of the following States (Art 15): (a) the State of the habitual residence; (b) a State of which the adult is a national; (c) the State of the former habitual residence of the adult; or (d) a State in which the property of the adult is located, with respect to that property. Providing beyond these possibilities could create difficulties at the time of a dispute (ie, if and when the adult does not have sufficient capacity to explain his or her choice) because other laws than those provided for under the 2000 Convention may not have a 'natural' or a 'real and substantive' connection with the adult. The same policy consideration is true as to the



completely open choice of jurisdiction that can be made by the adult (Art 8(2) (d)) but which can only be implemented under the safeguard mechanism provided for in the transfer of jurisdiction provision (Art 8). That is because, at the time the choice of jurisdiction will have effect, the adult may not have the required capacity to assess whether that choice is still appropriate in the given circumstances. Furthermore, it is important to understand that the operation of the choice of jurisdiction under the 2000 Convention is built to avoid possible conflicts of jurisdictions which is a rather important consideration for the peace of mind of a person whose personal faculties may be impaired or insufficient at the time of a dispute.

Hence, the EC-HCCH Joint Conference concluded and recommended that '[t]he possibility to develop complementary legal norms, for example in relation to party autonomy, was discussed with the understanding that it should bring real added value and should support the operation of the 2000 [...] Convention' (C&R No 15). It was clear from the discussions that such work is not necessary at this time but that a number of other possible work initiatives could move forward.

Future Work for the HCCH and the ELI

At the EC-HCCH Joint Conference suggestions were made to improve the enforceability of measures by developing a Guide to Good Practice in this area and/or making use of model forms and direct judicial communications (C&R No 6). It was also suggested that the cross-border transportability of measures under the 2000 Convention could be improved by the development of a public Country Profile for each Contracting Party providing, for example, information on the nature, substantive and formal requirements of such measures as well as their conditions for coming into effect (C&R No 9). Such public Country Profiles could also contribute to the building of mutual trust and confidence between actors, including competent authorities from different Contracting Parties (C&R No 10). It was also recommended that the cross-border transportability of powers of representation could be enhanced, for example, by the development and use of model forms (or model provisions), model certificates of powers of representation and access to electronic registries to verify their authenticity and integrity (C&R No 12).

Some of this work could be undertaken by the ELI as part of its mandate to serve the people in Europe by improving the law or facilitating its application and producing immediate practical results. The development of model laws providing for powers of representation and the development of model rules and registries to give them effect would be beneficial to Europeans, not just those in cross-border situations. The ELI could also undertake the development of model enforcement laws in this area as well as model forms and certificates.

The HCCH is planning in 2022 a meeting of States Parties to the 2000 Convention to review its practical operation.



The Author

[Philippe Lortie](#) has been the First Secretary at the HCCH since 2001 and is responsible for, among other projects, the 2000 Convention. Before joining the Hague Conference, from 1991 to 2001 Philippe Lortie was Legal Counsel at the Department of Justice of Canada. In that capacity, he acted as Head of Canadian delegations to the Hague Conference, UNIDROIT and UNCITRAL. From 1994 until 1996, he was Executive Assistant to the Associate Deputy Minister responsible for Public Law and Canadian Unity. In 2000 he was seconded as an 'expert from a third State' to the European Commission Justice and Home Affairs Directorate General. Philippe Lortie holds degrees in Civil Law (LL) and Common Law (LLB) both from the University of Ottawa.



Case Studies on the Protection of Adults in International Situations

In order to illustrate the various dimensions covered by the ELI project on Protection of Adults in International Situations the Project Team elaborated some case studies.

Case Study Eleni

The case

Eleni, a Greek living in Volos, suffers from a mild form of dementia. In taking decisions regarding her financial and personal interests, she avails herself of the assistance of her son Kostas, who equally lives in Volos and has been appointed her administrator by the local courts.

At one point, Kostas, an IT expert, is posted by his employer in Germany for a period of 18 months. Kostas is willing to settle in Germany for that time together with his wife, his child and his mother, but is unsure as to the implications of this move for the measures of protection taken in Greece in the interest of Eleni and for his ability to rely on such measures to actually assist, and represent where necessary, his mother.

Comments

Kostas' concerns reflect the two-fold diversity that the law of adults' protection currently features in the Member States of the European Union. Substantive rules in this area of law vary from one country to another, and so do – to a large extent – the rules of private international law, meaning the rules that determine the country whose courts are entitled to adopt a measure of protection and supervise its implementation, the rules that identify the law governing the substance of protection and the rules that decide whether a measure of

protection issued in one State may be recognised and enforced in another.

Specifically, Germany is a party to the Hague Convention of 13 January 2000 on the International Protection of Adults, which lays down uniform rules of private international law in this field, while Greece is not. This means, among other things, that the question whether Greek courts would retain jurisdiction over Eleni's protection after the move, like the parallel issue of whether German courts would become competent once Eleni settles in Germany, do not fall under the same rules in the two countries, and in fact receive different answers.

Similarly, different rules apply, respectively, to the recognition of Greek measures of protection in Germany and the recognition of German measures in Greece. Moreover, German authorities, on the one hand, and Greek authorities, on the other, lack in fact the ability to cooperate between themselves for the protection of Eleni (by exchanging information, etc).

All in all, this may result in contradictions, doubts, hesitations and slowdowns in the protection of Eleni, to the detriment of Eleni herself, the members of her family and of any interested third parties.

The picture would improve if Greece ratified the Hague Convention. A common set of rules would govern the jurisdiction of Greek and German courts as regards Eleni's protection, thereby facilitating the coordination of their respective action. A uniform



regime would likewise apply to the recognition of the protection measures taken in the two countries, and cooperation would be ensured, via dedicated Central Authorities, between the authorities of the two States.

The picture, it is contended, would improve even further if legislation were enacted by the European Union for the purpose of enhancing the operation of the Convention between Member States. For instance, the creation of a European Certificate of Powers of Representation would make it easy for Kostas to rely on his authority as Eleni's court-appointed administrator and representative for the purposes, among others, of opening a bank account in Germany in Eleni's name, so as to better care for Eleni's day-by-day needs.

Case Study Conor

The case

Under an enduring power of attorney governed by Irish law, Conor, an Irish citizen living in Ireland, grants his brother, Noah, the power to manage his affairs in the event of incapacity.

One day the power of attorney comes into effect and Noah decides to sell, on behalf of his brother, a crashed car that the latter, once an amateur restorer of Citroën cars, had purchased in France a few weeks earlier and still lies in a garage there.

He negotiates a sale price of 1,000 Euros. In order to complete the formalities of the transaction, including the entry of the change of ownership in the French vehicle register, Noah will need to show that his powers can legally be relied upon in France, and will have to provide appropriate evidence of the scope of such powers, typically by producing a stamped, attested copy of Conor's registered power of attorney.

Comments

Several practical difficulties are likely to arise in this scenario because of the differences that currently exist between Ireland and France, and more generally between the Member States of the European Union, as regards the law of adults' protection, and because of the limited effects of the Hague Convention of 13 January 2000 on the International Protection of Adults (which is currently in force for France, but not for Ireland), in relation to the rules of private international law in this area.

Enduring powers of attorney and other forms of private mandates in contemplation of a loss of capacity exist under French legislation. Yet, Article 15(3) of the Hague Convention, which French authorities would apply in the circumstances, states that 'the manner of exercise of such powers of representation is governed by the law of the State in which they are exercised.'

The French vehicle register office is therefore likely to require that Conor

must be visited by a French registered doctor to confirm his mental capacity and the power then registered at the French Court which would also require a certified translation of the instrument, bearing the apostille provided for under the Hague Apostille Convention of 5 October 1961. Fulfilling these requirements could ultimately involve expenses amounting to several thousands of Euros.

Things could not be significantly better if Ireland were also a party to the Hague Convention of 13 January 2000 on the International Protection of Adults. The French authorities, including the vehicle register, would still require local French implementation and confirmation from the French doctor and registration at the French court. If the Convention were in force in Ireland and if registration of the power in Ireland were sufficient to be regarded as a confirmation for the purposes of the Conventions, then Ireland could produce a certificate pursuant to Article 38 of the Convention, which might do away with the need for translations and an Apostille.

Things, it is suggested, would be rather much better, if the rules of the Convention were supplemented by a piece of EU legislation, one aimed, inter alia, to reduce the scope of local law, to make more complete and secure the rules of the Convention that regulate the law governing private mandates, to further facilitate the circulation of measures of protection, including those relating to private mandates, from one Member State to another, and to create a European Certificate of Powers of Representation.

For more information about this project, click [here](#).



Empowering European Families Instrument Approved

The ELI is pleased to announce that the final Instrument of its project on Empowering European Families Towards More Party Autonomy in European Family Law and Succession Law was voted upon by the ELI Council and the General Assembly. Both approved the Instrument by overwhelming majorities.

The ELI wishes to convey its warmest gratitude to the Project Reporters, Wendy Schrama, ELI President Christiane Wendehorst and Katharina Boele-Woelki, for the work done on this project. A warm thank you should also be extended to the other members of the Working Group as well as to the Advisory and Members Consultative Committees for their continuous support and for the critical feedback given throughout the project.

The approved Instrument can be found [here](#). Three different toolkits for legal advisers have been designed (for [married couples](#); [registered partners](#) and [couples in informal relation-](#)

[ships](#)) with a view of assisting legal professions in advising international couples within the EU. Their focus is on the economic consequences of the relationship and its potential dissolution through divorce, separation or death.

You can also find an information sheet designed for couples themselves, highlighting the implications of cross-border relationships and containing practical advice on how to prepare for the first meeting with a lawyer, [here](#). Please note that the Working Group is constantly reviewing the toolkits as new developments come to light.

Moreover, Project Reporter Christiane Wendehorst has and continues to update national ministries on the project's output and consults with them.

For more information about the project itself (ie background, aim, case studies, etc) please consult the following section of our [website](#). The Instrument will be published alongside country reports in the coming months.



Common Constitutional Traditions in Europe Project Team Meeting and Roundtable

The Team met on 21 May in Aix-en-Provence.

The Team held a Roundtable with representatives of two other European projects that are looking into broad questions of European constitutionalism.

Among various topics discussed in the morning, the Team focused on fine-tuning the planned output of the project. As the Team aims at filling Article 6.2 of the Treaty of the European Union with content, it will try to elaborate a tool for judges and

lawyers litigating before the Court of Justice of European Union (CJEU), with accompanying explanations. The Team also planned the work ahead, including the collection and analysis of national reports.

In the afternoon session, the Team was joined by the representatives of the Reconciling Europe with its Citizens through Democracy and Rule of Law project (Reconnect H2020) and the Common Core of European

Administrative Law (CoCEAL) project. The Roundtable facilitated the exchange of approaches taken by each group and allowed for discussion on different methodologies applied to each project.

The ELI would like to thank Guy Scoffoni from the University of Aix-en-Provence for organising both events. You can access the agenda of the Roundtable [here](#). For more information about this project, click [here](#).



Meeting of Sub-Group on Personal Data and Blockchain

On 27 May 2019 the sub-group on Personal Data and Blockchain of the ELI project on Blockchain Technology and Smart Contracts met in Lille.

The group analysed the use of blockchain technology by BCDiploma – a French project implementing a diplomas certification solution using blockchains – and Ethereum smart contracts. In particular, participants discussed the security risks inherent in storing personal data with the use of blockchain technology with the developer of the BCDiploma. You can read more about the project [here](#).



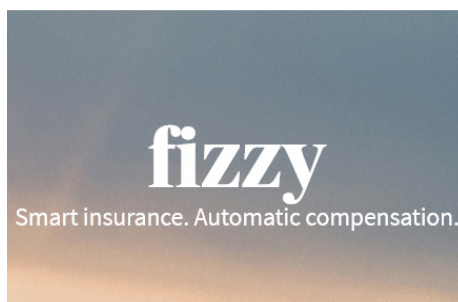
The ELI-FRA Business and Human Rights Project Team Meeting

The ELI-FRA (EU Agency for Fundamental Rights) Business and Human Rights: Access to Justice and Effective Remedies Project Team met for a second time this year on 3 June in Vienna at the ELI Secretariat to discuss the project's status and recent developments.

Three main points occupied centre stage at the meeting: the further development of the focus or the so-called 'operative' part of the project;

finalisation of the composition of the Advisory Committee; and to work on the project's timeline for the coming months. As with previous Project Team meetings, Team members also examined recent policy developments at EU and global levels in the field of Business and Human Rights. Jonas Grimheden, one of the Project Reporters, gave an update of the first and second rounds of research conducted by the FRA. In the afternoon session, Team Members focused on identifying the next steps to be taken and distributed the workload amongst themselves.

The core Team intends to meet again in autumn to advance their work, with a view to the final project being approved in February 2020. For a draft agenda of the meeting click [here](#).



Insurance and Blockchain Technology Meeting

On 4 June 2019 the sub-group on Contracts and Smart Contracts of the ELI project on Blockchain Technology and Smart Contracts met in Paris.

The participants focused on analysing the example of a smart contract developed by Etherisc, a platform that aims 'to use blockchain technology to help make the purchase and sale of insurance more efficient'. Among other topics discussed, the group went into legislative and regulatory requirements in the field of insurance. Participants also compared the solutions adopted by Etherisc with those developed by Fizzy, which were analysed in detail at an earlier meeting (on 12 March 2019) in Paris. You can read more about the project [here](#).



Model Rules on Online Intermediary Platforms: Joint Meeting in Brussels

The ELI organised a joint meeting between the Platforms group, Advisory Committee and Members of its Consultative Committee on 27–28 June 2019 in Brussels.

One part of the meeting was dedicated to a stakeholder workshop, in which representatives from the platform economy, consumer and business organisations as well as officials from the European institutions and national authorities actively took part.

Lively discussions were held among participants on specific issues relating to the Model Rules on Online Intermediary Platforms, in particular reputation systems, liability, and refining the Model Rules in light of the forthcoming EU legislation on platforms.

Participants were also invited to a 'cocktail dînatoire' on the evening of 27 June to continue their discussions in a more relaxed atmosphere.

You can read more about the project [here](#).



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Münster Colloquium on EU Law and the Digital Economy

ELI President Christiane Wendehorst and Vice-President Sjef van Erp participated in a Colloquium entitled 'Data as Counter-Performance – Contract Law 2.0?' at the University of Münster.

A Colloquium, co-organised by the University of Münster with representatives of the European Commission and ELI Council Member Reiner Schulze, was held from 16–17 May 2019. The Colloquium featured a number of key developments shaping the transition to the digital economy and the digital single market.

On the first day, Vice-President Sjef van Erp presented a paper entitled 'Do

We Need a Data Property Law Next to Traditional Property Law?' and President Wendehorst opened the second day with a presentation on 'Personal Data in Data Value Chains'. Other ELI members that also gave presentations include Schulze, Friedrich Graf von Westphalen, Axel Metzger, Martin Schmidt-Kessel and Juliette Sénéchal.

The topic, which formed the subject of the ELI's [Statement](#) on 'The European

Commission's Proposed Directive on the Supply of Digital Content to Consumers', deserves particular attention in light of the entry into force of the directives on certain aspects concerning contracts for the sale of goods of 20 May 2019 and the ELI's contribution to the same.

The programme and ELI Statement can be found [here](#) and [here](#) respectively.

The New Warranty Rights for Goods, Digital Content and Digital Services

ELI President Christiane Wendehorst co-organised a Conference at Palais Trautson with the Austrian Ministry of Justice and the University of Vienna.

On 12 June 2019, the Austrian Federal Ministry for Constitution, Reforms, Deregulation and Justice and the Institute for Civil Law of the University of Vienna (in particular, ELI President Christiane Wendehorst, Johannes Stabentheiner and Brigitta Zöchling-Jud) co-organised 'The New Warranty Rights for Goods, Digital Content and Digital Services' [Conference](#). In addition to Wendehorst and Zöchling-Jud, other ELI members that presented papers included Georg E Kodek and Bernhard Koch.

The Conference was dedicated to a comprehensive analysis of the newly adopted EU rules in the field. It is timely in light of the recent entry into force of these directives of certain aspects concerning contracts for the sale of goods.

The ELI and its members are proud to have contributed to shaping the outcome of this Directive through its abovementioned [Statement](#) and in the context of independent papers given on the subject.



ELI-ELSA Cooperation

ELI Secretary General, Vanessa Wilcox, met outgoing ELSA International President Filipe Machado on 17 June 2019 to thank Machado for the work he has done in cementing ties between both organisations and to discuss the prospects of further collaboration. The ELI sends a warm welcome to Diomidis Afentoulis, ELSA International's President-Elect and looks forward to a continued fruitful partnership under his mantle of leadership. President-Elect Afentoulis enters into office on 1 August 2019.

25 Years of the EEA Agreement

The ELI's esteemed Institutional Observer, ESA celebrated 25 Years of the EEA Agreement at a Conference in Brussels on 14 June 2019. The event, which was attended by the ELI Secretary General, Vanessa Wilcox, saw presentations by a broad spectrum of speakers. The ELI wishes the Authority the very best as it turns this new chapter in its history.



elsa

The European Law Students' Association

The ELI Welcomes its New Members

The ELI is pleased to welcome the following whose membership applications were approved by the ELI Council recently.

New Institutional Observer

Constitutional Court of Hungary

The [Constitutional Court of Hungary](#) is the principal organ for the protection of the fundamental law. Its tasks are to protect the democratic State governed by the rule of law, the constitutional order and the rights guaranteed by fundamental law; to safeguard the inner coherence of the legal system and to foster the principle of the division of powers.

The basic rules concerning the function of the Court are set in the fundamental law, and the main regulations on structure and procedure are determined by the Act on the Constitutional Court (ACC). The detailed regulations are set by the Constitutional Court in the Rules of Procedure. The Court itself regulated the detailed provisions on the rules of procedure in a plenary decision.

The 15 members of the Court are elected by the Parliament by a qualified majority (the vote of two-thirds of all representatives) for a term of 12 years. The President of the Court is elected by the Parliament. The judges elect the Vice-President from among



themselves. The President's activity of coordination and representation does not affect the independence of the judges.

The Court adopts its decisions in plenary session, in five-member-panels or as a single judge. According to the Rules of procedure of the Court it is possible to create three-member panels as well. The plenary session decides on the constitutionality of statutes and in all other cases if the ACC provides so.

The Office of the Constitutional Court helps the Court in performing its functions. It is in charge of managing the Constitutional Court's administrative tasks, it handles organisational-operational tasks, case administration and tasks related to the preparation of decisions.

New Sustaining Members

The ELI is grateful to its Sustaining Members who make a donation of € 60 per year (in addition to € 60 for membership fees), enabling the ELI to embark on new initiatives that further its causes. This term, the ELI is delighted to welcome the following new Sustaining Members.

- William Lawrence Aylmer
- Daniel Häusermann
- Elena Ioriatti
- Frank O'Reilly
- Fausto Pocar
- Henricus Snijders
- Luz Maria Martínez Velencoso
- Aura Esther Vilalta Nicuesa

New Individual Members

- William Lawrence Aylmer
- Anurag Bana
- Anzhelika Baran
- Dragan Bataveljić
- Jasna Bogovac
- Lana Bubalo
- Janez Čebulj
- Andrea Circolo
- Antonio Davola
- Florian Dollenz
- Alessandra Donati
- Gregor Dugar
- Ronan Dunne
- Martin Ebers
- Delia Ferri
- Julius Forschner
- Frederick Gilligan
- Stefano Giubboni
- Anne Jonlet
- Kevin Keane
- Alexander Keys
- Boštjan Koritnik
- Jaka Kukavica
- Dorothea Magnus
- Luz Maria Martínez Velencoso
- Luigi Migliaccio
- Dimitrios Moustakatos
- Vincent Naveaux
- Marko Novak
- Eoghan Ó hArgáin
- Barry O'Neill
- Frank Gerard O'Reilly
- Patrick O'Reilly
- Alfonso Ortega
- Juliana Rodríguez Rodrigo
- Tereza Pertot
- Uroš Petohleb
- Fausto Pocar
- Saša Prelič
- Nuria Raga Sastre
- Vasilka Sancin
- Grega Strban
- Chris Thomale
- Valeria Torre
- Kaius Tuori
- Matija Urankar
- Frank Van Vlaenderen
- Inmaculada Vivas
- Patrick White
- Saša Zagorc

News from ELI Hubs and SIGs

Slovenian Hub: Meeting in Ljubljana

On 8 May 2019 the annual meeting of the Slovenian Hub took place in Ljubljana. Reporter of the ELI's project on '[Detention of Asylum Seekers and Irregular Migrants and the Rule of Law](#)' and President of the European Chapter of the International Association of Refugee and Migration Judges, Boštjan Zalar, presented key challenges for courts and judges when implementing standards from the output.

President of European Center for Dispute Resolution (ECDR) and Chair of the Hub, Aleš Zalar, presented key judicial policy standards and principles concerning the ELI's project on '[The Relationship between Formal and Informal Justice through the Courts and ADR](#)'. Zalar was a member of the ELI Team that drafted the Statement. Participants welcomed the recommended approach in Europe of integrating alternative dispute resolution procedures and, in particular mediation, in the justice systems. Slovenia is the first EU Member State (since 2009) that mandated all courts of first and second instance to offer mediation to litigants.

More information is available [here](#).



Spanish Hub: 4th Annual Meeting in Elche

On Europe Day, 9 May 2019, the 4th Annual Meeting of the ELI Spanish Hub on European Jurisprudence took place in Elche.

Fernando Miró Llinares, Dean of the Faculty of Law of the Miguel Hernández University in Elche, opened the 4th Annual Meeting of the ELI Spanish Hub and welcomed around 120 experts from diverse legal disciplines.

ELI Secretary General, Vanessa Wilcox, stressed the importance of the ELI's local outreach through its Hubs and praised the Spanish Hub for being one of the most active.

The Conference opened with a round table on 'A Dialogue on the Impact of European Acquis on Internal law and on Courts'. The theme was then deepened by twenty thematic panels on a broad range of legal topics such as digital law, the protection of fundamental rights, financial law, private international law and criminal law.

More information is available in the [agenda](#).

Italian Hub: Addressing Tax Avoidance beyond BEPS

The ELI Italian Hub co-organised a Conference on addressing tax avoidance beyond base erosion and profit shifting (BEPS) at the University of Ferrara, Department of Law on 24 May 2019. Speakers from across the world addressed the importance of new, avoidance-proof, provisions capable of allocating States' right to tax according to value creation by businesses in general, and by the MNEs (Multinational Enterprises) in particular. The overall situation in Europe in this respect can be considered quite satisfactory (thanks to the implementation of the Anti-Tax Avoidance Directive ATAD) when compared, for instance, to the Asian scenario, where the lack of any coordination pushed the State to scramble in this respect.

Digital taxation is the next big challenge European States shall have to deal with, considering the failure of the Commission's proposals in this respect and the lack of possible (and inclusive) alternatives. In addition, the influence of taxation on business decisions needs to be considered. This is not only a question of debt or equity financing, but also the influence of taxation on corporate risk-taking. More information about the Conference is available [here](#).



Launch Conference on Access to Justice

The ELI is proud to announce the launch of the Belgium-Luxembourg Hub that was inaugurated on 27 May 2019 in Brussels.

The ELI Belgian-Luxembourgian Hub was successfully launched on 27 May 2019 in Brussels under the initiative of Robert Bray, Grégory Minne, Denis Philippe, and Matthias Storme. At the Conference, Paul Nihoul, Judge at the General Court in Luxembourg and Professor at Université catholique de Louvain, delivered a thought-provoking keynote speech. Over 80 participants from different legal professions discussed citizens' requests to judges to review the legality of decisions or regulations that are affecting their rights, on issues that had long been reserved to legislators or administrations.



Participants discussed if these new requests correspond to a new function that citizens would like judges to play and how the judiciary is responding to these new citizens' demands. These are essential questions for the development of our society, in the context of a Union based on values such as

the rule of law, and a growing interest is developing in these issues.

The event was a great success and enthusiasm for more such events in the future was voiced by the participants. More information is available in the [agenda](#).



Italian Hub: Conference on Circular Economy and the Law

The Department of Economics and Management of the University of Ferrara, together with CERCIS (Centre for Research on Circular Economy, Innovation and SMEs), the interuniversity research center SEEDS (Sustainability Environmental Economics and Dynamic Studies) and the ELI Italian Hub organised a three-day Conference from 6–8 June 2019 to promote analysis, synergies and further insights on the multiple facets of a circular economy and its regulation. More information is available in the [agenda](#).

Hungarian Hub: Conference on Hungarian Cases

The Hungarian Hub held a Conference on Hungarian cases before the CJEU on 7 June 2019 at ELTE University, Faculty of Law, Budapest.

50 participants discussed various topics on Hungarian cases before the CJEU. More details about the Conference that was held in Hungary can be found [here](#).

Administrative Law SIG: Conference Papers

During the Administrative Law SIG Conference held in June 2018 in Budapest, speakers were offered the opportunity to publish written versions of their papers in the ELTE Journal of the Eötvös Loránd University (ELTE).

The papers deal with different topics concerning administrative law, with a specific focus on the implication of the European Commission's White Paper on the Future of Europe. Papers will be published [here](#).



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Insurance Law SIG Inaugural Conference

Join the Inaugural Conference of the Insurance Law SIG on Systems of Governance in the European Insurance Industry on 10 October 2019 in Vienna.

Established at the end of 2018 by ELI members Helmut Heiss and Cristoph Brömmelmeyer, the SIG aims at providing an active forum for discussion and cooperation, reviewing relevant legal developments, conducting and facilitating research, making recommendations and providing practical guidance in the field of insurance law.

In that vein, the SIG is holding its Inaugural Conference at the University of Vienna.

The agenda of this event, which will be opened by ELI President Christiane Wendehorst, will be uploaded on the SIG's [page](#) shortly.

To join the SIG, please register [here](#).



Save the Date: Upcoming Public ELI Events

A full list of upcoming ELI events and working group meetings you can find on the [ELI webpage](#).

20 September 2019

Hungarian Hub Conference on the Digital Internal Market in Budapest, in English

4–6 September 2019

ELI Annual Conference and Meetings in Vienna

11 October 2019

German Hub Conference on Protection of Trust in the Digital Age in Frankfurt/Main, in German

European Law Institute

- Pan-European, democratic, membership-based organisation
- Uniting prominent jurists of all legal professions
- Aiming to improve the law in Europe
- Carrying out projects with immediate practical application

Members of the ELI can contribute to its projects and gain access to an international network of jurists. Apart from other activities, the ELI organises its Annual Conference and Meetings bringing together Europe's leading experts in diverse fields of law.

Executive Committee

President:	Christiane Wendehorst
Vice-President:	Sjef van Erp
Treasurer:	Denis Philippe
Members:	Anne Birgitte Gammeljord Hans Schulte-Nölke Lord John Thomas

2019 ELI Conference

The 2019 ELI Annual Conference will take place from **4–6 September in Vienna (Austria)**. Please take note of this date.

We look forward to seeing you there!

ELI in Vienna

The Secretariat of the ELI, which is hosted by the University of Vienna, is located in the heart of the Austrian capital, close to the main building of the University, the representation of the European Commission in Austria as well as the information office of the European Parliament.

We cordially invite you to visit us whenever you are in Vienna.



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