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## Message from Linos-Alexandre Sicilianos

### President of the European Court of Human Rights

Dear ELI Members and Friends

It is a great pleasure, as President of the European Court of Human Rights, to have been invited to contribute to this edition of the European Law Institute (ELI) Newsletter.

While we are all living through an uncertain present, marked by the COVID-19 pandemic, we may also look to the past to provide us with guidance.

This edition of the ELI newsletter falls at a very special time in our shared European history. First, last year marked the 70th anniversary of the Council of Europe and the 60th anniversary of the European Court of Human Rights: two remarkable achievements for fundamental rights protection in Europe. Second, this year sees the 70th anniversary of the European Convention on Human Rights: the first of the Council of Europe's Conventions, which remains the cornerstone of its activities.

From its inception in 1950, the Convention has demonstrated the strength of commitment of the signatory Member States to secure human rights protection for all those within their jurisdiction.

The Convention was radical and ambitious in providing for the establishment of a human rights court to ensure the observance of the Member States' engagements, thereby realising the aim of integrating State Parties into a system of collective responsibility for human rights protection.

Of course, our concerns have changed since the introduction of the Convention in 1950; though peace and stability in Europe arguably remain fragile. Fortunately, as a 'living instrument' the Convention has the capacity to adapt to the evolution of European societies. Indeed, our Judicial Seminar this year, which precedes the Opening of the Judicial Year, was dedicated to discussing 'The Living Instrument at 70'.

The European Court of Human Rights has produced a considerable body of case law refining and expanding its norms, such that the protection of human rights in Europe has been raised to a higher and substantially uniform standard. The Court has tackled sensitive social questions, such as abortion and surrogacy; novel questions arising from technological developments, such as mass data collection and hate speech on the internet; and complex problems of State security. Indeed, in the future the Court may be seized with complaints relating to the measures taken during the coronavirus epidemic.

The text of the Convention has also evolved. For example, the new Protocol 16 enables the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms in the Convention.

The process of ensuring that the Convention remains relevant to the modern day is equally dependent upon dialogue with other institutions and courts in the Council of Europe legal space, notably with the Court of Justice of the European Union as well as with national courts.

The Court's Superior Courts Network, established in 2015, has grown considerably since its inception, and now comprises 89 courts from 40 States.

In these challenging times marked by the Coronavirus epidemic, exceptional measures are needed to respond to the crisis. Nevertheless, governmental responses should be taken within the framework of democracy and the rule of law. Under no circumstances should this crisis be used to unduly restrict freedoms. I consider that ELI's 15 Principles for the COVID-19 crisis will prove to be useful tool for all actors.



**From its inception in 1950, the Convention has demonstrated the strength of commitment of the signatory Member States to secure human rights protection for all those within their jurisdiction.**

*Linos-Alexandre Sicilianos*

I remain confident that, together, equipped with these tools, we as active participants in the European enterprise can maintain and defend the gains which have been made and meet the challenges of the future, however great they may be.



# Message to ELI Members on COVID-19, Principles and Webinar

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## Imprint

Media Owner & Editor:  
European Law Institute (ELI)  
Schottenring 16/175  
1010 Vienna, Austria

Dear ELI Members and Friends

We are presently facing unprecedented times with the COVID-19 pandemic and are mindful of the havoc it has wreaked across families, communities and businesses globally. ELI wishes to express its sympathy for those of its Members and friends that have been worst hit by the crisis and to offer its solidarity in this hour of uncertainty.

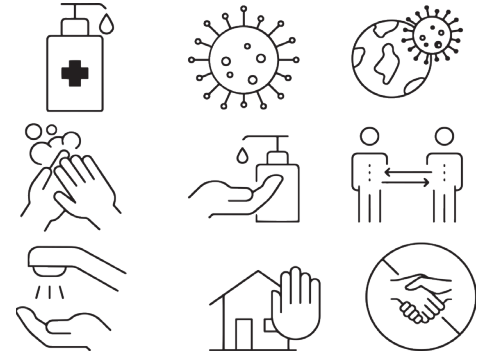
The pandemic has caught everyone off guard and has shaken us all to the core. Several adjustments have and will have to be made by us all, but we have every confidence that the ELI community will stand firm together in weathering this unprecedented storm.

The pandemic has had an impact on ELI. Several physical Project Team meetings are now being conducted remotely, with Team members remaining admirably resolute to their commitments to making progress on projects.

Further, due to the impact of the COVID-19, ELI's Annual Conference and Meetings 2020 will take place online.

We are hard at work on a virtual programme with the aim of ensuring that the content and knowledge of current and upcoming ELI projects and other activities can still be shared throughout our network and beyond. Please keep your calendars blocked for the original Annual Conference (9–11 September) and meetings dates, and prepare to join us online for several panel sessions. More details will follow shortly.

In line with its function, which is to provide guidance and help on important legal issues across Europe, ELI, through a joint effort by its Executive Committee, and backed-up with comments and suggestions from its Council and Senate, has adopted a set of 'Principles for the COVID-19



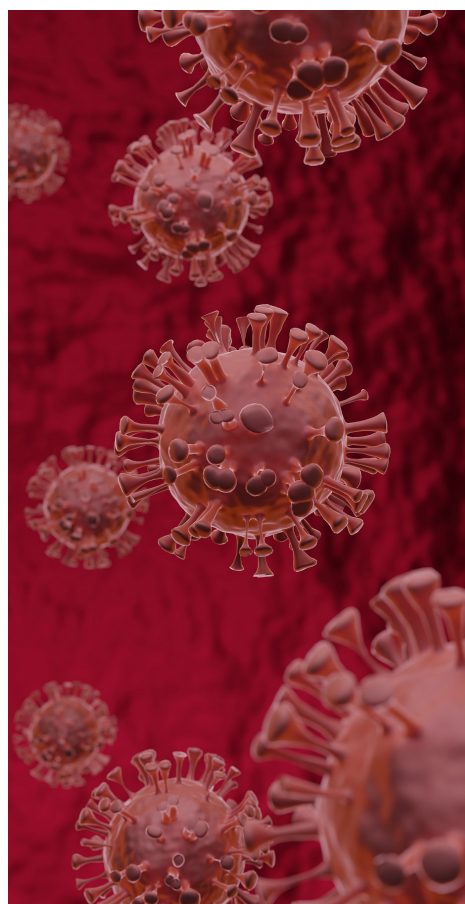
Crisis'. The 15 [principles](#) were drafted with due consideration of what has been published by other bodies and are intended to guide European States, EU Institutions and other bodies with the object of ensuring that everything that is done accords with the rule of law and democratic values.

The Executive is indebted to ELI's Senate and Council for the very considerable time and consideration they have given to the draft Principles. ELI's 'Principles for the COVID-19 Crisis' were approved by its Council on 26 April 2020. Prior to that, the Principles were discussed with ELI Members, at the first in a series of fortnightly webinars on various topics, including the pandemic. The lively discussion of 23 April 2020 also prompted reflection and minor changes to the text. We encourage you to visit our website to [watch](#) the webinar and for more information on subsequent webinars.

With that, we hope that you all manage to stay safe and healthy during these difficult times. We look forward to seeing you online for the webinars in the course of the coming weeks and in person again hopefully in the not too distant future.

Sincerely

Christiane Wendehorst, President  
Lord John Thomas, First Vice-President  
Pascal Pichonnaz, Second Vice-President



# ELI Publishes Principles for the COVID-19 Crisis

**The ELI Council recently adopted the ELI Principles for the COVID-19 Crisis, which address some of the most important legal issues arising in relation to the COVID-19 crisis and offer guidance to European States, EU institutions and other bodies.**

Despite COVID-19 and the exceptional measures taken by governments to control its spread, it is in the greatest interest of society that these measures against COVID-19 are imposed and enforced within the framework of established democratic principles, the international legal order and the rule of law.

In light of the above, ELI has put forward 15 Principles for the COVID-19 crisis. The Principles address the following issues: (1) fundamental values, principles and freedoms; (2)

non-discrimination; (3) democracy; (4) lawmaking; (5) justice system; (6) privacy and data protection; (7) borders and freedom of movement; (8) free movement of goods and services; (9) employment and the economy; (10) continuity of relationships at a distance; (11) education; (12) moratorium on regular payments; (13) force majeure and hardship; (14) exemption from liability for simple negligence and (15) return to normality.

The full Principles are available for download [here](#).

## Launch of ELI Webinar Series

**In light of the continued turmoil, disruption and uncertainty ushered in by COVID-19, ELI has decided to organise a series of fortnightly webinars, most of which are dedicated to the pandemic.**

As mentioned above, the first webinar, devoted to the 'ELI Principles for the COVID-19 Crisis', took place on 23 March 2020 and attracted well over 100 participants from Europe and beyond. More information on the webinar is available [here](#).

For more details on other webinars, please see the combined agenda on the right.

Please note that the events are for ELI Members only, however, videos from the webinars will be subsequently posted on ELI's [website](#).

## ELI Webinar Programme

### Thursday | 7 May 2020

18:30–19:30 (CET)

#### Hardship & Force Majeure

Confirmed speakers:

Hugh Beale QC  
Denis Philippe  
Pascal Pichonnaz  
Christina Ramberg  
Pietro Sirena  
Fryderyk Zoll

### Thursday | 21 May 2020

18:30–19:30 (CET)

#### Insolvency and Collection Proceedings Post-COVID 19

Confirmed speakers include:

Anne-Birgitte Gammeljord  
Denis Philippe  
Jos Uitdehaag

### Thursday | 4 June 2020

18:30–19:30 (CET)

#### Back to Normal: Checks and Balances (Legislator/Judiciary)

Confirmed speakers include:

Anne Birgitte Gammeljord  
Lord John Thomas

### Thursday | 18 June 2020

18:30–19:30 (CET)

#### Rule of Law (During and Post-COVID-19)

Confirmed speakers include:

Lord Jonathan Mance  
Andreas Stöckli  
Fryderyk Zoll

### Thursday | 2 July 2020

18:30–19:30 (CET)

#### Anti-Corruption Framework

Confirmed speakers include:

Anne Birgitte Gammeljord



# An Insight into Business and Human Rights

by Michael O'Flaherty

With COVID-19, the world is currently going through an extraordinary crisis that has put a good part of the global economy on hold. Business has a critical role to play in contributing to people's well-being, both in ensuring safety and health at work and by contributing in the production of medical equipment and pharmaceuticals. In doing this, businesses will now, more than ever, be expected to comply with human rights standards (see recent [report](#) of the Institute for Human Rights and Business 'Respecting Human Rights in the Time of the COVID-19 Pandemic'; see also [here](#)) in regard to workers' rights, the right to privacy, equality and non-discrimination, freedom of expression and the right to health.

When we talk about 'business and human rights', we have in mind two essential aspects: the prevention of human rights abuses, and access to an effective remedy for people whose rights are affected. Preventing business-related human rights abuses should certainly be at the core of our actions, but when abuse does happen, access to an effective remedy in case of breaches is essential for victims of abuse.

The European Union Agency for Fundamental Rights (FRA) collected evidence through desk and fieldwork research in 2018/19 on access to remedy in business-related human rights abuses in order to identify



possible actions the EU could take to improve the situation in cooperation with the ELI (see [here](#)). The first part of this research was [published](#) in December 2019 providing examples of business-related human rights abuses. This year, FRA will present the findings of its fieldwork research in a second report, which will include suggestions on measures that can improve access to justice for human rights violations by businesses.

The research finds that for more effective access to remedy the most critical aspects to consider are mainly: first, proving that a company's specific activity is actually responsible for the damage that has occurred; and second, ensuring equality of arms by empowering and supporting individuals to stand effectively against more powerful business adversaries.

## Who Are the Victims of Business and Human Rights Abuses?

FRA's research shows that consumers, workers, and local populations can be affected by harmful business practices which cover a broad spectrum ranging from [internal compliance to labour standards](#), to the displacement of indigenous populations and environmental pollution.

Very often, while an EU-headquartered company can have a significant role in the abuse, either directly or through its supply chains, victims of corporate human rights abuses are citizens of third countries. Such cases may involve local populations suffering severe pollution resulting from leaking oil pipelines owned by a subsidiary of an European oil extraction company. Often the victims are workers exploited by the textile industry, or indigenous communities affected by the operations of energy consortiums.

However, incidents identified through FRA's research also involved abuses within the EU. For example, elderly consumers tricked into signing unfair energy contracts or farmers suffering health deterioration due to intoxication by an herbicide produced and sold in the EU.







### The Burden of Proof

The research shows that rules on the burden of proof can be a major obstacle for persons who claim an infringement of their rights. In most legal systems, such a claim requires individuals to prove that they are directly affected by the actions of a business and to establish various levels of causality, including links between parent companies with subsidiaries or affiliate firms.

However, providing such proof is often impossible, especially when the

supporting documentation is in the possession of a company accused of the alleged infringement, adding to the imbalance in the judicial equality of arms. The main reason is that 'disclosure' – the obligation to release documents and other information by a business entity in a legal dispute – is either not available in most European legal systems, or only available in a limited way. For example, when courts require that documents for disclosure be explicitly specified which would require claimants to actually know of their existence and specific content. In most cases, however, this proves to be impossible. Moreover, in the legal systems covered by FRA's research, the burden of proof remains with claimants, even where there is limited disclosure of documents.

### Legal Standing

In most cases, the rules for defining who has standing before a court of law restrict the ability to pursue a particular claim to those individuals who have suffered the harm in question, or their direct representatives. Legal standing relates closely to collective redress and representative action – where a group of claimants can pool resources or where, for example, a representative organisation can bring a claim, to balance the equality of arms. Wider legal standing can lead to procedural

economies, with beneficial results in terms of costs and time not only for claimants and defendants but also for the court system. Yet, such collective representation is not possible in many legal systems or is very limited – either to only certain types of claims, or only following very complicated procedural rules. FRA's research entailed a collection of expert testimonies about the difficulties civil society organisations face in being recognised as 'qualified organisation' in order to file collective redress claims. It also pointed to additional difficulties civil society organisations face, such as limited resources and the high financial risk of prolonged and complex litigation.

FRA's upcoming report will present suggestions on how best to overcome such obstacles in order to improve access to justice in this area and share examples of good practices.

### The Author

Michael O'Flaherty is Director of the EU Agency for Fundamental Rights. FRA is the independent centre of reference and excellence for promoting and protecting human rights in the EU, offering assistance and expertise based on evidence and legal analysis from across the EU Member States.





# Case Studies on Business and Human Rights

In order to have a solid basis for appreciating how matters stand when it comes to access to remedies in cases where businesses stand accused of human rights abuse, significant 'incidents' in EU Member States (and also in North Macedonia and Serbia) were collected by FRA, which is providing input for an ELI project on this theme. Analysis of the – more than 150 – incidents enable the main issues to be identified, in particular what factors play a role in determining access to justice or even in determining whether victims succeed in their claims: these factors are likely to include the 'cross-border' nature of the case, legal standing, the quality of legal advice, judicial as opposed to non-judicial mechanisms, what type of fundamental rights are affected, etc.



## Case Study 1

The incidents identified cover a great variety of legal situations. For instance, in *Lexbase*, a Swedish company offered access to criminal records free of charge. The company was sued by individuals for defamation. The Swedish court had to decide if the company had violated the right to protection of personal data (Article 8 of the Charter of Fundamental Rights of the European Union) or whether freedom of expression should prevail.

## Case Study 2

In the *Walltopia* case, a prominent Bulgarian manufacturer of climbing walls caused concerns with labour safety rules when operating in the UK and had fines imposed on it for not complying.

The UK government agency, the Health and Safety Executive, brought a case relating to Article 31 of the Charter of Fundamental Rights on fair and just working conditions.

## Case Study 3

In the well-known case of *Vedanta*, a large number of Zambian citizens claimed in the UK courts that they had suffered damage on account of pollution from a copper mine. The mine was owned by a Zambian company, a subsidiary of Vedanta, incorporated in the UK. The case concerned health, loss of income and a clean environment and a UK court has allowed the case to go ahead. This case and the equally prominent case of the *Ogoni 9* in the Netherlands will be subject to particularly close analysis in that they may represent a turning point in this field.





# New ELI Report on Protection of Adults in International Situations

**We are pleased to report that the final results of the ELI Protection of Adults in International Situations project were approved by the ELI Council on 20 February and ELI Membership on 21 March 2020.**



ELI would like to express its gratitude to Project Reporters Pietro Franzina and Richard Frimston, who executed the project in such an exemplary manner. Sincere thanks also go to Project Team members, Advisors, Assessors, Members Consultative Committee members, Observers and all others for their reliable support and valuable input.

The adults referred to in the project are persons aged 18 or more who are not in a position to protect their interests due to an impairment or insufficiency of their personal faculties. They might be subject to such an impairment or insufficiency from birth or a very young age, victims of accidents or failed medical interventions or older persons gradually losing their autonomy. The protection of their personal welfare and/or property through supporting the exercise of their legal capacity is of particular importance in the light of the ever-increasing mobility of EU citizens and their [assets](#) as well as the EU's changing demographic picture.

For an illustration, in Europe, there are about 10 million people with dementia, who might need such protection, and their number is expected to double in the next [10 years](#). The lack of uniform rules of private international law in the field is likely to, among other things,

undermine the effectiveness of the protection provided to adults in cross-border cases and adversely affect their rights to free movement in the internal market, thereby resulting in discrimination. Issues connected to their protection have also been recently adjudicated in European courts, for example, in the Netherlands and United Kingdom.

The ELI project began in 2017, under the leadership of Pietro Franzina and Richard Frimston. The approved Report encourages the European Union to consider both external action and the enactment of legislation in the field of protection of adults. It provides analysis on the protection of adults in international situations. Where appropriate, it includes proposals regarding such protection as well as further issues surrounding the application of the Hague Convention of 13 January 2000 on the International Protection of Adults. It addresses the following issues: (a) the bases and scope of the Union's competences as regards the protection of adults in international situations; (b) the strategies that the Union should consider following in order to enhance the protection of adults in the relations between Member States; and (c) further improvements that the Union may

promote with respect to the Hague Convention of 13 January 2000 on the International Protection of Adults without making use of its external competence or its legislative powers. Finally, the Report sets forth a checklist to encourage the development of private mandates within the ambit of the substantive laws of the Member States.

The Report has been already presented to members of the European Parliament and brought to the attention of national authorities and relevant stakeholders, and strides will continue to be taken in this regard. The project's Reporters would appreciate it if ELI Members from countries that have not yet [ratified](#) the Convention could also encourage this.

The Report on Protection of Adults in International Situations is available [here](#).



**This project is co-funded by the European Union**



## ELI Proudly Announces the Publication of its Second Book with Oxford University Press (OUP)

**The book is based on ELI's 'Rescue of Business in Insolvency Law' project which ran from 2013 to 2017 and was conducted by Bob Wessels and Stephan Madaus, under the assistance of Gert-Jan Boon.**

The results of the project, which can be downloaded [here](#), were approved by ELI bodies in 2017. The project sought to design (elements of) a legal framework that will enable the further development of coherent and functional rules for business rescue in Europe. This includes certain statutory procedures that could better enable parties to negotiate solutions where a business becomes financially distressed. Such a framework also includes rules to determine procedures and conditions under which an enforceable solution can be imposed upon creditors and other stakeholders despite their lack of consent.

The initial ELI Report was timely in light of the European Commission's efforts on approximating business rescue laws resulting in the EU Directive on Restructuring and Insolvency Law (2019/1023). It is with pride that we observe that the ELI Report was expressly cited in Commission documents leading to the drafting of the Directive.

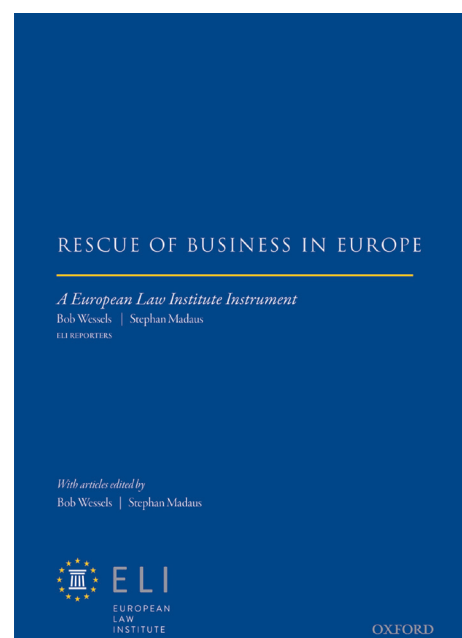
Further, national governments have already expressed their interest in the Report's recommendations. UK legislative tools to improve rescue opportunities for financially distressed companies, for example, refer explicitly to the discussion about the so-called 'absolute priority rule' versus 'relative priority rule', elaborated upon in the ELI Report: yet another example that ELI outputs are of immediate practical utility.

More recently, the Report was referred to in the [Executive Statement](#) of the Conference on European Restructuring and Insolvency Law on COVID-19 in which certain steps are recommended to be taken by governments to prevent the unnecessary bankruptcies of entrepreneurs.

ELI Members can purchase the book for personal use at 70% of the UK recommended retail price. To obtain such a discount, please order the book directly from OUP by sending an e-mail to [Imogen.Hill@oup.com](mailto:Imogen.Hill@oup.com).



**This project is co-funded by the European Union**



## ALI-ELI Principles for a Data Economy at UNCITRAL-UNIDROIT Workshop

**UNCITRAL and UNIDROIT invited ELI President and ALI-ELI Co-Reporter Christiane Wendehorst as an expert to a two-day workshop on Artificial Intelligence, Data Transactions and Digital Assets and Other DLT-Related Issues on 10–11 March 2020 at UNCITRAL in Vienna.**



The approach of the ALI-ELI Principles for a Data Economy – Data Rights and Transactions on leapfrogging and other downstream obligations, which already found broad recognition at the 59th session of the United Nations Commission on International Trade Law (UNCITRAL) Working Group IV on 25 to 29 November 2019, was discussed in the data transactions session.

The ALI-ELI Principles for a Data Economy are a transnational project conducted jointly by the American (ALI) and ELI. The project is generously funded by the Fritz Thyssen Foundation. The Reporters of the Principles, Christiane Wendehorst (on the ELI side) and Neil Cohen (on the ALI side), are currently working on Preliminary Draft 4.

## Finalisation of the AI and Public Administration Feasibility Study

**Great strides were taken to advanced the proposed project at the Team's remote meetings of 30 March, 14 and 28 April 2020.**

The Team finalised the feasibility study and discussed, among other things, certain conceptual issues and different models of impact assessments. The Team's feasibility study and project proposal are currently before ELI's Council for a decision as to whether a fully-fledged ELI project should commence on the topic.

This timely study aims at drafting model rules on assessing the impact of artificial intelligence used in the context of public administrations, that could serve as an inspiration to European legislators and relevant stakeholders.

## Access to Digital Assets Project Team Advance Draft

**The Team met remotely on 15 April 2020 to discuss draft chapters submitted by two working groups within the project.**

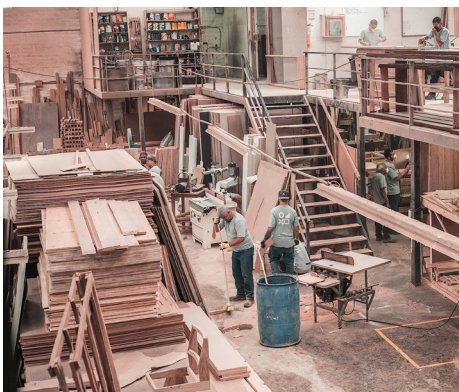
The Project Team provided feedback on the two draft chapters dealing with categories of digital assets and categories of persons having access rights, which were prepared by smaller Working Groups ahead of the meeting. In connection to this, discussions also focused on the purpose, scope and definitions used in the project. The Team decided to further divide their work and expand the existing Working Groups, which will continue working on their chapters based on the outcome of discussions.

Two European Commission Observers, Maria Vilar Badia and Veronica Williams, as well as the project's Assessors, Christiane Wendehorst and Aneta Wiewiorowska Domagalska, joined the meeting. ELI is pleased to report positive feedback on the part of a Commission representative.



## Business and Human Rights Project Team Convened Remotely

**The Team met on 30 April 2020 to discuss the project's status and advance their draft.**



Team members of the Business and Human Rights project, which is being conducted with input from FRA, discussed, among other things, the project's status, FRA's research findings emerging

from the second phase of their study on the matter and Team members' drafts. Authors of chapters dealing with collective redress, private international law provisions with respect to access to remedies, and action and transparency, presented their drafts, following which Team members and Assessors, namely Corrado Malberti and Lord John Thomas, provided feedback.

The next remote meeting aims at discussing outstanding Chapters, more specifically the Chapters on human rights due diligence, and monitoring and enforcement mechanisms. It is planned for the second half of May.

## Commentary on the ELI Model Rules on Online Platforms

**In a bid to disseminate output further, the Reporters of the recently adopted ELI Model Rules on Online Platforms published a commentary to the Rules in EuCML Issue 2/2020.**

Christoph Busch, Gerhard Dannemann, Hans Schulte-Nölke, Aneta Wiewiorowska-Domagalska and Fryderyk Zoll published a commentary in the Journal of European Consumer and Market Law this month. You can access the publication [here](#). The ELI Model Rules on Online Platforms are available to download for free on the [ELI website](#).



## ELI's First Vice-President at the Conference on the International Project on Judicial Independence

**ELI's first Vice-President represented the Institute at the Conference on the International Project on Judicial Independence organised by the International Association of Judicial Independence and World Peace and held at the University of Potsdam on 14–15 February 2020.**



The subject matter of the Conference was Judicial Independence and Democracy, Measuring Justice and the Rule of Law, the Role of the Judge in Jewish Law, Justice and Technology, Artificial Intelligence

and Judicial Decisions and Amendments to the Mt Scopus International Standards of Judicial Independence, and the Bologna Milano Global Code of Judicial Ethics.

During the Conference First Vice-President Thomas, besides raising ELI's relevant work, made a presentation on Artificial Intelligence and the Judiciary. He explained that, although digitalisation was making significant changes to the courts, it was unlikely that artificial intelligence would bring about further significant change in the immediate future. It was, however, important for judges and others to address the issues that would arise as artificial intelligence was developed. These

issues included control of the use that might be made of data provided to the courts or during court sittings as a result of digitalisation and transparency in relation to algorithms that were being introduced in the criminal justice system to provide predictions for future behaviour of those convicted of a crime.

One longer term issue that needed to be examined was the use of artificial intelligence to control judicial discretion and review judicial decisions. It was agreed that there would be further examination of this subject and steps would be taken to amend the Mt Scopus principles to give special attention to the use of artificial intelligence in the courts.

## ELI's Second Vice-President Pichonnaz at the HCCH CGAP

**Vice-President Pascal Pichonnaz represented the Institute, which is an Observer to the Hague Conference on Private International Law's (HCCH) Council on General Affairs and Policy (CGAP), at the CGAP meeting that took place from 3–6 March 2020 in The Hague.**

During the meeting, ELI's second Vice-President Pascal Pichonnaz presented, among other things, ELI's work in the field, in particular its Principles for a Data Economy, Blockchain and Smart Contracts and Access to Digital Assets projects.

He met different stakeholders as well as the Secretary General of the HCCH, Christophe Bernasconi, to exchange views and explore ways to create synergies. A further topic of mutual interest on the agenda on 4 March was the protection of adults in international situations. Both ELI and the HCCH have been

working on this theme in recent years. As seen above, ELI is pleased to announce that its project on the

Protection of Adults in International Situations was approved by its Membership on 21 March 2020.





# ELI Welcomes its New Individual Members

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

## New Individual Members

- Hüseyin Can Aksoy
- Niklas Arvidsson
- Cristian Bitea
- Salvatore Buscema
- Polina Cazals
- Ernani Contipelli
- Mustafa Ebaid
- Fabrizio Esposito
- Ibai Puente González
- Zoran Hačić
- Sirko Harder
- Margareth Helfer
- Patrick Hoffmann
- Marija Jovanovic
- Zafer Kahraman
- Dariusz Kloza
- Jovana Lakic
- Petra Lea Láncos
- Francesco Longobucco
- Karmen Lutman
- Jan Lüttringhaus
- Giuseppe Marino
- Carlos Nóbrega
- Hrvoje Pauković
- Jelena Perovic
- Jens Hillebrand Pohl
- Sarah Progin-Theuerkauf
- Andrea Purpura
- Peter Rott
- Seyedeh Sajedeh Salehi
- Nadja Skaljic
- Anatoli Tsakalidou
- Gabriela Varia



ELI

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## New Sustaining Members

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

- Remi Barneoud
- Salvatore Buscema

## Publications by ELI Members and Groups

ELI Member Thomas Papadopoulos has recently published an edited book on Cross-Border Mergers: EU Perspectives and National Experiences. This edited volume focuses on specific, crucially important structural measures that foster corporate change, namely cross-border mergers, which play a key role in business reality, economic theory and corporate, financial and capital markets law. You can find more details [here](#).

## Have you published recently? Let us know.

ELI's newsletter, which is published every two months, reaches an audience of around 2,500 registrants and provides an excellent channel to showcase your latest publications. We would like to invite all ELI Members that have published books shortly before each issue of our Newsletter to inform the [ELI Secretariat](#) so we can showcase this to our readership.

## Stay in touch with ELI!

We are doing our best to bring up-to-date news about ELI, project developments, representations and upcoming events to ELI Members and friends through our Newsletter and social media channels. It is important to all of us at ELI that we stay connected with you. Should your contact details change, please be so kind as to inform the ELI Secretariat. We also wish to invite those of you that are yet to do so to follow us on our Twitter and Facebook pages and to add us to your LinkedIn network.



## Join a Members Consultative Committee (MCC)

MCC members comment on preliminary project results that have been submitted. Any ELI Member, Individual or Institutional, Fellow or Observer, can join the following MCCs by sending an [e-mail](#) to the ELI Secretariat:

- [Common Constitutional Traditions in Europe](#)
- [Blockchain Technology and Smart Contracts](#)
- [Access to Digital Assets](#)
- [Business & Human Rights](#)



# ELI Welcomes its New Institutional Members

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

## INSTITUT ZA UPOREDNO PRAVO

Beograd, Srbija



### Institute of Comparative Law, Belgrade

The Institute of Comparative Law in Belgrade is one of the leading research institutions in the field of social sciences in Serbia and the Western Balkans region. Its more than 60 years of continuous work makes it one of the oldest institutions for comparative law research in the world.

In addition to scientific research and publishing activity, the Institute contributes with its expertise to the development of legal science, modern legislation and quality solutions for contemporary legal challenges in Serbia and the Western Balkans region.

The fruitful work of the Institute has benefited from the contributions of the most famous Serbian legal science professionals, professors of faculties of law and academics. The Institute's activities have also brought together prominent foreign experts.

It has published more than 300 monographs and thematic anthologies and maintains a specialised library with over 24,000 titles and foreign laws available to all those who wish to study foreign law.

On the 60th anniversary of its existence and work, on Candlemas Day, in 2016, the Institute for Comparative Law was awarded a gold medal for outstanding merits in the development of legal science.



### Brussels Bar (Dutch Language Section)

The Dutch Brussels Bar (*Nederlandse Orde van advocaten bij de balie te Brussel*, NOAB) is the Dutch Language Section of the Brussels Bar.

Regulated by law, the NOAB currently has approximately 3,300 members, including 297 foreign lawyers (EU-list and B-list), all of whom are in private practice and have an office in the city of Brussels or in the larger Brussels area.

NOAB guards the independence and ethics of lawyers, it endeavours to present lawyers in their proper light and provides efficient access to justice.



UNIVERSITY  
of NICOSIA

SCHOOL OF LAW

### School of Law of the University of Nicosia

With more than 25 years of experience in the provision of a top-tier legal education, the School of Law can also be credited for awarding the first law degrees in Cyprus that were officially recognised academically by the Republic and professionally recognised by the Cyprus Legal Council.

Today, our School offers a number of innovative courses and legal programmes that are recognised by the Cyprus Legal Council for access to the legal profession. Through these, we aim to help gain a competitive edge in a prestigious selection of professional careers.



# SIG Workshop on Access to Capital, Corporate Governance and Regulatory Competition in Corporate Law

**The Business and Financial Law Special Interest Group (SIG) held its annual meeting and a workshop entitled 'Access to Capital, Corporate Governance and Regulatory Competition in Corporate Law: A Union that Strives for More?' on 6 March 2020 at the Catholic University of Lille, Faculty of law.**

Researchers from different European universities exchanged views about current issues relating to cross-border mobility of companies, regulatory arbitrage, stakeholder protection and the fight against fraud and abuse. Particular attention was paid to private international law aspects in corporate law as well to corporate taxation.

Presentations were given by Katrin Deckert (University Paris Nanterre),

Aikaterini Pantazatou (University of Luxembourg), Thomas Papadopoulos (University of Cyprus) and Anastasia Sotiropoulou (University of Orléans). The panels were moderated by Andra Cotiga (Catholic University of Lille), Walter Doralt (University of Graz) and Nicolas Rontchevski (University of Strasbourg). The workshop also included the presentation of a recent research project relating to a general theory of the law of corporate debt,

shared by Felix Steffek (Cambridge University). The ELI Feasibility Study on Corporate Sustainability was also presented. Kristijan Poljanec (University of Zagreb) gave a regulatory overview of the matter, covering EU law, the case law of the Court of Justice of the European Union and academic literature. The event, which was well-attended, was organised with the support of ELI and the EU.

## Call for Interest: Food and Farm Law SIG

**Proposal to set up an ELI 'Food and Farm Law' SIG**

2020–2030 will witness massive changes in the way food is produced and consumed. Change is being forced on us by the need to make the food chain sustainable while guaranteeing food security for all Europeans in the European Union and in wider Europe. The Common Agricultural Policy (CAP) is the heartland of the original European Economic Community; food policy has boomed since the 1990s. Now food and farm policies are fundamentally challenged by the need to match the United Nations sustainability goals and the European Union's 'Green Deal' policy. These factors alone make it worthwhile to make space for food and farm law in ELI's spectrum of activities.

The SIG's initiator, Jens Karsten, believes that the SIG could contribute to the 2020–2022 'Conference on the Future of Europe' by looking at the basis in primary law of both the CAP and food policy. The law of the Treaties may need to evolve in order to match current needs, for instance, where ownership and acquisition of agricultural land is concerned and conventional views of the free movement of capital clash with



more communal views of arable lands as communal commodities. The SIG could put down a marker by working towards a position paper to be finalised in the current year. The initiator also believes that a close look at the rules on intellectual property in the agro-food chain is warranted (patents on life, breeders' rights, trade secrets, geographical indications as well as ownership of data). Eventually, the private law relationships in the food chain could become the focus of closer examination. Either could become the topic of work directed at elaborating model rules.

The subjects potentially covered by the SIG run along four strands: food constitutional law, property and lease of means of primary production, intellectual property in the agro-

food chain, and food private law. While each of these topics include potentially large areas of law, the SIG will concentrate on where its work could be of the most immediate relevance for European legislators.

The initiator hopes to align the work of the SIG with the Belgio-Luxembourg Hub's activities.

Considering that food and farm law is a completely new area for ELI, the initiator hopes that it will attract new members with relevant expertise as well as existing members with special knowledge on constitutional and intellectual property law.

ELI Members interested in joining this SIG are kindly requested to contact the [ELI Secretariat](#).

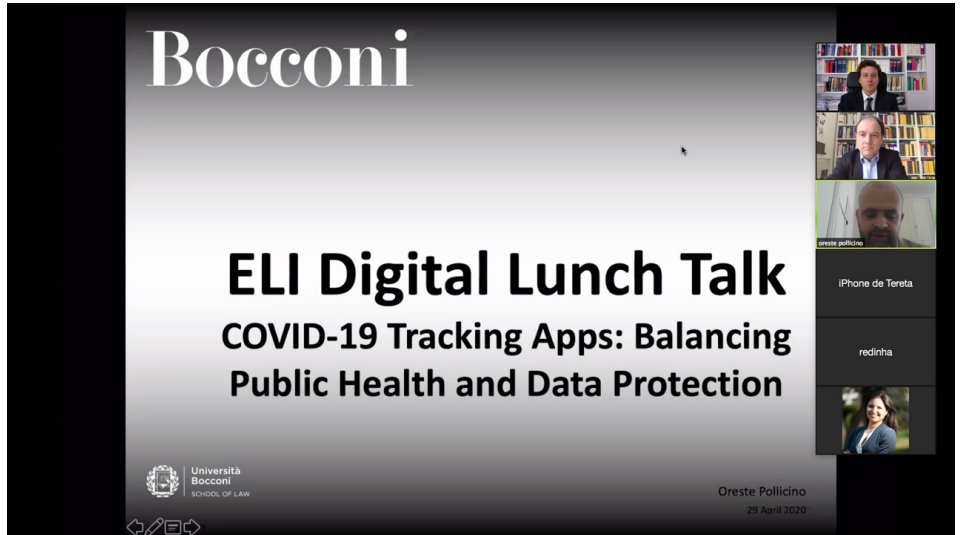


# ELI Digital Law Lunch Talks

**On 29 April 2020 the ELI Digital Law SIG launched its new Digital Lunch Talk series. In the first lunch meeting held via Zoom, SIG Chairs Christoph Busch and Alberto De Franceschi welcomed Professor Oreste Pollicino from Bocconi Law School, Milan, for a talk on 'COVID-19 Tracking Apps: Balancing Public Health and Data Protection'.**

Currently, many countries in Europe and beyond are considering the deployment of contact tracing apps to identify people that have been in contact with an infected person. As Professor Pollicino explained, these apps raise a number of questions regarding the right balance between public health and privacy concerns. Should the system be centralised or decentralised? Should the apps be voluntary or mandatory? What is the role of BigTech companies which provide the necessary application programming interfaces? How should one ensure that these apps do not turn into instruments of surveillance? And should there be a common European solution in order to facilitate cross-border mobility within the European Union?

In his talk, Professor Pollicino addressed these questions and in doing so provided a very insightful comparative analysis. He also explained the conditions under



which COVID-19 apps could be compatible with the General Data Protection Regulation (GDPR). Professor Pollicino for his part is in favor of a dynamic, risk-based approach that goes beyond the binary logic of anonymous and non-anonymous data. After the talk, the 45 participants from across Europe and the United States exchanged their views on different national

approaches to contact tracing and quarantine enforcement via apps. 'This was really a virtual laboratory of comparative law in action', Professor Pollicino concluded.

The series of lunch talks will continue over the next few months with fortnightly talks on current issues in law and technology. More details will be provided soon.



# Meetings and Events Calendar At-A-Glance

Below is a list of upcoming ELI meetings and events. Please save the dates and stay updated by following our [website](#) or social media channels for more details

### May 2020

- 5 May – CANCELLED  
**Event on Digital Assets: Property Rights, Collateral, Insolvency, Succession (organised by ELI's UK Hub)**  
Location TBC
- 7 May  
**ELI Webinar on Hardship & Force Majeure**  
Online
- 8 May – CANCELLED  
**Conference on Contracting and Contract Law in the Age of AI (organised by ELI's Italian Hub)**  
Turin
- 15 May  
**5th Online Annual Meeting on European Case Law (organised by ELI's Spanish Hub)**  
Online
- 18 May  
**Team Meeting of the Access to Digital Assets Project**  
Online (tbc)
- 18–20 May – CANCELLED  
**Presentation of the Council Draft of the Principles for a Data Economy at the 97th ALI Annual Meeting**  
San Francisco
- 21 May  
**ELI Webinar on Insolvency and Collection Proceedings Post-Covid 19**  
Online
- 28–29 May – POSTPONED (provisionally to October, more details in due course)  
**Common Constitutional Traditions in Europe Seminar and Project Team Meeting**  
Milan
- 29 May – POSTPONED (more details in due course)  
**Conference on Sustainability in Insurance Law: Roles and Responsibilities of Insurance Companies in the Light of Climate Change (organised by ELI's Insurance Law SIG)**  
Istanbul

### June 2020

- 4 June  
**ELI Webinar on Back to Normal: Checks and Balances (Legislator/Judiciary)**  
Online
- 5 June – POSTPONED  
**Dissemination Event on the Protection of Adults in International Situations Project with the Austrian Chamber of Civil Law Notaries**  
Vienna
- 15 June  
**Team Meeting of the Access to Digital Assets Project**  
Online
- 18 June  
**ELI Webinar on Rule of Law (During and Post-Covid-19)**  
Online
- 30 June  
**Team Meeting of the Access to Digital Assets Project**  
Online

## Upcoming ELI Events

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### July 2020

- 2 July  
**ELI Webinar on Anti-Corruption Framework**  
Online
- 18–20 July  
**ELI Business and Financial Law SIG at the SASE Research Network's Annual Conference**  
Amsterdam

### September 2020

- 8 September  
**Executive Committee Meeting and Executive Committee-Senate Working Dinner**  
Online
- 8–9 September  
**Council Meeting**  
Online
- 9–11 September  
**ELI Annual Conference**  
Online

### November 2020

- 12–13 November  
**Fifth Spanish-German Hub Meeting on Private Law (organised by ELI's Spanish and German Hubs)**  
Location tbc
- 12–13 November  
**Conference on Environmental Sustainability and 'European Green Deal': Values, Innovation and Regulation (organised by ELI's Environmental Law SIG)**  
Ferrera



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

## Executive Committee

President:	Christiane Wendehorst
First Vice-President:	Lord John Thomas
Second Vice-President:	Pascal Pichonnaz
Treasurer:	Denis Philippe
Other Members:	Anne Birgitte Gammeljord Pietro Sirena Fryderyk Zoll

## 2020 ELI Conference

The 2020 ELI Annual Conference will take place from **9–11 September** online. Please take note of this date.

We look forward to seeing you there!

## ELI in Vienna

The Secretariat of 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.



### ELI Secretariat

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