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# Newsletter

January - February 2020

Bringing Legal Experts Together

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## Message from Richard L Revesz

Director of the ALI

Dear ELI Members and Friends

It is my great pleasure to address the membership of the European Law Institute (ELI), the sister organization to the American Law Institute (ALI), which I direct. As many readers will know, the ELI and the ALI currently are collaborating on an exciting project, entitled 'Principles for a Data Economy' – Data Rights and Transactions. The effort is being ably led by its two Reporters, Professor Neil B Cohen of Brooklyn Law School in New York, and ELI President, Professor Christiane C Wendehorst of the University of Vienna. And I am also very grateful to the two chairs: Lord John Thomas of Cwmgiedd and Steven O Weise of Proskauer Rose LLP. In this note, I would like to share an update on our joint venture, as well as to comment briefly on the value of the public service that the ELI and the ALI perform.

In late January of this year, the ALI's Council – our governing body, composed of 65 leading judges, practitioners, and legal scholars – met to review a number of ongoing projects, including Principles for a Data Economy. I am pleased to report that the ALI Council approved eighteen Principles – comprising almost half of the full project. This meeting marked the first time our Council had considered any portion of the Data Economy project. Given that the project got underway only in January 2018, this represents remarkably swift progress, for which all project participants – including the ELI's Advisory Committee and Members Consultative Committee, as well as the ALI's Advisers, Liaison, and Members Consultative Group – should be congratulated.

Council approval is step one of the ALI's approval process. Next, these sections will be presented to the ALI membership at our Annual Meeting this coming May, which will take place in San Francisco, California. Ultimately, once the entire project has been finished and approved both by the ALI

Council and by the ALI membership, the ALI will have completed its process of approval. The ELI, of course, also will follow its own approval process for Principles for a Data Economy, and I look forward to the day when our two Institutes together may celebrate the publication of this important and timely work. The eighteen distinct Principles recently approved by the ALI Council demonstrate the ambitious vision of the Principles for a Data Economy. Principles 1–4 set the groundwork by establishing the purpose and scope of the project and by providing definitions of key terms (of great importance in this very technical field). Principles 5–10 cover critical aspects of transacting in data. And Principles 15–22 deal with the tricky terrain of data rights. I am confident that this project – once filled out with additional Principles and thoroughly vetted by each of our Institutes – will be of great value to courts, policymakers, and private actors in the global economy.

More broadly, I am exceptionally gratified that the ELI and the ALI are collaborating on a subject matter of such significance to the international order. The ALI was founded nearly a century ago because of the increasing uncertainty and complexity of American law. Our most valuable contributions have been efforts to clear away these ills, whether through synthesizing the common law in our Restatements, crystalizing the four types of criminal intent (mens rea) in the Model Penal Code, or helping to create uniformity in commercial transactions across State lines through the Uniform Commercial Code (UCC, a joint endeavor of the ALI and the Uniform Law Commission, ULC). As our Data Economy Reporters explain in Council Draft No 1, clear Principles for a Data Economy will 'facilitat[e] trans-Atlantic and other cross-border data transactions and reduc[e] the need to resort to murky conflict of laws principles to determine the law applicable to the transaction or any right concerning data.'



I am exceptionally grateful that the ELI and the ALI are collaborating on a subject matter of such significance to the international order.

*Richard L. Revesz*

In a world that depends so significantly on data – and commerce in data – the social good that will flow from these Principles seems clear. As a result, the work that we collectively are doing to produce these Principles is a public service of the highest order. I very much look forward to seeing the fruits of this shared labor!





# ELI

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## ELI Bodies Convene in Vienna

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### Following their recent election into office, members of the new ELI Executive Committee and Council met in Vienna to discuss and take critical decisions on projects and the future direction of the Institute

On 19 February 2020, ELI's Executive Committee met for the second time since being elected into office in September 2019. Much of their meeting, which took place at the ELI Secretariat, was dedicated to assessing the progress made on current projects and setting out a strategy to put before Council for ELI's prospective projects, in light of the fact that several current projects will be coming to an end soon.

The Executive Committee meeting was followed by a Council meeting from 20–21 February 2020. Sincere gratitude is owed to the hosts of the event, the Austrian Ministry of Justice.

The first day of the meeting was devoted mainly to developments in ELI projects that are drawing to an end, as well as to other current ELI projects. On the occasion, the Council approved ELI's Protection of Adults in International Situations project, which is currently before ELI's Membership for a vote.

Discussion of the future portfolio of ELI projects occupied the second day, with the General Project Strategy for 2020 and Beyond forming the basis of initial considerations. Members of the Council

assessed potential proposals under the umbrella topics of Rule of Law in the 21st Century, Law and Governance for the Digital Age and Sustainable Life and Society, and identified topics that ELI might direct its focus towards in the future. Importantly, the Council endorsed, in principle, that future ELI projects should follow a two-step procedure of project development with an initial Feasibility Study and if successful, a subsequent project. Green light was given for proposers to further develop Feasibility Studies for the following topics:

#### **Rule of Law in the 21st Century**

- Fundamental Constitutional Principles
- The Concept and the Role of Courts in Family and Succession Matters
- EU Conflict of Laws for Companies: The Acquis and Beyond

#### **Law and Governance for the Digital Age**

- Artificial Intelligence (AI) and Public Administration

#### **Sustainable Life and Society**

- Corporate Sustainability, Financial Accounting and Share Capital

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# An Insight into ALI-ELI's Principles for a Data Economy – Data Rights and Transactions Project

by Steve O Weise

We read, see, and hear much in the news about data issues. Much of it concerns questions of privacy, real and property rights to data, and the proper use of data collected in the course of everyday lives and business. These are important issues. There are other, also important, but more prosaic matters that need attention.

Behind all of those activities are the agreements for the use of that data. These day-to-day concerns can have a significant effect on the rights of the parties as a matter of the law of obligations, contract, and commercial law. The joint project between the ELI and the ALI – called Principles for a Data Economy – Data Rights and Transactions – gets into the behind-the-scenes ‘plumbing’ of these transactions. It looks to the underlying law of obligations, contracts, and commercial expectations of the parties and seeks to identify and organize the types of provisions and commercial rights of parties to these transactions.

Because data has no location and ‘crosses’ borders at will, it is important that persons entering into agreements that concern data, wherever the parties to the transaction are located, have a common approach and understanding of the terms of the agreement and the respective rights of the parties. To this end, ELI and ALI have assembled impressive groups of judges, practitioners, and academics to



work together to establish a common understanding of these transactions.

While existing law of obligations, contract, and transactions law apply to these transactions, as the use of data increases, practices are developing within these areas of the law tailored to these transactions. The goal is to discern the developing approaches and state a set of principles that is consistent with the law in this area and practice in actual transactions. The collection and distillation of these principles should aid all who work in these area – whether they do so full-time or just dabble in the area. We urge ELI Council members to review the current draft of the Principles and invite comments and suggestions, to be sent to the ELI Secretariat by 7 March 2020.

## The Author

Steve O’Weise has extensive experience in commercial law and contract matters, especially in transactions secured by personal property. He is a member of the Council of the ALI.

He lectures widely on commercial law topics and legal opinion letters and is the author of over 100 articles on these topics.

He has been a member of and an advisor to the UCC Article 9 Drafting Committees and is the representative of the American Bar Association (ABA) to the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Secured Transactions. He is also a member of the Permanent Editorial Board for the UCC.



# Case Studies on Principles for a Data Economy

## Case Study 1: Sale of Gaming Data

### 1.1. The Case

Business S supplies an online video game and holds a broad range of personal data from users playing that game, much of which is protected under data privacy regimes such as the California Consumer Privacy Act (CCPA) or the General Data Protection Regulation (GDPR). S 'sells' the data of 20,000 users to data analytics business B, which, let us assume, is in conformity with the relevant data privacy regimes (because those users have given consent or failed to click the 'Do not sell my data' button). Shortly after the data was transferred to B, 5,000 users from the EU withdraw their consent to the processing of the data. As a reaction, B demands a return of 25% of the price paid to S, arguing that B was unaware of users having a right to withdraw their consent, and that B did not receive what it paid for under the contract. The agreement between S and B is silent on this matter.

### 1.2. Comment

The purpose of the Principles for a Data Economy – Data Rights and Transactions – ('The Principles') is to facilitate the further development of the law by the courts and the legislators worldwide and the review of existing law and soft law instruments by, in particular, legislative bodies, standardization agencies, or bodies developing codes of conduct. They are also designed to be applied to the extent that the parties to a transaction have incorporated them into their contract or have designated them to complement the law which governs their contract.

The Principles do not seek to restate or revise existing rules in specific areas of the law such as copyright or other intellectual property law or data privacy/data protection and trade secret law. Rather, the Principles take the rules of these



areas of the law as more or less given. Therefore, the Principles do not deal with questions such as whether the users' data in Case 1 may be processed without the users' consent and whether that consent may be withdrawn at any time, or whether the users have a right to object to the sale by clicking a button stating 'Do not sell my data' or the like, or whether they should have no rights at all of that kind. Rather, user rights under data privacy/data protection law are left to the applicable rules, considering also the territorial scope of those rules. The Principles do, however, address the effect of data privacy/data protection regimes, and of rights exercised under such regimes, on the rights of parties to a data transaction such as the transaction between S and B.

If S and B have incorporated the Principles into their contract or have designated them to complement the law which governs their contract (or they have become applicable by judicial or legislative action), the Principles apply to the extent that they are not inconsistent with mandatory rules of applicable law. Importantly, since all contracts are inevitably

incomplete, the Principles set out default terms for data transactions, addressing eight different types of transactions. These default terms are included in the contract when the parties have not agreed with respect to those issues. Even if the parties have not incorporated the Principles into their contract, the solutions suggested therein could be considered reasonable and fair by a court which must deal with an incomplete agreement and has to find appropriate 'gap fillers'.

The contract addressed in Case Study 1 is a 'contract for the transfer of data' under the Principles. Among the default terms included in this contract for the transfer of data under the Principles is that S must provide to B information about all legal requirements with respect to control or use of the data, other than those applying to the control and use of data generally, of which the supplier has notice. So whether S would have had to inform B about the application of the GDPR would depend on the facts of the case. If B was based in the EU this would definitely not be the case as the GDPR would apply to data generally, but if both parties were based in the



US and it is not self-evident that the GDPR applies with regard to some user data, S would be required to inform B about this fact. (In any case, where users withdraw their consent vis-à-vis S, this fact must immediately be communicated to B, which is a duty S owes both to users and to B.)

As to the further question as to the effects of the European users withdrawing consent on the transaction between S and B, the Principles state, as a default term, that S must enable B rightfully to exercise control over the data at the time it is supplied. However, if, after the data has been supplied, the recipient's control of the data becomes wrongful (e.g. under an applicable regime of data privacy/data protection law) this does, according to the Principles, not of itself give rise to a claim by the recipient against the supplier.

### Case Study 2: Access to Data by the Supplier of a Component

#### 2.1. The Case

Business T produces tires that are supplied to car manufacturer C and mounted on cars that are ultimately to be sold to end users such as E. Data concerning the tires are generated in the course of mounting of the tires by C (eg the robot mounting the tires tests the properties of the rubber) and in the course of E driving the car (eg the car sensors collect data on how well tires adapt to weather conditions and road surfaces and how quickly the tires' treads wear off). All of this data is sent to and stored on cloud servers controlled by D under a contract with C.

Access to that data would enable T to improve tire performance. Accordingly, T seeks access to the data concerning its tires. C and D decline to grant such access because D is considering developing smart services utilizing the data and does not want anyone else to develop the same services, and C considers

producing tires itself at some point in the future and wants to have a competitive edge over T.

#### 2.2. Comment

Rights with regard to data ('data rights') which one party may have against another party and which are connected, in one way or another, with the nature of data and its generation may follow from different sources. They may, in particular, include the right to be provided access to data or port data, or require the controller to desist from control or processing of data, or have data corrected, or – rather exceptionally – receive an economic share in profits derived from the use of data. Data rights formulated by the Principles arise from considerations of fairness; accordingly, the way they are incorporated in existing legal frameworks under applicable law and the extent to which they may be waived or varied by agreement should be determined by the role such considerations of fairness play in the applicable legal system.

The most important data rights addressed by the Principles are rights in 'co-generated data', ie they find their justification in the share which a party had in the generation of the data that is at stake: A party

can have a share in the generation of data by being the object of the information coded in the data, or by being the owner of that object, or by otherwise providing a contribution to data generation. The concept of 'co-generated data' was developed, and the term coined, by the Reporters. It has meanwhile gained widespread recognition and has been adopted, inter alia, by the German Data Ethics Commission (a body advising the German Government) and more recently by the European Commission in its European strategy for data, COM(2020) 66 final.

In the scenario in Case 2, the data concerning the tires is considered to have been co-generated by T (together with C and E and possibly other parties), albeit to a lesser extent than by C or E. The share that a party relying on a data right had in the generation of the data is, however, rarely the only justification for granting such a right. Rather, the Principles identify five factors to be considered when deciding about whether to grant a data right. Apart from the share the party had in the generation of the data, these factors are: the weight of grounds put forward by the party relying on the data right; the weight of any legitimate interests



the controller or a third party may have in denying the data right; any imbalance of bargaining power; and any public interest (including the interest to ensure fair and effective competition).

Quality monitoring or improvement by a supplier in a value chain is one of the standard grounds for claiming access to or porting of co-generated data, when monitoring and improvement is in line with duties of that supplier within the value chain and the controller of the data can be expected to have foreseen and accepted this role. There is thus a strong legitimate ground for T to request access to the data relating to the tires, but legitimate interests of the controller or third parties (such as E) are equally a factor to be taken into account, as are the relative bargaining powers and public interests. This could mean in the individual case that a data right vis-à-vis D is afforded only with appropriate restrictions such as anonymization or, depending on the circumstances, access via a trusted third party.

The extent to which these considerations will result in the affording of such a data right, though, will also depend on the extent and nature of the applicable legal system's incorporation of notions of fairness in determining contractual obligations.

### **Case Study 3: Database for investors in Farmland**

#### **3.1. The Case**

Farm corporation F buys a 'smart' tractor which has been manufactured by manufacturer M and which provides various precision farming services, including weather forecasts, soil analyses and targeted recommendations concerning the use of particular fertilizers and insecticides. M also uses the soil and weather data collected by the tractor to create a database that could be sold to potential buyers of farmland, providing extensive details about the land in order to enable them to



make a more-informed choice on the price they would be willing to pay for farmland. When F learns about this database, F immediately requests M to stop using F's data for this purpose.

#### **3.2. Comment**

Among the data rights dealt with by the Principles is the right to require a controller of co-generated data, such as M, to desist from particular data uses. Without any doubt, F has had a huge share in the generation of the data collected by M, so F might have a right to require that M refrain from using the data relating to F's farmland in such a way.

Grounds that may give rise to a party's right to require that the controller desist from using co-generated data in a particular way include the fact that the use is likely to cause significant harm to that party. However, that alone is normally not sufficient, and further elements are required. For instance, the party must have contributed to the generation of the data for another purpose that is inconsistent with the contested use, and that party could not reasonably have been expected to contribute to

the generation of the data if it had foreseen the harm to it that would result. Also, the controller must have notice of these facts.

The situation in the Case Study could cause significant harm to F because potential buyers might have better information about the soil quality than F itself, so using F's data for this purpose could harm F's interests in the event of future negotiations about F's land. F has contributed to the generation of the data for an entirely different purpose (ie in order to benefit from precision farming services), disclosing the data to buyers of land is entirely inconsistent with that purpose, and it is highly likely that F would not have agreed to produce the data if F had known about how T would make use of the data.

However, desistance from data use is to be afforded only with appropriate restrictions, or not at all, to the extent that affording the right would be incompatible with the rights of others, or with public interests. Again, the right is to be afforded with specifications and against remuneration as is fair and reasonable in the circumstances.



## ALI Council Approves Parts of the ALI-ELI Data Economy Project

**The first parts of the ALI-ELI project were approved by the ALI Council on 17 January following presentations by project Chairs Steven O'Weise and Lord John Thomas as well as Reporters Neil Cohen and Christiane Wendehorst**

Following a meeting on 31 October 2019 in Philadelphia, a decision was taken to present Part I on 'General Provisions' and several Principles of Part II on 'Data Transactions' as well as of Part III on 'Data Rights' to the ALI Council for approval. Particularly worth highlighting is the approval of Part III Chapter B on 'Data Rights with Regard to Co-Generated Data'. In fact, the concept of 'co-generated data', which was developed and coined by the Reporters of this project, has already been adopted by the German Data Ethics Commission and most recently by the European Commission in its European Strategy for Data (COM[2020] 66 final). It is also beginning to be reflected in the work of international organisations.

ELI is pleased to report that the above parts were well-received by the ALI Council, which subsequently approved them.

Valuable guidance in respect of the remaining Principles, which should follow during the 2020–2021 cycle of the project, was offered. The next step towards membership approval of the presented parts will be the 97th ALI Annual Meeting which takes place from 18–20 May 2020 in San Francisco.

## Presentation of Draft ELI Protection of Adults Output to European Parliament Members

**On 21 January, Project Reporter Pietro Franzina met representatives of the Committee on Legal Affairs (JURI) to present the draft output of the above ELI project**



Representatives of the European Commission and the Secretariat of the Council of the European Union also took part in the meeting as did Philippe Lortie, First Secretary of the Hague Conference on Private International Law, Ibán García del Blanco, Vice-Chair of JURI, Axel Voss, member of JURI and Robert Bray, who is both an ELI Council member and one of the project's Assessors.

The following issues, among others, were addressed in the discussion: the reasons for the relatively limited number of ratifications of the Hague Convention on the Protection of Adults so far; the added value of the legislative and non-legislative measures contemplated in the draft output; and the initiatives that the European Parliament might take to re-open the debate on the topic.

## ELI Membership Approves Model Rules on Online Platforms

**27 January marked the final day of voting on the outcome of ELI's Online Platforms project and we are pleased to report its approval by an overwhelming majority of voters**

Sincere gratitude is owed in particular to Project Reporters Christoph Busch, Gerhard Dannemann, Hans Schulte-Nölke, Aneta Wiewiórowska-Domagalska and Fryderyk Zoll for their tremendous work.

Acknowledgment is also due to other Project Team members, to Advisors, Assessors, Members Consultative Committee members, the ELI Secretariat and all others for their invaluable contributions to the final output.

This project was approved to commence as an ELI project in January 2017. It addresses the phenomenon that the digital economy is increasingly shaped by online platforms serving as marketplaces where customers can buy goods or book services (eg Airbnb, Uber, Amazon). Their dynamics can be difficult to reconcile with the currently existing regulatory framework at EU level. The result is that in many situations customers that conclude contracts through online platforms are left without effective consumer protection.



The aim of the project was to develop model rules on online platforms that set out a balance between conflicting policy options, and demonstrate what potential platform regulation at EU or national level could look like. The Rules, which are available for free download [here](#), define the criteria for distinguishing whether a platform operator is only a 'facilitator' or the actual supplier and

specify the duties and obligations of the platform operator, as well as define conditions under which the operator may be liable for a non-performance by the supplier. Specific regard is given to the question of what the basic requirements for transparency and fairness of online reputation systems are (eg ratings and reviews), which are a key feature of many online platforms.

## 50 Years Since *Internationale Handelsgesellschaft*: The Ongoing Quest for Common Constitutional Traditions (CCT)

**On 30–31 January, the CCT Project Team met at the Max Planck Institute in Heidelberg to present and discuss their preliminary draft output**

On the first day, Armin von Bogdandy, Director of the Max Planck Institute for Comparative Public Law and International Law and a member of the Advisory Committee of the CCT project, gave a presentation on the 'Situation of European Jurisprudence Today in Light of Schmitt's Piece of 1950'. Sabino Cassese, Reporter of the above project, addressed the question of whether the law is a

unifying factor in Europe, and if so how it plays such a role. These two interventions were followed by a presentation of the ELI CCT project by its other Reporter, Mario Comba, and a discussion with Max Planck Institute researchers. On 31 January, various members of the Project Team held a meeting to discuss a draft report on freedom of expression, one of a two rights covered by the current Team.

## Translating ELI-UNIDROIT's Model Rules on Civil Procedure

**On 29 January, the group preparing the French version of ELI-UNIDROIT's European Rules of Civil Procedure convened in Paris to continue their work on translating the Rules into French**

In a bid to offer the results of its work to an ever-broader audience, ELI supports its partner, the International Institute for the Unification of Private Law (UNIDROIT), in translating the results of the project into French.

Professors Loïc Cadiet, Frédérique Ferrand and Emmanuel Jeuland met on 29 January in Paris in order to read through and refine the French translation of the ELI-UNIDROIT Model Rules of Civil Procedure.

After their first meeting of 18 December, where the group worked on Parts I to IV, the focus of the January meeting was on the remainder of the Draft, namely Parts V to XII.

The project was presented at ELI's Council meeting on 20 February and will be put to ELI Council's vote shortly. UNIDROIT's Governing Council will also be given a chance to vote on the output subsequently, following which both English and French versions will be available on the websites of both organisations. ELI wishes to thank the Team for enormous progress.





# Former ELI Vice-President Sjef van Erp Speaks on the Regulation and Challenges of Blockchains

**Van Erp, who leads ELI's Blockchain Technology and Smart Contracts project alongside Juliette Sénéchal, spoke on developments in ELI's project at a Conference at the University of Lille on 22 January and one in Canberra on 27 February**

The focus of the event in Lille was on 'How to Regulate Blockchain'. Among other things, van Erp referred to the UNCITRAL Model Law on Electronic Transferable Records (MLETR) and examples of legislation in jurisdictions that lead in the field such as Liechtenstein. He also informed those present of the ELI study on the subject which seeks to provide policymakers, legislators and legal practitioners with a legislative guide, a toolbox, on the regulation of blockchain technology and smart contracts.



On a separate occasion, van Erp gave both a public lecture and the keynote opening speech at a Conference at the Australian National University (ANU) in Canberra. The one day Conference on Blockchain Technology, Data Management and Smart Contracts: Challenges and Opportunities, which took place on 27 February, was hosted by the ANU Centre for Commercial Law and the ANU Centre for European

Studies, with the support of ELI's Global Private Law Special Interest Group (SIG). Gratitude is owed to Anne McNaughton, one of the SIG's Chairs, as van Erp's presence was at her initiative. The event aimed at promoting the work of the ELI, in particular, its project on Blockchain Technology and Smart Contracts in Australia and South-East Asia, and to seek to better understand the technical, legal and policy

implications of such new technologies. Those interested in the field are hereby informed of a call for papers for a Conference on Time to Re-shape the Digital Society organised by the Information, Law and Society Research Center (CRIDS). The event, which will take place from 2–3 July 2020 in Namur, is in celebration of the 40th Anniversary of CRIDS. More details can be found [here](#).

## ELI President Christiane Wendehorst Speaks on Reforms to the Product Liability Directive and on Challenges to Privacy in AI

**The discussions took place in the context of a public hearing of the Committee on the Internal Market and Consumer Protection at the European Parliament on 22 January and the Computers, Privacy and Data Protection Conference (CDPD), from 22–24 January, both of which were in Brussels**

At the hearing, which sought views of stakeholders and academia on the need to review the Product Liability Directive and on related challenges in the new digital age, Wendehorst spoke on Product Liability Directive: Protecting Consumers in the Digital Single Market and the results of the Commission's Expert Group on Liability and New Technologies, New Technology Formation. Wendehorst

spoke in her capacity as member of the Expert Group, which was composed of several ELI members. ELI, which is currently building its future portfolio of projects, is keen to resume research on the topic of liability and AI, a subject it put on hold to avoid duplication and inconsistency while the Expert Group conducted its work. President Wendehorst also took part in a panel discussion on the Global View on

AI Challenges to Privacy on 23 January. The ELI Council is keen to enhance ELI's work on AI and has, in this context, given green light to proposers of a Feasibility Study on AI and Public Administration: Developing Impact Assessments and Public Participation for Digital Democracy. This came a couple of days after a Commission White Paper on AI was published (on 19 February 2020; COM(2020) 65 final).

# ELI Involved in Discussions on Energy Communities

**ELI, Schoenherr, Bernard Energy and Philippe & Partners engaged in energy debate**



The recent 'Clean Energy for All Europeans' package formally introduced the concept of 'energy communities', which can be described as local communities that use technical opportunities presented by decentralised energy and other new technological developments in the energy industry, to create a local autonomous electricity system. ELI, its institutional member Schoenherr, Bernard Energy and Philippe & Partners held a Conference at Schönherr's offices in Vienna on January 14, aimed at presenting and examining the concept of energy communities and

at outlining potential adjustments to the legal and regulatory framework, which are likely needed to implement energy communities in practice. The Conference also addressed the question as to which corporate framework appears to be the best for energy communities. Among the speakers were Christiane Wendehorst, ELI President, Denis Philippe, ELI Treasurer, as well as Bernd Rajal, Partner, Schoenherr, Marion Malafosse, Policy Officer, DG ENER, Pierre Bernard, Managing Partner, BEA and Wolfgang Urbantschitsch, Executive Director, E-Control.

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Bernard Energy

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& PARTNERS  
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## BMEIA Discusses Possible Cooperation with ELI

**ELI President and Secretary General met European and International Affairs Ministry and Federal Chancellery (BMEIA) representatives in Vienna with a view to opening new avenues of collaboration and supporting Austria's role in Europe**



On 25 February, ELI President Christiane Wendehorst and ELI Secretary General Vanessa Wilcox met representatives of the BMEIA, Ministers Plenipotentiary Yvonne Tonic-Sorinj, Gerhard Eisl and Martin Meisel.

Additionally, representatives of the Federal Chancellery's Head of Institutional Affairs of the European Union Regina Kothmayr and her departmental colleagues Tanja Schmidt-Konecny and Bernhard Neufingerl were also present.

Noting the exciting prospects at the start of a new institutional cycle in both Austria and at the European Commission, participants discussed potential avenues of cooperation and ways of strengthening connections between Vienna and Brussels. Of special interest to the BMEIA were ELI's three 'umbrellas' for prospective projects, namely Rule of Law in the 21st Century, Law and Governance for the Digital Age, and Sustainable Life and Society, approved by its Council at its



meeting of 20–21 February 2020 in Vienna.

Interest was also expressed among other things in respect of the ELI project on the Detention of Migrants, a topic of great importance, given current discussions on constitutional issues in Austria.

Minister Plenipotentiary Toncic-Sorinj welcomed insight into the valuable work of ELI and praised her fruitful exchange with President Wendehorst on current questions of European legal development. The BMEIA also noted that 2021 will see ELI turn ten and suggested the sides join forces to celebrate

a decade of the Institute's work in Vienna.

The meeting came after an earlier successful meeting on 7 January in which ELI's President and Secretary General welcomed Head of Unit for EU and Fundamental Issues at the BMEIA, Gerhard Eisl to the ELI Secretariat.

## ELI Welcomes its New Members

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

### New Individual Members

- Lucía Alonso Sanz
- Remi Barneoud
- Vito Bumbaca
- Gabriele Carapezza Figlia
- Andrea Domac Ričković
- Marina Dumitrescu
- Ziemowit Kukulski
- Francesco Longobucco
- Lela Mélon
- Małgorzata Sęk
- Romeo Marius Stef
- Radosław Strugała
- Dominik Vuletić

### Publications by ELI Members and Groups

Emilia Miscenic recently published the first Handbook on European Private Law in Croatian, marking a step of particular importance for the whole of Southeastern Europe as the first work to provide a systemic overview of the field in the region. You can find more details [here](#).

ELI Vice-President Pascal Pichonnaz edited a recently published volume on Control of Price Related Terms in Standard Form Contracts, *Ius Comparatum – Global Studies in Comparative Law*. The volume was

co-edited with Yesim M Atamer. More details are available [here](#).

Do read ELI's Global Private Law SIGs' Book of Abstracts. The book precedes a four publications of full version of papers delivered at the SIG's Conference on the Law of Obligations in Zagreb from 12–13 December 2019. More [here](#).

ELI's Spanish Law Hub also recently published papers presented at its last Annual Meeting. Read more [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](#)



## Call for Interest: EU Law SIG

ELI is pleased to inform its members about a proposed initiative to re-launch the EU Law SIG



The proposers have been encouraged by the decision to set up the Belgio-Luxembourg Hub, since they consider that many of the activities of the new SIG are likely to take place in association with that Hub in Brussels and Luxembourg.

The relevance of such a SIG is self-evident given that the ELI's Statute refers to evaluating and stimulating the development of EU law, legal policy, and practice, and in particular making proposals for the further development of the *acquis*. An EU Law SIG could make a real contribution to European integration

and the harmonisation of national laws by nurturing new ELI projects for consideration by EU institutions. The new legislature and the undertaking by the President of the Commission to give serious consideration to legislative proposals from the European Parliament afford a real opportunity for ELI and more than justify reviving the EU Law SIG.

The subjects potentially covered by the SIG are extremely varied, but it is suggested that the development of EU constitutional law and possible Treaty change might constitute an area of considerable interest with scope for research into how the nexus between the EU normative system and the Charter of Fundamental Rights and the European Convention on Human Rights is handled by the courts in the various Member States. Other areas of obvious interest are competition law and State aid. The

SIG would also afford an opportunity for ELI to get closer to the day-to-day work of EU institutions. Finally, the new SIG should work on general themes in EU law not covered by other SIGs, such as European citizenship and freedom of movement and commerce. Candidates for Chairs of the SIG include Professor Laurence Gormley, Professor Fausto Pocar and Professor Giuseppe Tesaro. Candidates for Advisory Board are: Francesco Avolio, Robert Bray, Mark Clough, Fabio Ferraro, Rita Giannini and Laura Guercio.

The initiators would also suggest that Denis Philippe, Matthias Storme and Gregory Minne, as Chairs of the Belgio-Luxembourg Hub, should be closely involved with the running of the SIG.

Please contact the [ELI Secretariat](#) to join this SIG.

## 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.

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### March 2020

- 6 March  
**Workshop on Access to Capital, Corporate Governance and Regulatory Competition in Corporate Law (organised by ELI's Business and Financial Law SIG)**  
Lille
- 13 March  
**Conference on the New Trends in European Law and Annual General Meeting (organised by ELI's Polish Hub)**  
Warsaw

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### April 2020

- 2–3 April  
**Conference on 'How to Address AI Challenges in the Current Legal Framework' and Meeting (organised by ELI's Digital Law SIG)**  
Lyon
- 21 April  
**Event and Reception (organised by ELI's Belgio-Luxembourg Hub; more details to follow)**  
Luxembourg
- 30 April  
**Business and Human Rights Project Team Meeting**  
Vienna



## Upcoming ELI Events

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### May 2020

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- 5 May  
**Event on Digital Assets: Property Rights, Collateral, Insolvency, Succession (organised by ELI's UK Hub)**  
Location TBC
- 8 May  
**Conference on Contracting and Contract Law in the Age of AI (organised by ELI's Italian Hub)**  
Turin
- 15 May  
**5th Annual Meeting on European Jurisprudence (organised by ELI's Spanish Hub)**  
Seville
- 18–20 May  
**Presentation of the Council Draft of the Principles for a Data Economy at the 97th ALI Annual Meeting**  
San Francisco
- 28–29 May  
**Common Constitutional Traditions in Europe Seminar and Project Team Meeting**  
Milan
- 29 May  
**Business and Human Rights Project Team Meeting**  
Vienna
- 29 May  
**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

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- 5 June  
**Dissemination Event on the Protection of Adults in International Situations Project with the Austrian Chamber of Civil Law Notaries**  
Vienna
- 11–12 June  
**Conference on Environmental Sustainability and the European Green Deal: Values, Innovation and Regulation and Meeting (organised by ELI's Environmental Law SIG)**  
Ferrara

### September 2020

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- 7 September  
**ALI-ELI Principles for a Data Economy Project Meeting**  
Budapest
- 8 September  
**Executive Committee Meeting and Executive Committee-Senate Working Dinner**  
Budapest
- 8–9 September  
**Council Meeting**  
Budapest
- 9–11 September  
**ELI Annual Conference**  
Budapest

### November 2020

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- 5–6 November  
**Fifth Spanish-German Hub Meeting on Private Law (organised by ELI's Spanish and German Hubs)**  
Location TBC

# 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** in **Budapest**. 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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