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# Newsletter

September - October 2020  
Bringing Legal Experts Together

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## Message from Ignacio Tirado

Secretary-General of UNIDROIT

Dear Members and Friends of ELI

It is an honour for me to address all of you from the ELI Newsletter and a pleasure to do it for a very positive reason: the finalisation and adoption of the ELI-UNIDROIT Regional Rules of Civil Procedure by both our institutions.

The project has a long history. Back in 2004, UNIDROIT and the American Law Institute had just approved the ALI/ UNIDROIT Principles of Transnational Civil Procedure, a set of general Principles, which embodied a global consensus over the main tenets of procedural law, and which represented a prodigy of balance between the common and civil law legal families. The ALI/ UNIDROIT Principles were, however, broad and, by their very nature, could not cover many relevant aspects of procedural law. In this context, the leadership of both institutions had a brilliant idea: to adapt those global Principles to the European context, in the shape of a more detailed document, including a set of rules.

A workshop held in Vienna in 2013 set this process in motion, and the cooperation between the two organisations took institutional shape with the creation of a joint Steering Committee, led by co-chairs Diana Wallis (then ELI President) and Anna Veneziano (Deputy Secretary-General of

UNIDROIT), together with members Rolf Stürner, John Sorabji and Remo Caponi.

The project represents the success of a large collective effort lasting over six years, which involved nine Working Groups, around fifty experts representing a variety of legal systems and expertises, one overarching Structure Group, and both global and regional observer organisations, amongst which a special mention is owed to the very relevant contribution of the European Union representatives.

The goal was a true challenge: to draft model rules of civil procedure for Europe, covering a broad range of issues concerning the commencement, structure, conduct, and conclusion of civil proceedings, including a section on appeals and on collective redress. The functional approach adopted by the Working Groups was instrumental in the identification of common solutions, especially in core issues such as the structure of the proceedings, the role of different actors, evidence rules, or the importance of settlements. This instrument comprises both the rules and the accompanying commentary to facilitate its understanding and use. It is not, however, to be used as a "model law/code"; rather, these rules are a set of best practices, offering guidance for the further development of Civil Procedure in Europe and beyond.



The Rules are thus both a point of arrival after six years of research and discussions, as well as a point of departure for domestic law implementation, further study and development, as other regions in the world might use it as a basis of civil procedure reform. To this end, further translations of the Rules, already available in French, are in the pipeline.

Above all, this instrument is a testimony to the excellent collaboration between the ELI and UNIDROIT, one which, we hope, will continue for many years.

Ignacio Tirado  
Secretary General of UNIDROIT



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# Comment on Attacks throughout Europe

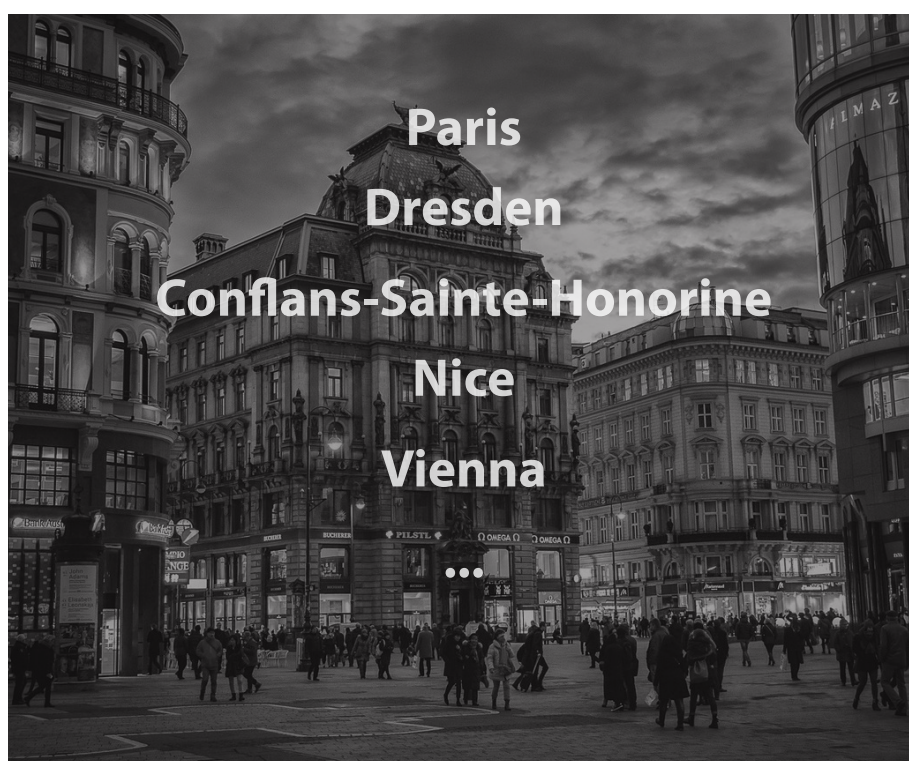
This week has been characterised by yet another act of terror. Since the last Newsletter went out, a series of violent attacks - including in Paris, Dresden, Conflans-Sainte-Honorine, Nice, and Vienna - occurred. As Vienna is the home of the ELI, this last attack affected us in particular. We condemn any form of violence anywhere and are shocked and saddened by this brutality and loss of life. Our thoughts are with the victims and everyone affected.

What we cannot deny is that these attacks aim at spreading fear, hatred, and separation. What is more, they attack European and International fundamental values. Democracy, freedom, and the rule of law are common values in all EU countries and beyond. These values are deeply rooted in our societies, define the common basis, and glue us together. They stand for societies in which integrity, tolerance, justice, and solidarity prevail.

After every attack, the world reacts with solidarity. Citizens, political leaders, and countries as a whole move closer together. We jurists do the same: We work together to tackle one crisis after another. We appeal at solving issues and conflicts without resorting to any form of violence; our tools of choice are consensus and agreements. In this way, we build the legal framework for upholding our fundamental values and provide guidance for solution-oriented law-making.

The ELI provides a platform for this endeavour by bringing experts together. We seek to build a more vigorous European legal community, facilitate conversations, and build upon shared legal knowledge. So let us continue to tackle every problem together – by finding legal solutions.

The ELI Executive Committee





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## Message from the ELI President

Dear ELI Members and Friends

It is my pleasure to begin this newsletter by expressing my sincere thanks to everyone who helped make the ELI's 2020 Annual Conference a success.

I am immensely grateful to all of the speakers who lent their time and expertise to the ELI Annual Conference and to the hundreds of ELI Members who participated in the webinars, providing valuable insights and posing thought-provoking questions.

Cancelling the planned meetings in Budapest and adapting the Conference to an online format posed a great challenge to the Institute, and I am indebted to my colleagues on the Executive Committee and staff at the Secretariat in Vienna for making the necessary decisions and preparations to enable the Conference to go ahead.

Although we all missed the convivial spirit of meeting in person, I believe that this year's conference was made special by the resilience, friendship and commitment to cooperation that it demonstrated. Moreover, it even revealed some advantages over previous years. The online format enabled greater participation than ever - this year over 600 individuals attended one or more parts of the conference – and all sessions were automatically recorded and are now accessible, for free, on the [ELI YouTube](#) channel.

In the weeks since the online Annual Conference, many countries are experiencing the so-called 'second wave' of coronavirus infections, and new restrictive measures have been enacted in many regions. The ELI is acutely aware of the difficulties that so many people are facing throughout Europe and beyond. The '[ELI Principles for the COVID-19 Crisis](#)' represent some of the efforts the ELI has taken to tackle this ongoing crisis as jurists. I can assure you that the ELI will continue to navigate these uncharted waters and strives to find and clarify legal solutions.

Lastly, my colleagues on the Executive Committee and I send our good wishes and support to all ELI Members and friends during this difficult period.

Christiane Wendehorst  
ELI President



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# Hosting the Second Ole Lando Memorial Lecture

**On 8 September the Second Ole Lando Memorial Lecture took place as part of the 2020 ELI Annual Conference. This year's speaker was Professor Christian von Bar, who entitled his lecture 'Contract Law and Human Dignity'.**

The Ole Lando Memorial Lecture series was launched in 2019 in memory of the Danish Professor Ole Lando (1922-2019). Professor Lando was a Founding Member of the ELI and a leading private international lawyer. Among many achievements of his long and varied career were the 'Principles of European Contract Law' which have been highly influential in the development of both EU and national contract laws. The first lecture in the series was given by Professor Hugh Beale at the Copenhagen Business School Law Conference in October 2019. This year the ELI had the honour of hosting the second Ole Lando Memorial Lecture at its Annual Conference, a tradition that will continue every two years.

In this year's online lecture, Christian von Bar focused on the aspects of contract law that are directly affected by fundamental and human rights law and pointed out situations

in which agreements cannot be held up as binding contracts, usually for constitutional reasons. After the lecture, there was a lively Q&A session in which Christian von Bar addressed several questions, including on the topics of gender-neutrality of contract law, contracts for surrogacy, and expressing of the notion of dignity in an algorithmic way.

Over 180 viewers made up a diverse audience representing 26 European nations as well as countries further afield, such as India, Japan, Canada, and the USA. The lecture was preceded by introductory words from ELI President Christiane Wendehorst and Professor Hugh Beale, who also moderated the Q&A. Viewers also watched video messages from friends and colleagues of Professor Ole Lando who reflected on his legacy and their personal memories of him. These contributors were Bénédicte Fauvarque-Cosson, Arthur Hartkamp, Ewoud

Hondius, Hector MacQueen, Christina Ramberg, Oliver Remien, Hans Schulte-Nölke, Thomas Wilhelmsson and Reinhard Zimmermann.

To close the evening, Professor von Bar nominated Professor Hector MacQueen from the University of Edinburgh to deliver the 2021 Ole Lando Memorial Lecture.

To read the text of Professor von Bar's lecture, please click [here](#).



Christian von Bar

## Watch Online

**A recording of the Second Ole Lando Memorial Lecture can be viewed [here](#).**

**All events of the Conference were recorded and can be viewed for free on the ELI Secretariat YouTube channel.**

**Please consider subscribing to receive notifications whenever new material is posted.**

**Click [here](#) to see the recordings.**

## A Glimpse into the Next Lecture

**Hector MacQueen on his nomination for the Third Ole Lando Memorial Lecture.**



Hector MacQueen

To be asked to follow in the steps of Hugh Beale and Christian von Bar and give an Ole Lando Memorial Lecture is an honour and source of pride, although also somewhat daunting. What to say that would have interested Ole himself? How to live up to the high standard that has now been

set by my distinguished and brilliant predecessors? Hugh sought the way forward for the transnational contract law project, the subject that was Ole's greatest intellectual legacy, while Christian shifted the focus to the law of personhood, a necessary preliminary to contract law, but not one that has previously received much attention in transnational or even comparative thinking. So they have shown a path that is reflective yet also forward-looking and dynamic. I will seek a subject and an approach for my lecture that follows the wonderful examples we now have before us.

# A Warm Welcome to the Online AC2020

**On 9 September participants in the Annual Conference heard live from the ELI President, the Austrian Minister for Justice and the European Commissioner for Justice.**

ELI President Christiane Wendehorst welcomed participants to the online conference. Touching on the difficult and unforeseeable circumstances that 2020 has brought to us all, President Wendehorst sent her good wishes to the ELI members who have been affected most seriously by the crisis, and explained how it was a painful but inevitable decision to call off the planned meeting in Budapest this September and hold the Annual Conference online instead. She reflected on how the strength of the ELI community revealed itself during the crisis, with members sharing messages of support and encouragement and ensuring that they continued their ELI-related work wherever possible.

Next to speak was the Austrian Minister for Justice Alma Zadić, whose speech focused on the challenges that the Coronavirus pandemic has brought to the legal system, and in particular the difficulty faced by all countries in striking the right balance between basic fundamental rights and the protection of health – how can freedoms be upheld and health be protected?

Minister Zadić thanked the ELI for holding the Conference during these difficult circumstances, and expressed her gratitude to everyone working on ELI projects. She praised ELI for taking on 'the challenge of identifying well-balanced and practicable regulatory options' and was optimistic that this Conference, as well as ELI's wider activities, would help bring about solutions to promote and develop the European legal framework.

ELI Treasurer Denis Philippe then took to the 'stage' to introduce his compatriot, the European Commissioner for Justice, Didier Reynders. The Commissioner began by reiterating Minister Zadić's comments on the impressive agenda of the ELI Annual Conference, noting the topicality and importance of the topics to be discussed.

The keynote speech then moved on to its central theme, the rule of law, the importance of which could not be overstated by the Commissioner: 'What makes the rule of law so important is that it guarantees the respect of all our values, including democracy

and fundamental rights. My conviction is firm; there can be no compromise when it comes to defending all common values.'

Another topic that was discussed in depth during Commissioner Reynders' speech and the ensuing Q&A session was the digitalisation of justice. The Commissioner underlined how digitalisation can help make the justice system more transparent and easier to navigate, stating, 'digitalisation can guarantee easy and timely access to justice'. He expressed his hope that member states will identify the digitalisation of justice as a priority of any recovery plan after the Coronavirus pandemic.

Closing this welcome session, ELI President Christiane Wendehorst and Commissioner Reynders reflected on the importance of instilling an understanding and respect for the rule of law in the wider population, so that it may be recognised not as a lofty idea, but as something at the heart of life and culture in Europe even at the most local of levels.



From left to right: Alma Zadić, Christiane Wendehorst, Didier Reynders



## ELI Annual Conference 2020

# ELI Projects in Focus

**On 10 and 11 September the focus of the Annual Conference turned to ELI Projects. In a series of stand-alone webinars ELI members heard from members of ELI Project teams or authors of feasibility studies as well as external experts.**

## Project Webinars Day One

On 10 September many of the topics discussed were pertinent to one of the wider themes that the ELI has identified as an umbrella topic for its 2020 project strategy: law and governance for the digital age.

The first panel focused on the current ELI project 'Artificial Intelligence and Public Administration – Developing Impact Assessments and Public Participation for Digital Democracy'. Speakers discussed the use of AI in public administration and the importance of conducting impact assessments and ensuring public participation prior to its introduction into the realm of public administration.

The next session turned to 'Admissibility of Criminal Evidence in the Digital Age', the subject of a project approved by the ELI Council the day before. The lively discussion focused on the 'un-territorial' nature of the digital evidence as well as AI and Machine Learning empowered evidence in the context of criminal justice.

Another current ELI project, 'Block-

chain Technology and Smart Contracts', was also presented on 10 September. Speakers addressed, among other things, the issue of smart contracts in the data economy, the German and French perspectives on blockchain and smart contracts as well as legal and regulatory challenges in practice, which was followed by a lively discussion with the viewers.

Conference participants then had the chance to attend a session on the ALI-ELI 'Principles for a Data Economy'. The presentation of the recently completed Preliminary Draft No 4 was reacted to by practitioners and discussed with participating ELI Members in a Q&A session that focused, among other things, on the concept of co-generated data.

'Access to Digital Assets' was the next ELI project presented. Speakers described the ELI project and the work done so far by the Team. The Q&A session included discussions about issues of terminology and private international law applicable to digital assets.

The last project session of the day celebrated the joint ELI-UNIDROIT

'European Model Rules of Civil Procedure', the final draft of which has recently been approved by the ELI and is awaiting final approval by the UNIDROIT Governing Council. The speakers presented the history of the project, its structure and the innovative aspects of the Model Rules. The debate that followed centered the dissemination of the output, the models for the drafters of the Rules, and the main challenges of the drafting process.

In the evening, participants were invited to a book launch to celebrate the publication of 'Rescue of Business in Europe', a two-part volume based on the ELI's project 'Rescue of Business in Insolvency Law'.

## Project Webinars Day Two

On 11 September, the first webinar was on Business and Human Rights: Access to Justice and Effective Remedies. They discussed the issue of human rights, due diligence, and the implications of private international law rules on access to remedies. The ensuing Q&A session included questions on issues of availability of rem-



From top to bottom, left to right: Yannick Meneceur, Sjeff van Erp, Jos Uitdenhaag, Sir Geoffrey Vos, Phoebe Athanassiou





From top to bottom, left to right: Lord John Thomas, Fryderyk Zoll, Daniela Piana, Giuseppe Ferrari, Shimon Shetreet, Thorsten Ingo Schmidt  
edies, court jurisdiction, and possible next steps for the EU.

The next webinar focused on Independence of Judiciary and ELI's co-operation with the Mount Scopus Group in this area. After a presentation of Mount Scopus International Standards of Judicial Independence, aspects such as the importance of education in promoting judicial independence and the rule of law, the role of councils of the judiciary as well as challenges resulting from the use of AI on the independence of judiciary, were discussed. During the Q&A attendees were particularly keen to hear about the dissemination of the Mount Scopus Standards and measures to ensure these principles are observed.

The following four sessions focused on recent ELI feasibility studies. The first feasibility study presented was on Fundamental Constitutional Principles, a Study which seeks to outline the basic principles which form the foundations of a European liberal democratic State. During the discussion, participants provided feedback on the study, pointing out its timely manner, and also addressed relevant work done by other organisations.

Companies elaborated on the need for harmonisation of conflict of law for companies, a potential Rome V regulation, and the role of arbitration as an alternative method of addressing the problems resulting from the lack of harmonisation.

The afternoon ended with a webinar on Corporate Sustainability, Financial Accounting and Share Capital. Input was provided on company capital requirements and the issue of corporate sustainability in EU accounting law and regulation.

The evening of 11 September saw the final event of the ELI 2020 Annual Conference, where the book 'Coronavirus and the Law', a collection of 60 essays on this most pertinent of topics, was presented. The event concluded with a live Q&A with ELI Members.

It was certainly a fitting way to end this year's conference, which, like so many other events, has been re-imagined in light of the circumstances brought about by COVID-19. Alongside the ELI's own publication, its 'Principles for the COVID-19 Crisis', this book, edited by several leading ELI members, reflects the Institute's desire to add a useful voice to the discussions on how the legal system, as indeed all areas of our society, can best function during and after this pandemic.

A webinar on the Concept and Role of the Courts in Family and Succession Matters was next on the agenda. A discussion which centred on the issue of out-of-court proceedings in family and succession matters that have arisen in European jurisdictions in the past years (so called 'de-jurisdictionalisation') took place. In the Q&A, the project's methodology and concerns regarding the loss of precedents and development of the law were among topics addressed.

The session on EU Conflict of Laws for



From top to bottom, left to right: Georg Kodek, Luca Enriques, Chris Thomale, Jessica Schmidt

## Honouring the Work of Exceptional ELI Hubs and SIGs

**Awards for the most successful Hub and SIG of the Year were presented in the evening of 9 September. The winners of the 2020 awards were the Spanish Hub and the Digital Law SIG.**

The Spanish Hub, chaired by Carmen Jerez Delgado (Professor of Civil Law at the Universidad Autónoma de Madrid) and Albert Ruda (Associate Professor and Dean at the University of Girona), was established in May 2016 and has shown consistent activity ever since. In 2020 its Annual Meeting (held this year online) focused on European Case Law and attracted over 400 attendees.

The Digital Law SIG is currently chaired by Alberto De Franceschi and Christoph Busch. In the past twelve months, the Digital Law SIG has hosted several valuable events. In December 2019 a two-day conference on 'Contracts for the Supply of Digital Content and Digital Services' was organised in Milan, and in April 2020 a 'Digital Lunch Talk' series was launched.

Congratulations and thanks to the Chairs and members of both the Spanish Hub and the Digital Law SIG, as well as all of our other ELI Members who have organised or attended events throughout the year. For more information about Hubs and SIGs, click [here](#).

## Recognising the Next Generation Leaders

**The ELI Young Lawyers Award 2020 has been awarded to Alina Škiljić for her paper entitled 'Health Data Inferences – an unexplored volcano eager to erupt post COVID-19 crisis'.**

Alina Škiljić is an associate at CMS Reich-Rohrwig Hainz where she focuses on the areas of corporate, competition and consumer law. She completed her law studies at the University of Zagreb in 2017. Her paper aims to provide an overview of the most pressing risks related to drawing inferences on health data.

Planck Institute for Comparative and International Private Law).

The ELI launched the ELI European Young Lawyers Award in 2016, with the goal of enabling the young European legal community to propose practical suggestions for the improvement of European law, and as a way to give voice to the future European legal experts. The 2020 Award was sponsored by the International Association of Independent Law Firms, 'Interleges' and was judged by a jury comprised of the following experts: Sjef van Erp (professor of civil law and European private law at Maastricht University), Filipe Machado (international and Association Coordinator at InterelGroup), John North (President of Interleges), Walter Doralt (professor at the University of Graz), Reinhard Zimmermann (Director of the Max



From top to bottom, left to right: John North, Alina Škiljić, Sjef van Erp



**ELI Annual  
Conference 2020**



## Remote Meetings Held by ELI Bodies

**Early September saw meetings of the ELI bodies that traditionally hold meetings during the Annual Conference in person, but have adapted to this year's circumstances by convening remotely as part of the wider online Conference.**

The ELI Executive Committee met in the morning of 7 September. The focus of the meeting was on the progress in current ELI projects and feasibility studies. Members also discussed the events of 2021, a key year for the ELI which will see an Annual Conference in Vienna, Council elections, and the Decennial celebrations.

Members of the Senate also met on 7 September and were later joined by the Executive Committee. During that joint meeting President Christiane Wendehorst and her colleagues discussed with the Members of the Senate the progress of current ELI Projects and other recent activities, the external relations of the organisation, and the presidential elections, among other issues. The Senate expressed its particular satisfaction at the drafting and publication of the 'ELI Principles

for the Covid-19 Crisis', praising the practical value of the Principles as well as the efficient way they were produced.

The Council meeting was split over two days, with two sessions on 8 September and a final meeting in the morning of 9 September. This very fruitful meeting allowed for in-depth discussions on ELI Projects with Project Reporters, proposers, Assessors and Council Members. The Council also decided that the two recently completed feasibility studies, 'Admissibility of E-Evidence in Criminal Proceedings in the EU' and 'The Concept and the Role of Courts in Family and Succession Matters', will proceed as ELI Projects. These decisions were followed by deliberations on the general work of the Institute, including the question of whether the ELI could op-

erate more efficiently by an increased use of remote technology in the future.

Finally, on 9 September there was a Membership meeting open to all ELI Members. In the past these meetings have taken place every second year in Vienna, and every other year in different European cities, including Brussels, Zagreb, Ferrara, and Riga. This year, the meeting was more international than ever as Members logged in from wherever they were in the world to participate in the discussions. The opportunity that the Membership meeting provided for direct interaction between the ELI's leadership and members at large is invaluable, and it was gratifying to see so many ELI Members demonstrated their active involvement in the progress of the Institute.

## Council Approved Two New Projects

**ELI embarks on two new projects: Admissibility of E-Evidence in Criminal Proceedings in the EU and Concept and Role of Courts in Family and Succession Matters.**

The Project on Admissibility of E-Evidence in Criminal Proceedings in the EU, led by Lorena Bachmaier Winter and Farsam Salimi, will address the longstanding issue of the admissibility of evidence gathered in cross-border criminal proceedings in the EU, on which no uniform practice among EU Member States exists to date.

The project will therefore develop a legislative proposal on admissibility and exclusionary rules of e-evidence as well as on traditional evidence in criminal proceedings, with a view to address this lack of uniform practice. The legislative proposal will be accompanied by a background study. The project will benefit all stakeholders involved in criminal proceedings, legislators, law enforcement agencies

as well as the general public.

The Project on Concept and Role of Courts in Family and Succession Matters, led by Elena Bargelli, Anatol Dutta and François Trémosa, will focus on a practical problem: Most EU private international law instruments presuppose that justice in the area of family and succession law is still mainly administered by courts. However, contrary to this practice, it is a current trend in Member States to shift competencies in these matters from courts to other parties. These parties may include notaries, registrars, child protection agencies, or even private parties themselves. The question arises whether common provisions on jurisdiction, applicable law and recognition and enforcement of foreign

judgments are fit to deal with this 'de-judicialisation'. Recent case law of the Court of Justice of the European Union (CJEU) suggests that there is need for reform.

The Project on the Concept and Role of Courts in Family and Succession Matters aims to develop an outline for a harmonised European concept of courts and other actors traditionally not qualified as courts, such as notaries. Ultimately, best practices and minimum standards should be developed.

The first meeting of this Project was held remotely on 29 October and a workshop with the members of the Advisory Committee is intended to take place in spring 2021.

# Fundamental Constitutional Principles

by Silvana Sciarra

**Fundamental constitutional principles are at the heart of liberal democracies**

The 'Proposal for an ELI project on Fundamental Constitutional Principles' is ambitious and provocative in many ways. As all ambitious undertakings, it originates curiosities and raises questions among readers.

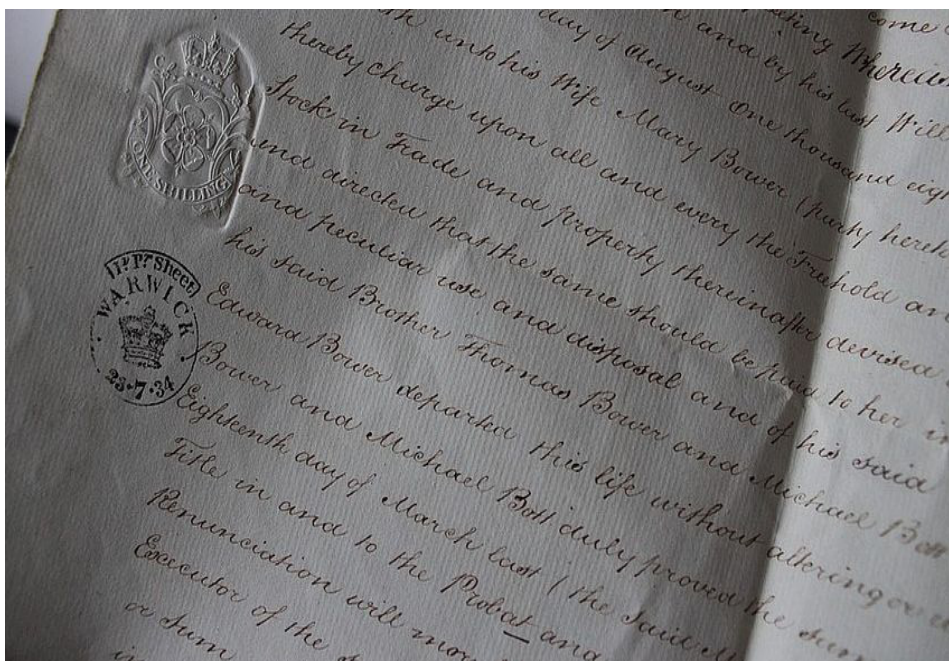
It has been a privilege for me to be included in a webinar, chaired by Professor Takis Tridimas on 11 September 2020, dealing with such a proposal. I am happy to share some of the comments I made in that occasion, which I have intentionally kept in the form of immediate, not fully articulated, reactions to a stimulating, still in fieri project.

In a short paper circulated beforehand, we read that Art 2 TEU has a 'signalling effect', inasmuch as it makes a statement of constitutional identity, indicating the founding principles, which should keep together all Member States. Let us reproduce it entirely:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

A powerful message emanates from such an article, which must be interpreted as a vehicle in building consensus among all European institutions, as well as all actors involved in policy-making.

In this dramatic phase of history, we should emphasise this message; as lawyers, in our different capacities, we should contribute in disseminating arguments enhancing the enforcement of fundamental rights



and principles. In fact, bridging the gap between these two legal categories may become a useful – and in a sense preliminary – exercise.

The proposal mentions, among other principles, equality and dignity. Such principles invigorate the case law of constitutional courts and of the CJEU. They lead to enforcing rights and to strengthening reasonableness as a leading legal argument, as well as a criterion frequently adopted in adjudication.

A universe of different approaches is disclosed when looking at such issues, therefore, choices must be made, taking into account both the available time and the length of the final proposal. If time is considered of essence, the style must necessarily be concise, as we understand from the anticipation that the proposal should not exceed 40 pages.

If the choice should be made to concentrate on a limited number of principles, such a preference should run parallel to selecting a more specific target for the final outcome of the project itself. I very much value ELI's role in disseminating good practices among legal practitioners,

broadening the horizon of legal professions, and bringing to the fore the crucial dilemmas that the pandemic dramatically discloses.

I shall try to indicate some tensions that – bearing in mind these suggested priorities – might emerge from reading the project.

The preamble displays two sides of a methodological coin: a 'descriptive' and a 'prescriptive' part are portrayed, the latter accompanied by a detailed annex. Prescriptions are put forward in the form of soft guidelines and present, for this reason, some margin of ambiguity.

For example, references to 'practical standards' may sound unusual and yet this terminology may imply that standards in some instances should originate from a detailed observation of real facts, in order to meet the expected outcome, namely to be enforced. This is a point that can usefully be clarified.

Furthermore, one of the intended objectives is to provide 'guidance to public authorities, the courts and citizens'. The prevailing aim, even in this case, seems to imply



## Spotlight on Fundamental Constitutional Principles

the adoption of best practices and to recommend virtuous behaviour.

However, if one looks at the principle of 'democracy' – one of the many indicated in the annex – guidance should become closely connected to prescriptions for all actors indicated. This example is paramount and leads to further methodological questions, which are of great interest.

The descriptive part of the project – it is clearly stated – should not be based on a thorough comparative analysis of the constitutions enshrined in EU Member States legal orders.

Selective criteria are always fascinating, when a comparative project is under way. Families or clusters of countries is one option, if a solid ground is found to build on similar traditions. The next step, however, is to consider which traditions may differ, since some of the principles indicated in the project should be measured against economic and social peculiarities. For example, a comparison among national economic systems could throw some light on a different criterion, taking into account, for example, Western and Eastern countries of the EU, in particular for Member States of the enlargement.

Since a huge patrimony of comparative research is available, no 'level of abstraction' should be proposed, as the project seems to insinuate, but concrete and urgent questions should rather be addressed.

'Sustainability', one of the mentioned challenges, requires a relevance of its own and could be given precedence in the investigation. Is it a goal to be reached at a political level? Should it imply an optimal behaviour for companies and governments? Should it be supported by fiscal incentives? Should it be a significant part of a scoreboard whenever EU institutions distribute resources?

'Artificial intelligence' too – another mentioned challenge – requires a variety of interventions by legisla-

tures and private actors. Is this an issue that implies the reconsideration of fundamental constitutional principles or should it be framed within existing ones? Should principles be further strengthened and specified in particular when applied to judicial independence and autonomy?

ELI's role in supporting projects leading towards this direction is essential, especially in times of lasting uncertainties, such as the current ones.

The rule of law is placed at the centre of this discussion and is important to ascertain that typically it brings together substantial and procedural contents: the latter imply entitlements and lead to the enforcement of substantial guarantees. It is urgent to open up this discussion more broadly and clarify the scope of the project.

Fundamental constitutional principles, as the proposal specifies, are at the heart of liberal democracies and should continue to be developed as the cornerstones of a changing society. They should counteract the dramatic impact of the pandemic, acting as clear limits to emergency measures. Hence, the urgency is to bring this ambitious proposal closer to the spirit of the times we are experiencing.



Silvana Sciarra

### The Author

Silvana Sciarra is the first woman elected by Parliament as a Judge at the Italian Constitutional Court. She started her mandate in November 2014, after serving as Full Professor of Labour Law and European Social Law at the University of Florence and at the European University Institute.

She was Harkness Fellow and Fulbright Fellow at US Universities and Visiting Professor at several universities, including Warwick, Columbia Law School, and Cambridge.

She holds Doctorate Honoris Causa in Law from the Universities of Stockholm (2006) and Hasselt (2012).



# Business and Human Rights Project Presentation in the European Parliament

**Following several online meetings, the Project was presented at the European Parliament's Legal Affairs Committee on 27 October.**

During the presentation, Diana Wallis pointed out that the draft ELI report covers a number of essential points about access to remedy and highlighted some of the main issues and recommendations the Project Team is likely to come up with. One of the issues covered is human rights due diligence, which is currently being addressed by the JURI Committee in a recent report of which this exchange formed a part. The ELI Project Team feels that mandatory due diligence should include a standard legal duty of care at the EU level and be accompanied by a right to civil judicial remedy in the jurisdiction of every Member State, in order to not create rights without creating a remedy. In addition and importantly to ensure there is no right without a remedy to ensure that victims can pursue their rights through the courts in a straight forward manner, the Team also believes that there is a need for

an accessible horizontal system of collective action at the EU level, which could be built on the existing system in place for consumers.

Other matters highlighted in the draft report include issues of private international law, where the Team considers that a simpler option rather than amending existing EU legislation in the field would be to introduce a mandatory contractual term as part of human rights/environmental due diligence legislation, a clause that EU based parent companies and contractors operating in a third country would need to include in their contracts. The clause would compel a choice of an EU jurisdiction and law. Thereby, litigation would be brought before EU courts and be subject to EU law. The Team also thinks that more could be done regarding transparency and information, where, among other things, the EU's e-justice portal could

be made of greater use and help to point victims and advisors in the right direction.

Last but not least, the Team is looking quite carefully at non-judicial remedies, such as with an EU level Ombudsman scheme with strong investigatory powers. While such mechanisms could be helpful, they should, however, not be presented as an alternative to a clear judicial remedy but should rather be complimentary.

FRA representatives Jana Gajdošová and Patrycja Pogodzinska (who is also a Project Team member of the ELI project) presented FRA's recent report on 'Business and human rights – access to remedy' on this occasion.

The ELI report is foreseen to be sent for adoption by ELI bodies in the upcoming weeks

## ELI Project Common Constitutional Traditions Held Webinar

**On 15 October 2020 a webinar on Common Constitutional Traditions in Europe was organised by the project team in cooperation with the Bocconi University and the ELI Italian Hub.**

The meeting provided an opportunity to discuss the advancement of the project's report on freedom of expression with around 70 attendees.

The webinar, opened by Giacinto della Cananea, included welcome addresses by Marta Cartabia, former President of the Italian Constitutional Court and Project Team member, and ELI President Christiane Wendehorst as well as introductory remarks by Sabino Cassese, former Italian constitutional judge and Project

Co-Reporter. Drs Riccardo de Caria, Armando de Crescenzo and Gabriele Marino then presented their work on common constitutional traditions in the field of freedom of expression. Their presentations were followed by a lively discussion, chaired by Project Co-Reporter Mario Comba, with interventions by Piotr Bogdanowicz, Giuseppe Franco Ferrari, Takis Tridimas and Jacques Ziller, as well as remarks from the audience, including the Italian constitutional judge Francesco Viganò.

The final draft of the report on freedom of expression is planned to be presented next month.





## Advisors of the AI and Public Administration Project Provided Initial Feedback on the Draft Model Rules

**On 27 October 2020, the Project Team of the Artificial Intelligence (AI) and Public Administration – Developing Impact Assessments and Public Participation for Digital Democracy project held a remote meeting with the Project’s Advisors to discuss the draft Model Rules that are being developed by the Team.**

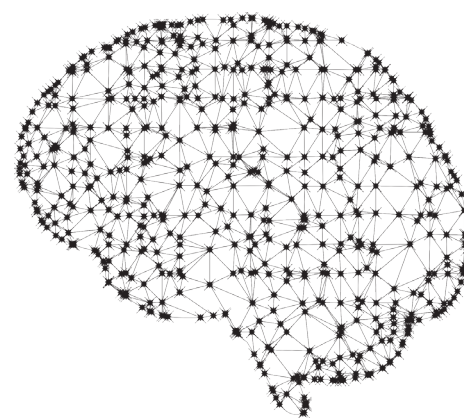
After a series of successful Project Team meetings over the past few months and a webinar discussion on the project in September, the Team prepared an updated draft of the Model Rules. This draft was discussed with Advisors Péter Darák, Jonas Ebbesson, Joanna Goodey, Michael Gøtze, Alexia Maniaki-Griva, Ilaria Pretelli, David Reichel, Jane Reichel and Clara Velasco Rico.

Project Reporter Jens-Peter Schneider and Team members Jonathan Dollinger and Katarzyna Ziółkowska first briefly presented the project and major changes to the draft. This was followed by a lively discussion with

the Advisory Committee members. Among other things, the most relevant points being discussed were the issue of definitions, purpose of the impact assessment, standards of assessments, coordination with other forms of assessments, possible remedies and the relationship between the model rules and national legal systems.

After the meeting with Advisors, the Team held another meeting to discuss the feedback received and next steps to be taken. They will meet again on 16 November to discuss further changes to the draft. This takes place prior to the meeting with the Members Consultative Committee (MCC) on 24

November. A final meeting for this year to implement feedback received by the MCC is foreseen for 9 December.



## Blockchain Technology and Smart Contracts Project Advanced on Principles

**The Project Team and Assessors met remotely to continue their discussions on the formulations of draft principles.**



For the purpose of this meeting the Team laid the focus on private law aspects in context of the use of blockchain technology. They emphasised the need to differentiate the various types of uses of blockchain technology. This seems to be particularly important as the different types also have different effects and consequence. Especially in regards to consumer protection these differences need to be addressed. Additionally, the Team also took the time to analyse the recent initiatives of the European Commission in the field. The Project Team will meet again in December.



# Call for Expression of Interest in a Feasibility Study on Ecocide

**Proposers of an ELI feasibility study on ecocide are inviting Members and non-members with an interest in criminal law, international criminal law and environmental law to participate in the initiative. The study will consider whether an ELI project developing a model law for the inclusion of ecocide in international agreements, in particular the Rome Statute, would be feasible.**

The feasibility study is inspired by the work of British barrister Polly Higgins who 'led a decade-long campaign for "ecocide" to be recognised as a crime against humanity. She sold her house and gave up a well-paid job to dedicate herself to attempting to create a law that would make corporate executives and government ministers criminally liable for the damage they do to ecosystems.' Read more about Higgins' efforts and the issue of ecocide as well as the proposed ELI project in a letter from Robert Bray [here](#).





## ELI Welcomes its New Members

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

### New Individual Members:

- Raquel Abajas
- Sebnem Akipek Ocal
- Serhiy Banakh
- Anne-Laure Bossel
- Claire Bright
- Christian Frederick John Chopin
- Mădălina Cocoşatu
- Tanya Drakohrust
- Klaas Hendrik Eller
- Eloise Ellis
- Marco Fasciglione
- Kostyantyn Flissak
- Hristina Georgieva
- Luis Gonzalez-Vaque
- Susanne Lilian Gössl
- Hervé Jacquemin
- Anna Krisztian
- Stavros Makris
- Nataliia Martsenko
- Georgiana Andreea Nicolae
- Manuel Peláez Muras
- Poillot Peruzzetto
- Rielaender Frederick
- Vincent Rivollier
- Carlo Rossi-Chauvenet
- Astrid Schrader
- Anja Srsek Crnkovic
- Giuseppe Versaci
- Aida von Schulman

### 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.



### Sustaining Members:

The following members have joined as, or changed their membership to that of Sustaining Members, who pay an additional 60 EUR per year to support ELI's work:

- Emilio De Capitani
- Aida von Schulman

## The Research Institute for Private Insurance Law



PARIS  
LODRON  
UNIVERSITÄT  
SALZBURG

Privatversicherungsrecht

The Research Institute for Private Insurance Law has been in existence at the Paris-Lodron University of Salzburg since 1973. Its main tasks are research and further education in private insurance law. The Research Institute also maintains an extensive academic library on private insurance law in the Faculty Library of Law.

# Family and Succession Law SIG Organised a Webinar and Met Remotely

**The Family and Succession Law SIG organised a webinar on the Interplay of Succession and Matrimonial Property Regimes. The webinar, which took place on 9 October 2020, was preceded by a SIG meeting.**

The SIG's Co-Chair, Elena Bargelli, had the great pleasure to open the webinar and welcome all attendees.

Following its agenda, the webinar then proceeded with three individual presentations on the Interplay between Succession and Matrimonial Property Regimes.

The first was held by Jan Peter Schmidt who discussed a Comparative Perspective on the Interplay between Succession and Matrimonial Property Regimes. The second presentation, by Elise Goossens, offered insights into the perspective of EU regulations. Lastly, François Trémosa elaborated on Practical issues on the Interplay between Succession and Matrimonial Property Regimes.

After the presentations there was a Q&A session and closing remarks by Jens Scherpe.

You can find the presentations [here](#).



## Hubs and SIGs: Upcoming Events

### HUNGARIAN HUB

On 27 November the ELI Hungarian Hub will hold a Webinar on the EU and the COVID-19 crisis. ELI First Vice-President Lord John Thomas will present the ELI Principles for the COVID-19 Crisis.



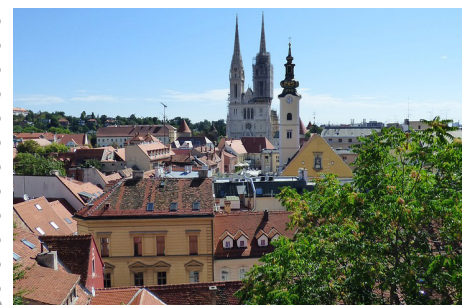
### ENVIRONMENTAL LAW SIG

The ELI Environmental Law SIG is organising a Conference on Environmental Sustainability and the [‘European Green Deal’: Values, Innovation and Regulation](#). The event will take place online on 12 November. In order to attend, please contact the organisers [here](#) and follow [this](#) link to the Conference.



### BUSINESS AND FINANCIAL LAW SIG

The ELI Business and Financial Law SIG is a co-organiser of the European Company Law and Corporate Governance Conference from 26–27 November 2020 online. The Conference will feature a panel on the SIG's feasibility study on Corporate Sustainability, Financial Accounting and Share Capital. More information is available [here](#).





# 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.

## November 2020

- 4 November - **Access to Digital Assets Project Team Meeting**  
(Online)
- 12–13 November - **Conference on Environmental Sustainability and ‘European Green Deal’: Values, Innovation and Regulation, organised by ELI’s Environmental Law SIG**  
(Online)
- 16 November - **Artificial Intelligence and Public Administration Project Team Meeting**  
(Online)
- 24 November - **AI and Public Administration Project: Meeting with the Members Consultative Committee**  
(Online)
- 26 November - **High-Level Expert Group Meeting Labour Law**  
(Online)
- 26 November - **High-Level Expert Group Meeting Financial Law**  
(Online)
- 26–27 November - **Conference on Company Law and Corporate Governance, co-organised by the ELI Business and Financial Law SIG**  
(Online)
- 27 November - **Webinar on the European Union and the COVID-19 Crisis, organised by ELI’s Hungarian Hub**  
(Online)

## December 2020

- 9 December - **Artificial Intelligence and Public Administration Project Team Meeting**  
(Online)

## February 2021

- 11-12 February - **ELI Council Meeting**  
(Online tbc)

## March 2021

- 19 March - **Concept and Role of Courts in Family and Succession Matters Workshop with Advisory Committee**  
(Pisa 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 took place from **8–11 September** online. You can find the Conference recordings [here](#).

Thank you to everyone who helped make the AC2020 a success!

## 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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