



ELI
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Newsletter

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Cover by Monique Goyens Director General of the European Consumer Organisation (BEUC)

Cover Letter on the EU Product Liability Directive



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Spotlight on Product Liability in the Digital Age by Bernhard A Koch

The most obvious flaw of the PLD as it stands is its lacking definition of the crucial term 'product', leaving it open whether it extends to digital data. In 1988, the Commission argued that software were within its scope, but that is of little help today, since at the time software was not marketed in purely digital form yet.

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Message from Monique Goyens Director General of BEUC

Dear ELI Members and Friends

A lot of water has flowed under the bridge since 1985. That year, Mikhail Gorbachev became the last USSR Secretary General, Nelson Mandela was still imprisoned at Robben Island, Bob Dylan celebrated his 44th anniversary, while compact discs and other CD players had only recently landed on the shelves of our European stores. That same year, after tense and lengthy negotiations, which I had the chance to follow in my early career as a consumer advocate, the EU adopted a breakthrough directive on product liability ('PLD').

36 years later, the USSR is gone, Mandela has received the worldwide recognition that we know, and CD players, today progressively eclipsed by streaming, look more like relics.

But the PLD is still here while, as Dylan's song says, 'the times they are A-changin'.¹

Despite its remarkable longevity, this legislation has today reached its limits. Over the years, the need to review the PLD has been documented by many expert and policy reports. Recently, the European Parliament also called on the European Commission to adapt the existing liability rules to address the challenges of

the digital revolution.² It goes without saying that the products that the drafters of the PLD had in mind back in the 1980s are a far cry of those surrounding consumers nowadays. Relying on digital content, inter-connected and sometimes guided by automated decision-making, products have become increasingly complex and the damage that they may cause when things go wrong has drastically expanded to include for example loss of data, identity thefts or harm caused by the unpredicted behaviour of robots. As a cross-country survey conducted by BEUC in autumn 2020 showed,³ a majority of EU consumers considers that AI is potentially dangerous because machines can fail and, in such situations, it is ultimately not clear who the liable person is in case of harm.

Updating the PLD is therefore not only about defending the rights and the property of individuals but, more generally, it is about promoting the collective interest of our society, ensuring an effective access to justice for all harmed individuals, and incentivising professionals to take all the

² European Parliament resolution of 20 October 2020 on a civil liability regime for artificial intelligence (2020/2014 INL, at pt. 8).

³ BEUC, 'Artificial Intelligence: what consumers say – findings and policy recommendations of a multi-country survey on AI', September 2020.



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necessary precautions when they develop their products.

Several golden principles should guide EU policymakers when updating the PLD to ensure it is consumer-friendly.⁴ First, it is essential to provide legal certainty and clarity for all stakeholders. For example, it should now be well established that digital content and digital services can fall under the definition of "product" under the PLD.

Second, rules should not impede harmed individuals from seeking compensation. Therefore, the burden of proof should be reversed, and it should be enough for the injured party to prove the existence

⁴ BEUC, 'Product Liability 2.0: How to make EU rules fit for consumers in the digital age', April 2020.

¹ Bob Dylan, *The Times They Are A-Changin'*, 1964.

of a damage resulting from a product. Moreover, the liability threshold of €500 should be removed.

Third, harmed plaintiffs should have clear 'go-to' points to which they can turn in case of harm. For this reason, all professionals involved in the supply chain should be jointly liable, and online marketplaces should also be made liable under certain circumstances when they sell or facilitate the circulation of defective products. In a study published in February 2021, consumer groups found that 66% of the 250 investigated products sold online turned out to be unsafe.⁵

Fourth, product liability rules should follow and accompany the dynamic nature of digital goods, which may evolve during their lifespan. Producers' liability should thus no longer stop once products have been put on the market and the risk development defence should no longer be a valid reason for escaping liability. Finally, as digital goods have triggered important changes in the types of harm likely to impair consumers' wellbeing, product liability rules should no longer be limited to the compensation of physical injuries and other damage to property, but also ensure compensation in case of immaterial damage and pure economic losses.

In this context, I am confident that ELI's Guiding Principles for Updating the Product Liability Directive for the

⁵ BEUC, 'Is it Safe to shop on online marketplaces?' February 2021.

Digital Age will be an important building block for the upcoming policy discussions on the future of the PLD.

The EU is currently working on several initiatives that will profoundly shape the upcoming regulatory framework for AI and the future of digital products and services in the Internal Market. This includes the Digital Services Act ('DSA') and the revision of the General Product Safety Directive ('GPSD'). Together with the revision of the PLD, they are all the different pieces of the same puzzle which should aim to ensure the highest level of protection for consumers. It is thus essential that all of this legislation is closely coordinated to ensure a solid EU regulatory framework.

EU policymakers and all involved stakeholders have to be up to the new opportunities which a revision of the PLD represents today. As the experience has shown, the fears which plagued the preparatory works of the PLD have ultimately not materialised. Contrary to what some had predicted back in the 1980s, we have neither observed a flood of product

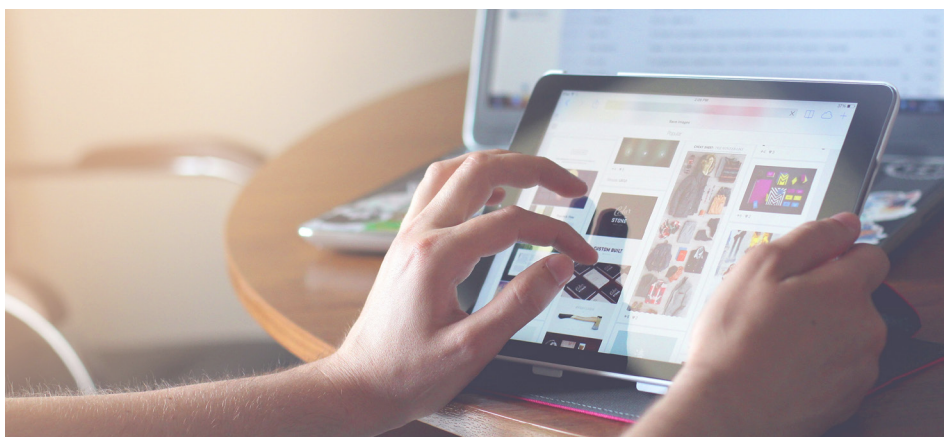
liability cases nor drastic increases in the level of insurance premiums as a consequence of the PLD. Therefore, as Dylan's song rightly says, it is now time to look 'beyond the horizon'⁶ and to work together for an ambitious and consumer-centric updated product liability framework.

In 2021, Bob Dylan will celebrate his 80th birthday. Let's hope that we will also remember this year as the one where the PLD managed to successfully embrace the challenges of the digital revolution.

Monique Goyens
Director General of BEUC, The European Consumer Organisation*

⁶ Bob Dylan, *Beyond the Horizon*, 2006.

* The author wishes to thank Alexandre Biard (Senior Legal Officer at BEUC) for the preparatory work towards the finalisation of this contribution.



ELI Guiding Principles for Updating the EU Product Liability Directive for the Digital Age

The ELI Council adopted ELI's first Innovation Paper on the 'Guiding Principles for Updating the EU Product Liability Directive for the Digital Age', prepared by Professor Christian Twigg-Flesner (University of Warwick) in consultation with ELI Members.

This Innovation Paper sets out concrete propositions for updating the EU Product Liability Directive (PLD), which has remained unchanged for the past 35 years despite rapid digitalisation. With digital automation and artificial intelligence substituting for human operation, the Institute alerts that the time has come to reform the Directive so that it can continue to protect individuals suffering harm from defective products in the new, digital reality.

The ten Guiding Principles elaborate on the following points in detail:

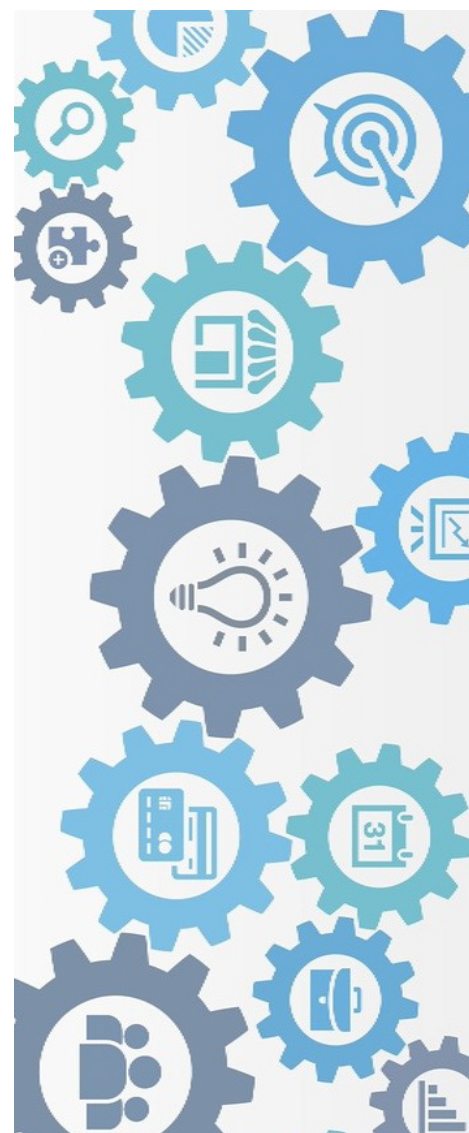
1. mechanism for seeking compensation by persons suffering harm from a defective product,
2. balance between protection of individuals and fostering innovation and utilisation of digital technology,
3. alignment of the PLD with measures in related areas of law as well as non-legal measures,

4. update of the definition of 'product',
5. update of the notion of 'producer',
6. update of the definition of 'defect',
7. revision of the notion of 'damage' to consider including damage to digital elements and data,
8. burden of proof,
9. defences available, and
10. the system for allocating financial consequences of a successful claim by an individual.

The Innovation Paper aims at sparking discussions and inspire further action in updating the PLD.

After this successful first paper, the Institute considers embarking on a new Innovation Paper Series.

[Read the Innovation Paper](#)



Christian Twigg-Flesner

Author of ELI's first Innovation Paper

'The digital economy has proven to be a fertile testing ground for the robustness of existing legislation. Often, some adjustments to existing legislation are needed to make its application in the context of digital technology clearer. This ELI Innovation Paper is intended to encourage debate on the need for adapting the EU's Product Liability Directive for the digital era.'



ELI Webinar on Guiding Principles for Updating the EU Product Liability Directive for the Digital Age

The first ELI webinar in 2021, held on 23 February, was based on the recently published ELI Innovation Paper and brought together over 130 ELI Members and Friends from over 30 countries.

ELI President and Chair of the webinar, Christiane Wendehorst, emphasised that the topic ELI chose for its first Innovation Paper is the one that ELI believes is key to some of the current discussions on (liability for) artificial intelligence and other digital technologies.

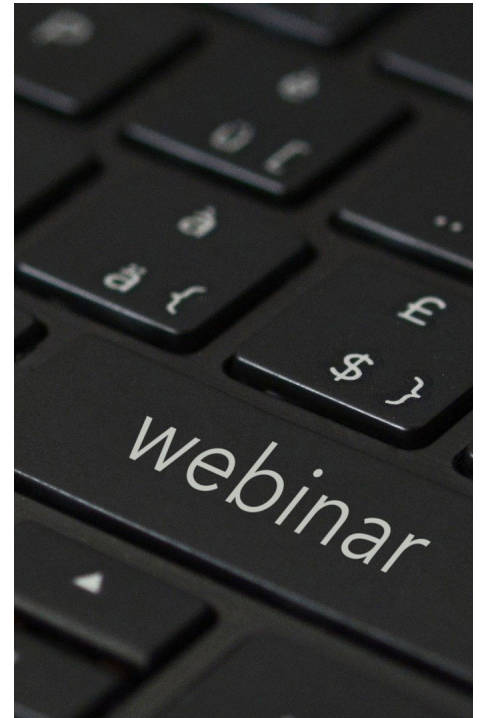
Christian Twigg-Flesner (Professor, University of Warwick; Author of the Innovation Paper) highlighted the importance of the feedback received from the ELI Membership during the process of elaborating the Innovation Paper, which was prepared in several stages and ultimately approved by the ELI Council.

Piotr Machnikowski (Professor, University of Wrocław; member of the Litigation and Arbitration practice in Dentons' Warsaw office) explained the background of the Product Liability Directive and discussed whether digital products are similar to traditional products in terms of liability.

Agustin Reyna (Director, Legal and Economic Affairs, The European Consumer Organisation (BEUC)) provided the analysis from the consumer protection perspective, pointing out the need for a clear liability framework and stressing the importance of having an integrated and multifaceted approach when regulating liability.

Mark Beamish (Legal and Policy Officer, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, European Commission) provided information on policy developments regarding the Product Liability Directive, which was last evaluated in 2018.

A lively discussion with attendees followed, during which the distinction between liability for (digital) services and products, the issue of liability in case of open source software development as well as the role of insurance in the whole picture were addressed, among other things.



[Watch the Webinar](#)





Spotlight

Product Liability in the Digital Age

by Bernhard A Koch

The topic of [ELI's first Innovation Paper](#) is a perfect choice: product liability was one of the first substantive private law matters harmonised by the EC, and a reform of the [1985 Directive](#) (PLD) is currently under debate, also at Commission level.

The most obvious flaw of the PLD as it stands is its lacking definition of the crucial term 'product', leaving it open whether it extends to digital data. Requiring in art 2 PLD that products must be 'movables' may suffice for some jurisdictions such as Germany, where all things (and therefore also movables) in law are corporeal by definition of [sec 90](#) of the German Civil Code (BGB), but not for others which have a much broader legal notion of things (cf [sec 285](#) of the Austrian Civil Code, ABGB). Therefore, digital content would clearly be excluded from a German perspective but not from an Austrian point of view, had not the Austrian legislator when implementing the PLD decided to deviate from its wording by adding the further qualification of 'corporeal' to the definition of products, thereby aligning it unilaterally with the German understanding.

The Commission's express inclusion of software into the scope of the PLD in a [response](#) to a parliamentarian

question in 1988 at first sight seems to contradict that, but does not help us any more today, since at the time software was not marketed in purely digital form yet, but only on tangible media which could be seen as the relevant 'products'. However, at least we can safely assume on the basis of that statement that tangible products which include digital elements are clearly within the scope of the PLD, even though the Innovation Paper seems to question that.

Still, it remains unclear whether the embedded software or other digital data are components within the meaning of art 3 para 1 PLD, and even more so whether digital data distributed as such fall under the directive's strict liability regime. It is to be hoped that an answer to this question – whether in the affirmative or not – will be added to the black-letter text of the PLD and not just communicated via some [guidance document](#).

Excluding digital content from the notion of a 'product' within the meaning of the PLD would raise complex follow-up questions, though, not only with respect to the afore-mentioned tangibles with digital elements. Expressly *including* data, as inter alia also endorsed by Guiding Principle (GP) 4 of the ELI Innovation Paper and

ELI's first Innovation Paper is an important contribution to the current debate on a reform of the Product Liability Directive. - Bernhard A Koch

by a rather clear majority of academic opinion, may not be the easier, but undoubtedly the more convincing choice. Drawing the line to services is feasible, as [art 3 para 5 lit a](#) of the Digital Content Directive (EU) 2019/770 shows. If digital data can be a product within the meaning of the PLD, the notion of compensable harm in art 9 lit b PLD would have to be expanded to include damage to data as well, as endorsed by GP 7.

If digital data already is or at least will be subject to the PLD regime, certain aspects thereof still would have to be reconsidered, first and foremost the directive's turning point – currently the moment when the product is put into circulation. The manufacturer is only liable for defects already existing at that time (art 7 lit b PLD). It also freezes the relevant safety standard, which is the benchmark for determin-

ing whether the product was indeed defective (art 6 lit c PLD). The underlying idea is that the manufacturer is only in control of the product until then. This may have been adequate for products envisaged in the 1980s, but no longer for smart goods of today, let alone for purely digital content. While the hardware may still remain the same once distributed, firmware and other pre-installed digital data is often subject to updates thereafter, typically (though not necessarily) provided by the original producer or at least by someone tasked by the latter. This is even more true for stand-alone software. In order to update the concept of the original PLD, it therefore appears necessary nowadays to focus not on when the product was 'put into circulation', but when the producer last impacted upon the product, coupled with a rebuttable presumption that the defect was caused either by the state of the product when first circulated or by an update subsequently provided.

This does not yet resolve another key problem, though: The aforementioned 'magic moment' is also the last time others such as component suppliers can contribute to finalizing a traditional product before it enters the stream of distribution, which justifies the primary liability focus on the manufacturer of such a finished product, who can in turn seek recourse from those he selected as contractors. Anything added to the product thereafter increases chances for the producer to succeed on the art 7 lit b PLD defence. Smart products of today, however, are already designed from the start to interact with content provided by third parties outside the sphere of the product's manufacturer, making it more difficult to identify the original source of harm and therefore to pin it to a product defect. Just think of a smartphone that one day catches fire: maybe the battery was defective, or the pre-installed firmware was ill-designed from the start or became flawed after some update (all of which so far attributable to the smartphone producer), or some third-party app kept overusing the processor,

ultimately causing the phone to over-heat. Will the victim be able to prove a defect as required by art 4 PLD? Alterations of and additions to the original product made by someone else other than the original manufacturer are not a novelty to product liability law, of course, and courts could settle ensuing [disputes](#) already on the basis of the *lex lata*. However, the openness of the design of smart products and their connectivity, to name just a few key novel features, certainly add a further level of complications which inter alia require a rethinking of (though not necessarily a fundamental change to) the distribution of the burden of proof.

Two more aspects of the PLD need to be reconsidered irrespective of the challenges of the digital age. First, the 500€ threshold for property damage set by art 9 lit b PLD – even if it were to be maintained – is unclear in itself, and Member States have implemented this either as a minimum harm requirement (but compensating the entire loss if higher) or as a deductible (indemnifying only damage to the extent it exceeds that amount). Not only is this an oddity in all domestic tort laws per se, it also fails to take account of differing price levels in the Member States. While the industry insists on preserving such a threshold in order to counter-balance the imposition of strict liability by excluding small claims, the arguments raised by [France](#) against such a limit when challenged by the Commission to implement it have not yet been convincingly rebutted, and all the [ECJ](#) could do at the time was to insist on the policy argument as such without actually justifying it. Another problematic provision of the PLD is its Art 11, according to which all claims based upon the PLD shall be extinguished (and not just prescribed) ten years after the product was put into circulation. While the starting point may have to be reconsidered for other reasons as already argued, the ten years period as such cannot stand after the ruling of the ECtHR in the [Howald Moor](#) case, where that court had declared an absolute prescription period of ten years

The Author

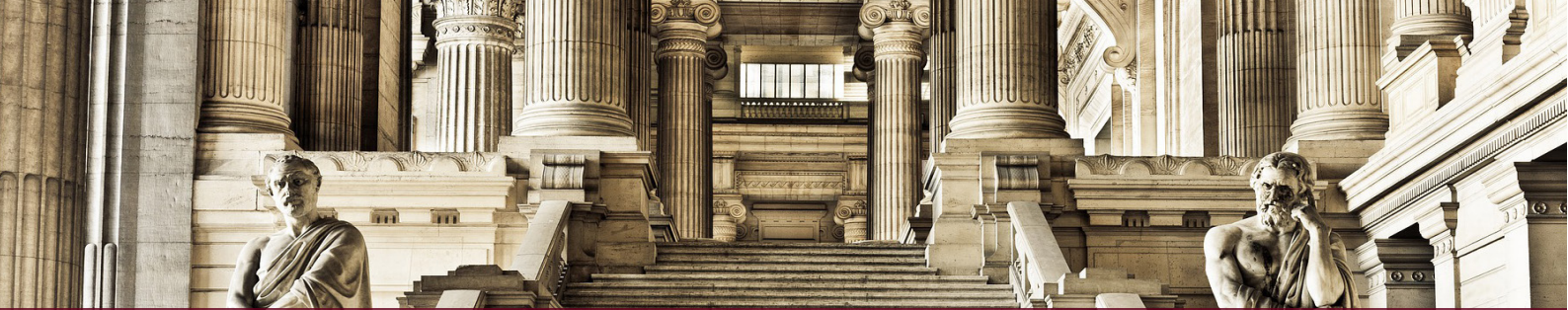


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Bernhard A Koch is a professor of civil and comparative law at the University of Innsbruck, where he currently also serves as the Dean of Studies at the Faculty of Law and as the academic director of its medical law program. He is inter alia a member of the European Group on Tort Law and of the EU Commission's Expert Group on Liability for New Technologies. Koch was recently elected as one of the Vice-Presidents of the Institute for European Traffic Law. His main research interests are in the areas of comparative tort and contract law as well as conflict of laws.

to be too short in latent personal injury cases.

In light of the need for adjustments indicated above and further elaborated by the first ELI Innovation Paper, it will hopefully indeed serve 'to spark discussion and to inspire further action', both with an eye to a possible reform of the PLD itself and with a broader perspective of how to distribute such risks more generally. In particular, it is to be hoped that any further approximation of the laws in Europe will be done on the basis of a careful [comparative analysis](#) of the existing liability regimes in the Member States concerned in order to avoid frictions as experienced in the past.



ELI at 10

ELI celebrates its 10th anniversary in 2021. Over the course of the next five issues of this Newsletter, we will display ELI's history, Members, and project milestones to commemorate this occasion. In this issue, you are cordially invited to take a trip down the memory lane with us to 2011 and 2012.

The idea of founding an independent organisation that will improve European law by conducting research and providing expertise to European legislators as well as provide a forum to jurists from different legal traditions, had been deliberated and examined for more than a decade. Back in 2010, two initiatives originating from the Association for a European Law Institute (ELIA) and the Robert Schuman Centre for Advanced Studies of the European University Institute (EUI) agreed in the Hamburg Memorandum to work together towards the founding of the European Law Institute (ELI).

Their joint meeting in Vienna, that resulted in the Vienna Memorandum, laid the cornerstone of the ELI as it set up working groups that began to prepare key documents for the launch of a European Law Institute. In 2011, after a meeting of the ELI Founding Committee in Athens, ELI was established by its 56 Founding Members and its first Council appointed.

ELI is the outcome of the commitment and hard work of jurists all over Europe who wished to establish a community of experts prepared to guide decision makers towards better law making, with a view to serve the public. To this day, ELI continues in this spirit by involving its Members and its Friends in activities that aim at identifying areas which require development and proposing solutions for the improvement of European Law.

15–16 April 2011

The ELI Founding Committee convened in Athens, upon the kind invitation of Professor Spyridon Flogaitis, President of the European Public Law Organisation (EPLA), in order to debate the results submitted by the three Working Groups.



ELI Founding Members (in alphabetical order):

Gianmaria Ajani, Gabriel Alonso Landeta, Carole Aubert de Vincelles, Jean-Bernard Auby, Hugh Beale, George A Bermann, Snezhana Botusharova, Fabrizio Cafaggi, Remo Caponi, Marc Clément, Georges-Albert Dal, Walter Doralt, Bénédicte Fauvarque-Cosson, Spyridon Flogaitis, Lech Garlicki, Johan Gernandt, Friedrich Graf von Westphalen, Irmgard Griss, Stefan Grundmann, Herwig Hofmann, Huguenin Claire, Rafael Illescas, Francis Jacobs, Carmen Jerez Delgado, Rudolf Kaindl, Yves Kreins, Lord John Thomas, Ole Lando, Lord Jonathan Mance, Imelda Maher, Hans Micklitz, Valentinas Mikelenas, Horatia Muir-Watt, Leo Netten, Savvas Papasavvas, Denis Philippe, Miguel Poiaras Maduro, Radim Polcak, Bernard Reynis, Marek Safjan, Hans Schulte-Nölke, Reiner Schulze, John Sorabji, Matthias Storme, Christiaan Timmermans, Verica Trstenjak, Sjef van Erp, Pasul Varul, Christian von Bar, Christiane Wendehorst, Reinhard Zimmermann, Fryderyk Zoll, The International Union of Judicial Officers, The Council of the Notariats of the European Union, The Council of Bars and Law Societies of Europe, The European Land Registry Association

31 May 2011

The University of Vienna won the tender to host the ELI Secretariat.

16 September 2011

The ELI General Assembly held a meeting in Vienna.

17 November 2011

Viviane Reding, then EU Commissioner for Justice, opened the ELI Secretariat in Vienna.



From left to right: Heinz W Engl, Viviane Reding, Beatrix Karl, Sir Francis Jacobs

'You, the Members of the European Law Institute, will provide practical advice to policymakers and authorities across Europe on how to build these bridges. Advice that will ultimately help to build the European area of law and justice for the benefit of our citizens.' - Viviane Reding in 2011

11 June 2012

The ELI Irish Hub was launched in Dublin. This makes it the first ELI Hub to be inaugurated.

September 2012

ELI publishes its 'Statement on the Proposal for a Regulation on a Common European Sales Law.

1 June 2011

The inaugural Congress of ELI took place in Paris.

Inaugural Congress Paris - 1st June 2011

'The ELI has now been founded, and it is officially inaugurated today. It has been a long, and not always smooth, road to Paris, but we have finally arrived. Fifty-two persons from 22 different countries, from many different disciplinary and professional backgrounds, and representing a broad range of traditions, networks and organisations, have made a beginning.'

- Reinhard Zimmermann in 2011



'Congratulations again for having planted today, with the European Law Institute, a little apple tree for Europe's Legal Culture. May this tree grow over the years. May it prosper. And may it bear many, many fruits. For the benefit of European Law. And for the benefit of the citizens of our European Union.' - Martin Selmayr in 2011

March 2012

'The launch of the European Law Institute was a remarkable event on many counts. It followed a long and carefully managed period of preparation. That preparation involved the talents—and hard work—of some of the leading figures in European law. We owe them a great debt.' - Sir Francis Jacobs, first President of the ELI

July 2012

ELI publishes its first report on 'Case Overload at the European Court of Human Rights.'

28–29 September 2012

ELI held its first ELI Annual Conference and General Assembly in Brussels.

ELI's Solutions to the Backlog of the European Court of Human Rights

Sir Paul Mahoney KCMG, Co-Reporter of the first ELI project on the Case-Overload at the European Court of Human Rights, shares his perspective of working on this ELI project in 2012.



About the Project Co-Reporter

Sir Paul Mahoney, KCMG, sat as the United Kingdom judge on the European Court of Human Rights from 2012 till 2016, having previously been the Registrar of that Court (2001-2005). In the intervening period, he served as President of the European Union Civil Service Tribunal (a specialist chamber of the Court of Justice of the European Union) (2005-2011) and Chair of the Appeals Board of the European Space Agency (2011-2012). He was for many years an associate editor of the Human Rights Law Journal (1980-2012). He received an honorary doctorate from the Aristotle University of Thessaloniki in 2011 and was knighted by the British Crown in 2018 (for services to international justice). He has co-edited three books and published 50 or so articles on international human rights law and European civil service law. He is currently Chair of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, as well as being Chair of the European Patent Office's internal Appeals Committee.

I have nothing but fond memories of frantically working against the clock with Mark Entin, Jean-Paul Jacqué and Luzius Wildhaber, sifting through the panoply of ideas on the table in order to make our selection.

How would you describe the project outcome in a couple of sentences?

The Statement did not purport to present a comprehensive survey of measures for resolving the complex problem of the Court's overload, but had the much more limited objective of formulating a few practical proposals that could be rendered public in a short time-span. That objective was achieved. And the recommendations made in regard to the three main categories of cases making up the Court's caseload (manifestly inadmissible, repetitive well-founded, otherwise meritorious) have on the whole proved to be foresighted.

Why was this project relevant for the development of the European legal order? Does it remain relevant?

The project can be taken to have been part of the flow of ideas prompting

developments in the Court's treatment of its caseload from 2012 onwards. The project also retains some relevance today insofar as it contains the preparatory groundwork for further contributions by the ELI on how to render more effective the functioning of the system of human rights protection under the European Convention on Human Rights (ECHR).

What do you consider the direct impact of the project for citizens?

While it is not possible to say that the project had a direct impact on citizens, its subject-matter was one of significance for them - not only as potential applicants to the Court but also because of the ever-growing influence of ECHR case-law on their day-to-day lives.

What are your personal memories of the project?

I have nothing but fond memories of frantically working against the clock with Mark Entin, Jean-Paul Jacqué and Luzius Wildhaber, sifting through the panoply of ideas on the table in order to make our selection. Although we were somewhat taken by surprise by the rigour of the ELI's internal approval procedure, the end-product, thanks to the input of the Senate, the Council and the Advisory Committee, was certainly better than if we had been left to prepare a purely personal 'expert' opinion.

What are your recommendations for future projects in this area?

The mismatch between the Court's caseload and its case-processing capacity has not yet been removed in relation to the crucial category of meritorious applications, such that

too many of the more serious cases are still not being dealt with as expeditiously as they should be. There is therefore scope for the ELI to look beyond the original Statement for ways of adapting the ECHR system so as to eliminate this worrying problem.

Quick Facts:

Project Type and Output: [Statement](#)

Project Period: January 2012–July 2012

Read more about the project [here](#).

ELI Bodies Convene Remotely

At the beginning of February, ELI's Council and Executive Committee held successful meetings with fruitful discussions. The ELI Council met online to elect the nominate members of the Executive Committee, discuss developments of ELI projects and take critical decisions for steering the Institute towards a successful future.

ELI Executive Committee Meeting

A day prior to the Council meeting, on 10 February 2021, the Executive Committee held a full-day meeting to assess the progress of current projects and set out a strategy for future projects to be put before the Council.

ELI Council Meeting

The first day of the Council meeting saw the elections of the nominate members of the Executive Committee, who will take up office in September 2021. Pascal Pichonnaz was elected as the next ELI President, Lord John Thomas as the next First Vice-President, Anne Birgitte Gammeljord as the next Second Vice-President and Pietro Sirena as the Treasurer. The remaining innominate members of the Executive Committee will be elected during the Council Meeting in September. The current ELI President, Christiane Wendehorst, who has already served two consecutive terms and was, thus, in accordance with the ELI Statute and Election Byelaw unable to run again for the office of President, will head the institute until the official start of the new Executive Committee in September.

ELI Projects

The remainder of the day was devoted to discussing the developments in on-going ELI projects.

The second day provided a room for discussion on future ELI projects. Green light was given to the following projects:

- EU Conflict Law for Companies: The Acquis and Beyond
- ELI-Mount Scopus European Standards of Judicial Independence
- Ecocide
- Corporate Sustainability, Financial Accounting and Share Capital

ELI's Project Portfolio

NEW EU Conflict Law for Companies: The Acquis and Beyond*



NEW ELI-Mount Scopus European Standards of Judicial Independence*



NEW Ecocide*



NEW Corporate Sustainability, Financial Accounting and Share Capital*



NEW Fundamental Constitutional Principles*



ON-GOING The Concept and Role of Courts in Family and Succession Matters

ON-GOING Admissibility of E-Evidence in criminal Proceedings in the EU

ON-GOING Artificial Intelligence (AI) and Public Administration - Developing Impact Assessments and Public Participation for Digital Democracy

ON-GOING Access to Digital Assets

ON-GOING Blockchain Technology and Smart Contracts

ON-GOING Business and Human Rights: Access to Justice and Effective Remedies (with input from FRA)

ON-GOING Common Constitutional Traditions in Europe (Freedom of Expression)

ON-GOING Principles for a Data Economy: data Rights and Transactions (with the ALI)

ON-GOING For a European Approach to R&D Tax Incentive(s)

*further details will follow on ELI's website shortly

Updates on ELI Projects

Below is an overview of ELI Projects-related events that took place in January and February 2021. Please follow the link to read up on these stories.

Blockchain Technology and Smart Contracts

Project Team Meeting

At the first meeting in 2021, the set of draft principles was further examined.

[Read here](#)

Business and Human Rights

Project Team Meeting

The Project Team of the Business and Human Rights: Access to Justice and Effective Remedies project met online on 21 January 2021.

[Read here](#)

ALI-ELI Principles for a Data Economy

Meeting with ALI Council

The American Law Institute (ALI) Council approved the remaining set of Principles that were presented as Council Draft No 2.

[Read here](#)

AI and Public Administration

Project Team Meeting

The team convened on 26 January 2021 to discuss revisions of the Model Rules and the project's timeline.

[Read here](#)

Access to Digital Assets

Project Team Meeting

The team convened online on 27 January 2021 to review the latest revised draft.

[Read here](#)



ALI-ELI Principles for a Data Economy

Reporters Meeting with Advisors

Project Chairs and Reporters met with ALI and ELI Advisors as well as MCC and MCG.

[Read here](#)

AI and Public Administration

Project Team Meeting

The Project Team convened again on 25 February 2021.

[Read here](#)



ELI Welcomes its New Members

ELI is pleased to share information about its individual and institutional Members.

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 the ELI's work:

Chris Backes, Utrecht University, Netherlands

Bertrand Perrin, University of Fribourg, Switzerland

Corina Florenta Popescu, Ecological University of Bucharest, Romania

Access to Justice in Eastern Europe Journal (AJEE)

Access to Justice in Eastern Europe (AJEE) is an English-language journal covering a variety of issues related to access to justice and the right to a fair and impartial trial. A specific area of interest of AJEE is the law in East European countries which share special features in the evolution of their legal traditions. While preserving the high academic standards of scholarly research, AJEE provides the opportunity for its contributing authors, especially young legal professionals and practitioners, to present their articles on the most current issues. AJEE is an Open Access double blind peer-reviewed journal, recognised by the academics and indexed in Web of Science Core Collection, ESCI.

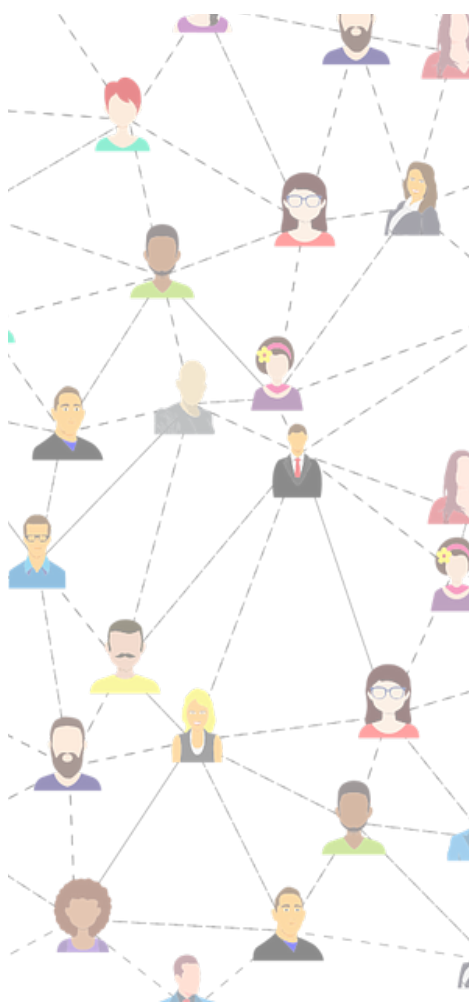


Bocconi School of Law

The School of Law of the Bocconi University (Bocconi School of Law) is a leading teaching and research institution based in Milan (Italy). It was founded in 1999. As a part of the Bocconi University, the Bocconi School of Law enjoys great reputation and high standing for the excellence of its teaching and research activities in national and international rankings.



**Università Commerciale
Luigi Bocconi**



ELI Welcomes its New Members

ELI is pleased to share information about its individual and institutional Members.

New Individual Members:

Alessio Bartolacelli, University of Macerata, Italy

Alexandre Biard, Erasmus University Rotterdam & The European Consumer Organisation (BEUC), Belgium

Thom Brooks, Durham University, United Kingdom

Raquel Carvalho, Catholic University of Portugal, Portugal

James Davey, University of Southampton, United Kingdom

Francesco De Pascalis, Brunel University London, United Kingdom

Raphael Gellert, Radboud University, Netherlands

Núria Ginés Castellet, University Ramon Llull, Spain

Milène Hauri, University of Geneva, Switzerland

Caroline Heber, Max Planck Institute for Tax Law and Public Finance, Germany

Aileen Keogan, Aileen Keogan Solicitor & Tax Consultant, Ireland

Erik S Knutsen, Queen's University, Canada

Christian Koller, University of Vienna, Austria

Gökçe Kurtulan Güner, Istanbul Bilgi University, Turkey

Anna Mercedes López Rodríguez, Loyola University Andalusia, Spain

Geo Magri, University of Insubria, Italy

Manolis Perakis, National and Kapodistrian University of Athens, Greece

Bertrand Perrin, University of Freiburg, Switzerland

Barbara Pozzo, University of Insubria, Italy

Alina Škiljić, Law firm Bardek, Lisac, Mušec, Skoko in cooperation with CMS Reich-Rohrwig Heinz, Croatia

Václav Šmejkal, Charles University, Czech Republic

Guido Smorto, University of Palermo, Italy

Anne van Aaken, University of Hamburg, Switzerland

Wannes Vandenbussche, Ghent University, Belgium

Joelle Vuille, University of Fribourg, Switzerland

Ingo Klaus Wamser, Rechtsanwalt Wamser, Germany

Oliver D William, University of Bern, Switzerland

Karolina Barbara Wojciechowska, University of Warsaw, Poland

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.

March

5 March
16:00
(CET) **ELI Croatian Hub Webinar**
Online

8 March
10:00
(CET) **ELI Business and Financial Law SIG Webinar**
Online

12 March
12:00
(CET) **ELI Polish Hub Conference and General Meeting**
Online

19 March
14:30
(CET) **The Concept and the Role of Courts in Family and Succession Matters Workshop with Advisory Committee**
Online

19 March
09:00
(CET) **ELI Executive Committee Meeting (ELI Executive Committee members only)**
Online

23 March
18:30
(CET) **ELI Webinar on Vaccination Against COVID-19: Distribution, Privileges and Challenges Ahead**
Online

26 March
16:00
(CET) **ELI Croatian Hub Webinar**
Online

April

14 April
16:00
(CET) **ELI Council Meeting (ELI Council members only)**
Online

30 April
13:00
(CET) **ELI Executive Committee Meeting (ELI Executive Committee members only)**
Online

May

14 May **IV Annual Meeting of the Spanish Hub in European Case Law**
Online

Save the Date

ELI Annual Conference 2021 and Decennial Celebration

2021 is a special year for ELI, as the Institute will celebrate ten years since its foundation. This is an important step for our Institute, which should certainly be celebrated accordingly.

We would like therefore to cordially invite you to save the date for the ELI Annual Conference and Decennial Celebration, which will take place from 6–8 September and on 9 September 2021.

This year is also a year of great uncertainties about any planning of the

future. While we remain hopeful that we will be soon able to engage in lively discussions in person, the safety of the participants of our events remains our primary concern.

This is why we cannot know or decide now whether our Decennial gathering will be in Vienna (Austria) in person or online.

We are closely monitoring the situation in Europe and beyond and the ELI Council will meet again in April to decide on the event format in light

of the developments to come. More information will follow, therefore, in due course.

Regardless of the format, we are confident that the Annual Conference and Decennial Celebration will again gather legal experts from across Europe and beyond, including practitioners, judges, academics and policy makers, to discuss future European legal developments and reflect on the remarkable achievements of our ever-growing Community in the past ten years.

ELI Annual Conference, 6–8 September 2021
ELI Decennial Celebration, 9 September 2021

Vienna, Austria/Online (tbc)



Call for Papers for the ELI Young Lawyers Award

For the fifth time, the European Law Institute seeks to uncap the innovative power and creativity of young lawyers by providing them the opportunity to submit papers for the ELI Young Lawyers Award.

The ELI Young Lawyers Award was officially launched in 2016 with the intention to provide the young European legal community with a mechanism to propose practical suggestions for the improvement of European law.

The aim is to give voice to future legal experts and, in return, fulfil ELI's core mission to improve the quality of European law. Please feel welcome to share the information below among your networks.



ELI
EUROPEAN
LAW
INSTITUTE

5th Edition of the ELI Young Lawyers Award

Submit Your Paper by 30 April 2021

With the Young Lawyers Award the European Law Institute (ELI) gives voice to the next generation of legal experts. You are invited to share your ideas on legal issues that require urgent attention in Europe and submit your paper.

Who

Applicants must be students enrolled at a university, currently undertaking a university law degree (undergraduate or postgraduate) or individuals who are within five years of being awarded a law degree at the date by which entries must be submitted.

What & How

Candidates must submit a unique and original paper which was not previously published and which deals with a European legal issue that could be improved. A jury comprised of the ELI and other institutions determines the winner. The successful candidate will be invited to present their paper at the 2021 ELI Annual Conference, which, depending on the pandemic situation, will take place either in Vienna (Austria) or online on 6–8 September 2021.

When

The paper must be submitted by 30 April 2021, together with the application form to the following address: secretariat@europeanlawinstitute.eu

About the ELI

The European Law Institute (ELI) is an independent non-profit organisation, established to contribute to better law-making in Europe, the enhancement of European legal integration and the formation of a more vigorous European legal community.

europeanlawinstitute.eu

! Scan the QR codes to find out more about:



General Info



Rules

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



ELI Webinar on

Vaccination Against COVID-19: Distribution, Privileges and Challenges Ahead – Updating the ELI Principles for the COVID-19 Crisis

23 March 2021, 18:30–19:45 (CET)

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.



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