



ELI

EUROPEAN
LAW
INSTITUTE

Bringing Legal Experts Together

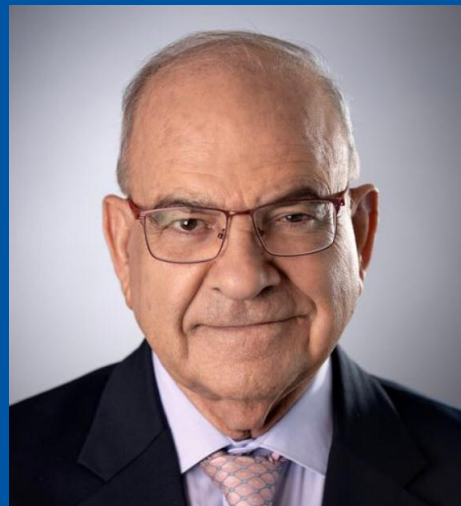
Newsletter

Issue 6: November–December 2021

Inside this Issue:

Strengthening the Judiciary and the Rule of Law

Cover by Shimon Shetreet



- 2 Season's Greetings by
Pascal Pichonnaz
- 4 Cover Letter by Shimon
Shetreet
- 6 Spotlight contribution
by Ksenija Turković
- 9 Decennial Special
- 11 Conference on the
Future of Europe
- 12 Projects and Hub and
SIG Activities
- 15 ELI Representation
- 17 ELI Membership
Updates



ELI
EUROPEAN
LAW
INSTITUTE

ELI Decennial Special

ELI celebrated its 10th anniversary on 1 June 2021. Over the course of the 2021 issues of this Newsletter, we have displayed ELI's history and project milestones to commemorate this occasion. In this issue, you are cordially invited to take one last trip down memory lane with us to 2021.

Connect



Contact us

secretariat@europeanlawinstitute.eu

Stay up to date

Latest ELI news

Photo Credits

Pictures were provided by the contributors to the ELI Newsletter and are taken from Pixabay and Pexels.

Imprint

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

Season's Greetings

from ELI President, Prof Dr Pascal Pichonnaz

2021 has been a remarkable year in many respects. We had all hoped to return to physical meetings, to share our ideas, warmth, and experiences in person, to further build our ELI legal community. The Covid-19 pandemic forced us to decide otherwise. This has shown, however, how resilient our Institute is and how committed its Members are. Despite a huge number of online events, the ELI has continued to grow in numbers, in aspirations and in projects.

Focusing specifically on ELI's core output, its projects, no less than five projects were approved by the ELI Council in 2021 (ELI Members will still have to approve the last two):

- For a European Approach to R&D Tax Incentive(s)
- ALI-ELI Principles for a Data Economy: Data Transactions and Data Rights
- Business and Human Rights: Access to Justice and Effective Remedies
- Freedom of Expression as a Common Constitutional Tradition in Europe
- Use of Digital Assets as Security

Furthermore, the ELI-UNIDROIT (International Institute for the Unification of Private Law) Model European Rules of Civil Procedure were published with Oxford University Press in 2021. Several translations of the Model Rules are on their way; the



French translation has already been published. Moreover, the black-letter rules of the ALI-ELI Principles are currently being translated into many languages across the world.

ELI supplemented its Covid-19 Crisis Principles to address the need for proportionality of measures to be taken where there is a low epidemiological risk and the need for the equitable distribution of vaccines. Contrary to what we expected a year ago, the COVID-19 pandemic still generates a lot of legal concerns; vaccine hesi-

tancy, fuelled by fake news, has led some countries to threaten to impose mandatory vaccination, triggering new issues which could be tackled by a further supplement of the Covid-19 Crisis Principles.

In 2021, ELI responded to the European Commission's Public Consultation on the Data Act. A further consultation on Civil Liability (Product liability and liability for AI) went before our Council for approval and was submitted to the EU Commission on 10 January 2022.



Finally, ELI published its first Innovation Paper, 'Guiding Principles for Updating the Product Liability Directive for the Digital Age' in early 2021 and a second on Algorithmic Decision-Making in the EU is scheduled for completion soon, demonstrating ELI's capacity to respond promptly to legal issues.

These projects-related achievements are only a part of ELI's achievements in 2021, but a strong sign of how resilient our community is, despite our difficult times.

On 1 June 2021, ELI celebrated its Decennial. It was a wonderful success that was both a tribute to the 10 years of incredible growth of the Institute and a source of energy and motivation for the years to come. We can all be proud of the event, but above all of what it represents. Thanks are extended to our outgoing President, Prof Dr Christiane Wendehorst, for having so marvelously led our Institute in the last four years up to the last Annual Conference.

Needless to say that webinars of all sorts have flourished in 2021, including one dedicated to the Conference on the Future of Europe, enabling ELI to reach untapped segments of our society. They also contributed to the broader dissemination of ELI's ideas, projects and commitments.

As we close 2021 and look ahead to the next 10 years, I would like to thank all those involved in various aspects of ELI projects, from our Reporters and team members to our High Level Expert Group members, from Assessors to those active in Members Consultative Committees. ELI is also very proud of its Hubs and SIGs, with their chairs and members. Further, the ELI Secretariat deserves our admiration after a very intense year, which was managed with mastery and efficiency on a daily basis. Thanks are also due to members of various ELI bodies and Committees, to the Council, to the Senate, its speaker Reinhard Zimmermann, and to the Membership and Fundraising Committee chairs and members.

Last but not least, a very special show of gratitude is owed to all my colleagues at the Executive – who have repeatedly agreed to meetings at ungodly hours – with special thanks to both Vice-Presidents, Lord Thomas and Anne Birgitte Gammeljord, and to our recently appointed Scientific Director, Prof Dr Christiane Wendehorst, who has embarked on her new role with much enthusiasm.

It is the dedication of everyone, throughout the year, that has earned ELI its high reputation, and has enabled it to achieve incredible success in 2021.

I invite you to look at the positive achievements of 2021 without neglecting the difficult issues our society is facing; to enter in 2022 with confidence and hope that our actions will help the world and change lives.

It is with this message of hope that I convey to you all my warmest winter wishes and that I make a wish that 2022 will meet all your expectations.

Strengthening the Judiciary and the Rule of Law: The ELI Mt Scopus Standards Project on Judicial Independence

Cover by President of the JIWP, Prof Dr Shimon Shetreet

Under the initiative of Prof Dr Fryderyk Zoll and with the encouragement and support of Lord Thomas ELI decided, in the beginning of 2021, to join forces with the International Association of Judicial Independence and World Peace (JIWP) in redrafting and adjusting the Mt Scopus International Standards of Judicial Independence (2008, as amended and consolidated in 2018; see [here](#)) to the European context and the current challenges that the European reality presents.

Under the innovative and active leadership of former ELI President Prof Dr Christiane Wendehorst and her current and former colleagues, President Prof Dr Pascal Pichonnaz, Vice-Presidents Lord John Thomas, and Anne Birgitte Gammeljord, ELI registered significant achievements in the last 10 years since its establishment in the promotion of European law in many areas. The ELI Mt Scopus project is another project of ELI reflecting its commitment to promoting the rule of law, democracy and liberty.

The JIWP has, for four decades now, engaged in four main areas. The activities of JIWP include helping to protect judges in challenging situations, holding international conferences on judicial independence in all parts of the world, research and publication of a series of books on judicial independence (thus far five volumes have been published with Brill Nijhoff),



Photograph: Lior Yado

and drafting international standards on judicial independence and judicial ethics (for details, see [here](#)).

The ELI-Mt Scopus project on European Standards of Judicial Independence is very significant from many aspects. The partnership of ELI and JIWP creates synergies between two organisations committed to the promotion of the rule of law, democracy and liberty.

The project is aimed at providing guidelines for the judiciary and the other branches of government on

central issues regarding judges, courts and administration of justice, which have arisen in European countries at times causing crisis and controversy. These include the procedure and method of judicial appointments, procedures of judicial discipline and removal, and the role of the executive in judicial appointments, in judicial discipline and court administration. These also include the role of the Higher Councils of the Judiciary and the limits on legislatures in introducing changes in the terms of office, retirement age and per-

sonal conditions of judicial service.

These issues have been at the center of controversies on the domestic level as well as at the European level and many of these issues have been adjudicated by top national courts and by the European Court of Human Rights (ECtHR) in Strasbourg and the Court of Justice of the European Union (CJEU) in Luxembourg (see eg the recent case of *Repubblika v Il-Prim Ministru*, validating the Maltese method of the appointment of judges by the Prime Minister on the recommendation of a Judicial Appointment Committee). The jurisprudence of the CJEU states clearly that judicial independence is a central foundation of the values of the rule of law in the EU.

The Reporters of the Project, Prof Dr Fryderyk Zoll, Prof Em Leah Wortham, Dr Sophie Turenne and this author

lead the project with the assistance of an Advisory Group of eminent judges including Lord Thomas, Justice Teresa Bielska-Sobkowicz and Judge Paul Gilligan, and distinguished scholars in the above group and as part of the Project Team including Professors Ahrens, Kosar, Novak, Cavallini, Trunk, Ferrari, Storme, Rivera, Fleck and Rechberger.

The group has met regularly on Zoom to discuss the text and the commentary of the Standards and aims at completing the redrafting of the revised ELI Mt Scopus Standards on Judicial Independence by May 2022 and at completing the commentary to the first set of standards, which will refer to the jurisprudence of the European top international courts, by July 2022. The team is committed to a submission of a full set of standards and explanatory notes in April 2023 at the latest. I take this opportu-

nity to express my thanks to my colleagues, the Reporters and the Advisors for their significant contributions.

The task of the group is challenging as it has to take into account not only judicial independence but also the other fundamental values of the justice system such as accountability of the judiciary, efficiency of the judicial process, accessibility of the courts and public confidence in the courts. Another central challenge for the Reporters and Advisers is also to draft revised ELI-Mt Scopus Standards, which will reflect the values of desired universal European standards but at the same time take into account the particular circumstances of the domestic jurisdictions and their different legal cultures and traditions. This challenge will be met by careful deliberation and wide consultation with all relevant stakeholders.





European Court of Human Rights' Perspective on the Polish Judiciary: An Overview

Spotlight by former Vice-President of the ECtHR, Judge Ksenija Turković

In 2015, a new right-wing government came to power in Poland. By 2017/18 the government presented its legislative package overhauling the judiciary, starting by prematurely terminating the four-year term of office of members of the National Judicial Council (NCJ), a constitutional body created to safeguard the independence of judiciary. Ever since, the reform of the Polish judiciary has been the subject of intense public debate at domestic and European level. Poland has become the first ever EU Member State that is simultaneously subject to the special monitoring procedure of the Council of Europe and the EU's exceptional Article 7(1) procedure on the Treaty of the European Union.

This year, after years of silence, the European Court of Human Rights (the Court), relying on its recent judgment in *Guðmundur Andri Ástráðsson* in which the Grand Chamber of the Court clarified the scope of, and meaning to be given to, the concept of a 'tribunal established by law', reacted in several of its judgments to the implementation of the 'muzzle'

law in Poland. The Court emphasised that the institutional requirements of Article 6 § 1 of the Convention shared the common purpose of upholding the fundamental principles of the rule of law and the separation of powers and emphasised their fundamental function of the protection and promotion of human rights. The Court also reiterated that the purpose of the requirement that a court should be established by law was to ensure 'that the judicial organization in a democratic society [did] not depend on the discretion of the executive, but that it [was] regulated by law emanating from Parliament' (*Ástráðsson*, § 218) and to protect the judiciary against unlawful external influence, in particular from the executive and the legislature, or from within the bench itself.

Currently, there are 81 pending applications against Poland, lodged between 2018–2021, concerning various aspects of the reorganisation of the Polish judicial system initiated in 2017. The Court has given notice of 23 applications to the Polish Government and delivered four judgments,

Poland has become the first ever EU Member State that is simultaneously subject to the special monitoring procedure of the Council of Europe and the EU's exceptional Article 7(1) procedure on the Treaty of the European Union.

Judge Turković

Xero Flor w Polsce sp Zoo, Broda and Bojara, Reczkowicz and Dolinska-Ficek and Ozimek. The Chamber of the First Section of the Court has also decided that all the current and future applications belonging to that group should be given priority, pursuant to Rule 41. The Court has emphasised that its task was not to assess the legitimacy of the reorganisation of the Polish judiciary as a whole but to determine whether, and if so how, the changes had affected applicants' rights under Article 6 § 1 of the Convention.

The Court process of appointing judges constitutes an inherent element of the 'established by law' concept and calls for strict scrutiny. Ultimately, the purpose of that requirement is to ensure that the protection it offered was genuinely effective. There should be a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit, such as technical competence and moral integrity – which must provide safeguards against undue influence and/or unfettered discretion of the other State powers, both at the initial stage of the appointment of a judge and during the exercise of his or her duties. The Court noted that the higher a tribunal was placed in the judicial hierarchy, the more demanding the applicable selection criteria should be (see *Ástráðsson*, §§ 220–222, 234). Breaches of the law regulating the judicial appointment process might render the participation of the relevant judge in the examination of a case 'irregular' and therefore ultimately, the decision/judgment delivered invalid (*ibid*, §§ 226–227).

In *Reczkowicz*, the Court held that there is a very close interrelationship in the Court's case law between the specific right to a court established by law and the guarantees of 'independence' and 'impartiality' – where complaints concerning the 'tribunal

established by law' and 'independence and impartiality' requirements stem from the same underlying problem of an inherently deficient procedure for judicial appointments once the Court finds that the irregularities in question are of such gravity that they undermine the very essence of the right to have the case examined by a tribunal established by law then the question as to whether the same irregularities have also compromised the independence and impartiality of the same court is as well answered and does not require further examination (*Reczkowicz*, § 284).

The Court has developed the three-part test (a threshold test made up of three criteria that should be taken cumulatively) to determine whether a tribunal is established by law and whether the balance between the competing principles (the tribunal established by law, the principle of legal certainty and the principle of irremovability of judges) had been struck by State authorities (*Reczkowicz*, § 243).

According to the first criteria, a 'tribunal should be established in accordance with the domestic law'. The Court observed that in the first place, the relevant domestic law on judicial appointments should be couched in unequivocal terms, to the extent possible, so as not to allow arbitrary interferences in the appointment process (*Ástráðsson*, §§ 229–230). The task of the Court is to review whether there has been a manifest breach of domestic law that must be objectively and genuinely identifiable.

In *Xero Flor* the Court found that the President of Poland had refused to swear in three judges who had been legally elected in October 2015 by the old *Sejm*. It also found that the new *Sejm* had elected three new judges in December 2015 to seats that had already been filled. The Court saw no reason to disagree with the Constitutional Court's findings that there had been irregularities amounting to

manifest breaches of domestic law in the appointment of those judges. It found that the actions of the legislature and executive, in particular the authorities' failure to abide by the relevant Constitutional Court judgments, was linked to their challenging – to usurp – the Constitutional Court's role as the ultimate interpreter of the Constitution and the constitutionality of the law.

In *Reczkowicz and Dolińska-Ficek and Ozimek* the Court first established that there had been a manifest breach of domestic law because the 2017 Amending Act deprived the judiciary of the right to elect judicial members of the NCJ, a right it had had under the previous legislation, meaning in effect that those wielding legislative and executive powers were able to interfere directly or indirectly in the appointment of judges. The Court has found that this in itself was incompatible with Article 6 § 1 of the Convention. The irregularities in the appointment process compromised the legitimacy of the Disciplinary Chamber of the Supreme Court as well as of the Chamber of Extraordinary Review and Public Affairs to the extent that, following an inherently deficient procedure for judicial appointments, they lacked the attributes of a 'tribunal' which is 'lawful' within the meaning of the Convention.

In coming to this conclusion, the Court referred in particular to rulings by the Polish Supreme Court of December 2019 and January 2020, finding that the procedure for judicial appointments to the Disciplinary Chamber, ie the Chamber of Extraordinary Review and Public Affairs, breached domestic law. The Court considered that those rulings were based on convincing arguments, including a thorough and careful evaluation of the relevant Polish law from the perspective of the Convention's fundamental standards and of EU law. It also took into account rulings of the Court of Justice of the European Union, and multiple

reports and assessments by European and international institutions.

An additional manifest breach of domestic law was found in *Dolińska-Ficek* and *Ozimek*, because ‘in blatant defiance of the rule of law,’ the President of Poland carried out judicial appointments despite a final court order staying the implementation of the NCJ’s resolution recommending judges to the Chamber of Extraordinary Review and Public Affairs.

In all the above cases against Poland, the Court found that the alleged irregularities were of such gravity as to give rise to serious fears of undue interference in the judiciary, and to taint the legitimacy of the whole process and thus compromised the independence of the court in question and undermined the very essence of the right to a ‘tribunal established by law’. The Court characterised this kind of interference with a judicial body, aimed at incapacitating it in the exercise of its adjudicatory function in the application and interpretation of the Convention and other international treaties, as an affront to the rule of law and the independence of the judiciary.

The Court found that there was no procedure directly available to the

applicant to assess the legal effects of such breaches on the basis of the relevant Convention case law and the principles derived from there. Consequently, no remedies at the domestic level were provided.

The above violations originated in the amendments to Polish legislation, which deprived the Polish judiciary of the right to elect judicial members

of the NCJ and enabled the executive and the legislature to interfere directly or indirectly in the judicial appointment procedure. This situation produces a systemic dysfunction – the legitimacy of a court composed of the judges appointed in that way is systematically compromised and thus leads to further aggravation of the rule of law crises in Poland.

For all these reasons, rapid remedial action of the Polish State is required. In that context, various options are open to the respondent State. Under Article 46 of the Convention, it falls upon the respondent State to select, subject to supervision by the Committee of Ministers, general and/or individual measures in order to resolve the problems at the root of the violations found by the Court and to prevent similar breaches from taking place in the future. From the above judgments it follows that violations are rooted in deficiencies within the domestic legal order, which have a potential of harming a large number of persons. Therefore, Poland should engage in legislative or policy reform that would secure adequate participation of the judiciary in the selection, appointment, and promotion of judges while limiting excessive executive or parliamentary interference in this process.

Poland should engage in legislative or policy reform that would secure adequate participation of the judiciary in the selection, appointment, and promotion of judges while limiting excessive executive or parliamentary interference in this process.

Judge Turković

The Author



Ksenija Turković is a judge and former Vice-President of the European Court of Human Rights. She graduated from the Faculty of Law in Zagreb (1987) and holds an LLM and a JSD from Yale Law School. She worked as Legal Counsel for Hunton & Williams (New York) and was an Associate in General Corporate Practice at Sullivan & Cromwell (New York). Judge Turković has been lecturing on criminal law, criminology, victimology and health law at the University of Zagreb since 1987, becoming Full Professor in 2008. She was Vice-Dean for Faculty Affairs at the Zagreb Law School and Vice-Rector for International and Legal Affairs at Zagreb University. She was also head of an expert team drafting the new Croatian Criminal Code (2009–2012). She has published books and papers in the areas of criminal law, medical law and ethics, criminology, victimology and human rights.



ELI at 10

ELI celebrated its decennial in 2021. Over the course of the 2021 issues of this Newsletter, we have displayed ELI’s history and project milestones to commemorate this occasion. In this issue, you are cordially invited to take a trip down memory lane with us to revisit ELI’s achievements in 2021.

21 Jan 2021

On 21 January 2021, the ELI Council approved the ELI Innovation Paper on ‘[Guiding Principles for Updating the EU Product Liability Directive for the Digital Age](#)’, which set out concrete propositions for updating the EU Product Liability Directive with a view to adapting it to the digital age.

14 April 2021

On 14 April 2021, the ELI Council approved the [2021 Supplement to the ELI Principles for the COVID-19 Crisis](#), which addresses the issue of the equitable distribution of vaccines.

21 May 2021

On 21 May 2021, the ELI Council approved [For a European Approach to R&D Tax Incentive\(s\)](#).

1 June 2021

On the occasion of ELI’s 10th anniversary, a [series of webinars](#) took place from June to December 2021 to showcase some completed ELI projects.

1 and 27 September 2021

A [Response to the Public Consultation on the Data Act and Principles for a Data Economy](#) were approved by ELI bodies.

6–8 September 2021

The 2021 ELI Annual Conference and Meetings took place in Vienna from 6–8 September. The Conference featured a series of webinars on ELI projects (both current and prospective), which span a number of areas of law, as well as welcome addresses and a keynote speech by distinguished Speakers, the ELI Young Lawyers Award, the SIG and Hub of the Year Awards, and a closing ceremony, where the Council elections results were announced and the ELI Presidency was handed over.

11–30 November 2021

A series of three webinars on the Conference on the Future Europe took place from 11–30 November. The webinars gathered both experts and non-experts who engaged in in-depth discussions and shared their views on burning issues in Europe. For more information, please click [here](#).



1 December 2021

The Business and Human Rights: Access to Justice and Effective Remedies (with input from the European Union Agency for Fundamental Rights, FRA) report was approved by ELI Council.

R&D Tax Incentives

The Project Reporter on R&D Tax Incentives, Georges Cavalier, shares his memories of working perspectives on working on this ELI project from 2017.

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

Harmonisation of tax rules is highly discussed nowadays (Amazon, Luxleak, etc), while harmonisation of tax concepts is less discussed. However, before harmonising tax rules, one needs a common language. Tax concepts have precise meanings. The differences in the structures of tax systems may not necessarily reflect common understanding. To test this idea, the ELI tax research group selected, among the two main tax incentives found in tax systems, one relating to research and developments (R&D) activities. Indeed, R&D activities generally entitle taxpayers to a tax credit or a super-deduction in most EU countries, but these tax incentives are not (yet) harmonised in Europe, so one could imagine claiming different tax incentives in different Member States for a single research activity. In addition, the very concept of R&D activity triggering incentives is not commonly understood. This means that fundamental research expenses may be tax eligible in one Member State, but not in another. The same applies to payments made to a R&D subcontractor.

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

This project is very relevant at a time when Europe is thinking of harmonising tax rules. The Organisation for Economic Co-operation and Development (OECD) is fostering a reform of international taxation, by ensuring multinational enterprises are subject to a minimum 15% tax rate from 2023. In 2011, the EU commission already proposed a Common Consolidated Corporate Tax Base (CCCTB) providing a single set of rules for calculating corporate taxes in the EU, and the ability to consolidate the tax base within the Member States. The CCTB is intended to reduce administrative burdens while simultaneously preventing aggressive tax planning

strategies. The proposal was amended by the EU Parliament to introduce a specific EU tax incentive for R&D activities.

What do you consider is the relevance of the project for citizens?

With a single set of tax rules, it will be more difficult for Member States to implement discriminatory tax measures leading to a disadvantageous treatment for corporations from other Member States. For instance, a company conducting research in humanities, geography, or logistic may not claim a tax credit for research expenses in a country, Ireland for instance. The same company, conducting the same research but in another country, France for instance, would be able to claim a tax credit and thus reduce its tax liability. In due course, it is the functioning of the Single Market which will be enhanced. Citizens will directly benefit from this trend to harmonise tax within Europe. Also, by preventing revenue erosion, citizens will benefit from public services better.

What are your personal memories of drafting the project?

It was really fun to interact with many European nationalities and see our common willingness to invent a new tax system. We were lucky to interact with global tax policy leaders, such as Prof Dr Michael Lang (former Chairman of the Academic Committee of the European Association of Tax Law Professors), Prof Dr Jeffrey Owens (former OECD Tax Director), Prof Dr Robert Danon (Switzerland), and even politicians (Michel Sapin, former French Finance Minister or Alain Lamassoure, former EU Parliament Member and CCCTB Reporter) – just to name a few.

What are your recommendations for future projects in this field?

I recommend approaching tax subjects more from a comparative perspective:

historically, taxes and the State are substantial matters.

Today, taxes and the world are consubstantial. We must therefore overcome the obstacle we face: taxation is a prerogative of national sovereignty, but it is also imagined elsewhere than within nation States: VAT is almost completely European, and most of the new tax issues are now dealt with by the OECD.

Academics also have to perform their share of the job: the European Law Institute is obviously an excellent cénacle to allow academics to participate in the debate; and its recommendations may well be adopted in the draft European Business Code in its tax Chapter. I would conclude by wishing comparative taxation in Europe a long life, and as the Dutch would say: 'Success'!

Georges Cavalier is Associate Professor of Law at the University of Lyon and Academic Director for International Programs (North America). He holds two PhDs in Law and a LLM from Georgetown University Law Center.



ELI Webinars on the Conference on the Future of Europe

Throughout the month of November, three webinars within a series of ELI Webinars on the Conference on the Future of Europe took place. The webinars gathered both experts and non-experts and provided an opportunity for participants to engage in in-depth discussions and share their views on pressing issues in Europe.

Climate Justice

On 11 November 2021, the first webinar in the series of ELI Webinars on the Conference on the Future of Europe took place. It was on Climate Justice – New Challenges for the Law and Judges. After introductory remarks by ELI President, Prof Dr Pascal Pichonnaz, and Reporters of the recently approved ELI Project – Prof Dr Henrik Andersen and Prof Dr Alberto de Franceschi – the floor was given to over 60 participants, who provided their views on topics pertaining to climate justice.



Artificial Intelligence (AI) and Public Administration

On 25 November 2021, a webinar on AI and Public Administration took place. Member of the ELI Executive Committee Prof Dr Teresa Rodríguez de las Heras Ballell welcomed participants and briefly introduced the Reporters of the AI and Public Administration Project (Judge Marc Clément, Prof Paul Craig and Prof Dr Jens-Peter Schneider). Over 90 participants discussed the advantages and disadvantages of the use of AI in public administration as well as the Team's proposals on how risks can be mitigated. The project is due to go before the ELI Council and Membership for a vote shortly, following which the report will be posted on ELI's website.



Business and Human Rights (BHR)

On 30 November 2021, the last webinar in ELI's series took place on the topic of BHR. ELI's First Vice President, Lord John Thomas, welcomed over 70 participants and introduced the speakers – Diana Wallis and Robert Bray Co-Reporters and Project Team member respectively of the ELI project on BHR: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights, FRA). They outlined the project's aims and a background on the legal and practical obstacles victims currently face in obtaining remedies for human rights abuses as well as the Team's proposals for ensuring meaningful legal protection in this field. The Team's report was recently approved by the ELI Council and will be posted on the ELI website soon.

Updates on ELI Projects

Below is an overview of project-related events that took place in November and December 2021.

AI and Public Administration

Project Team and MCC Meeting

The Project Team met online on 3 November 2021 for a final discussion on their revised Model Rules. Read more [here](#).

Admissibility of E-Evidence in Criminal Proceedings

Project Team Meeting with Advisors

The Project Team and Advisors met remotely on 5 November 2021. Read more [here](#).

High Level Expert Group Meeting on Automated Contracting and Enforcement in Consumer Cases

On 9 November 2021, leading experts worked on the scope of a prospective ELI project in the field. Read more [here](#).

Blockchain Technology and Smart Contracts

Project Team and MCC Meeting

The team met remotely on 17 November 2021 to discuss the draft Additional Principles on Smart Contracts. Read more [here](#).

High Level Expert Group Meeting on Third Party Funding of Litigation

On 18 November 2021, experts in the field discussed the most pressing questions on the topic as well as the feasibility of a prospective ELI project. Read more [here](#).

ALI-ELI Principles for a Data Economy

On 18 November 2021, the Project Team met representatives of the Dutch Ministry to discuss the ALI-ELI Principles and the upcoming European Data Act. Read more [here](#).

Call to Participants in an MCC

We are pleased to inform you that the ELI Council adopted several new ELI projects and that the Executive Committee established their respective Members Consultative Committees (MCCs).

ELI Members can currently join Members Consultative Committees of the following projects:

- Access to Digital Assets
- Admissibility of E-Evidence in Criminal Proceedings
- The Concept and the Role of Courts in Family and Succession Matters
- Corporate Sustainability,

Financial Accounting and Share Capital

- ELI-Mount Scopus European Standards of Judicial Independence
- Fundamental Constitutional Principles

Interested ELI Members are invited to join the projects' MCCs and, thereby, help to shape their outcome.

MCC members will be invited for comments at various stages of the project, overall offering guidance and insight.

The level of involvement in the MCC is not predetermined and, thus, it is

for each MCC member to decide how much time to devote to a project.

Typically, Project Reporters will submit drafts to the Members Consultative Committee at least twice per year, ahead of the ELI Council meeting in February and September, and invite comments.

You can notify your interest to join an MCC by sending a message to [ELI Secretariat](#).

Updates on ELI Projects

Below is an overview of project-related events that took place in November and December 2021.

Annual Training Session of the European Legal Advisers Network (ELAN)

Several ELI projects were presented at the Annual Training Session of the ELAN which took place from 22–24 November 2021. Read more [here](#).

AI and Public Administration Project Team Meeting

The Project Team met remotely on 24 November 2021 to revise the project's draft Model Rules. Read more [here](#).

High Level Expert Group Meeting on the Recognition of Agreements Resulting from Mediation

On 29 November 2021, leading experts considered the scope of a prospective ELI project in the field. Read more [here](#).

ALI-ELI Principles for a Data Economy Disseminated in Belgium

On 2 December 2021, Prof Dr Christiane Wendehorst, Reporter of the ALI-ELI Principles for a Data Economy on the ELI side, delivered a keynote speech at an event organised by the KU Leuven. Read more [here](#).

Leading Experts Discuss the Protection of Adults in International Situations

On 7 December 2021, ELI organised the 'ELI at 10: Protection of Adults in International Situations' webinar, in which ELI's recently completed Protection of Adults in International Situations project. Read more [here](#).



ELI
EUROPEAN
LAW
INSTITUTE



Updates on ELI Hubs and SIGs

Below is an overview of events organised by ELI Hubs and SIGs that took place in November and December 2021.

ELI Insurance Law SIG

Lecture

On 11 November 2021, the SIG organised a Fourth Transatlantic Lecture on Insurance Law. Read more [here](#).

ELI Croatian Hub

Ninth Webinar in Hub's Series

On 12 November 2021, the Hub held its 9th webinar aimed at contributing to discussions on current ELI projects and at developments in Croatian and EU law. Read more [here](#).

ELI Austrian Hub

Evening Lecture

The lecture on recent EU constitutional law responses to rule of law challenges took place on 17 November 2021. Read more [here](#).

ELI Austrian Hub

Online Evening Lecture

The lecture on the implementation of the Sale of Goods Directive and the Digital Content Directive took place on 26 November 2021. Read more [here](#).

ELI Intellectual Law SIG

Online Event

On 26 November 2021, the SIG organised a discussion about the Czech Supreme Court's groundbreaking ruling. Read more [here](#).

ELI Environmental Law SIG

Online Event

From 1–3 December 2021, the SIG supported the 5th IAERE School 'Law and Economics of the Circular Economy Transition.' Read more [here](#).

ELI Austrian Hub

Conference

On Friday, 10 December 2021, the ELI Austrian Hub organised a Conference on 'Third-Party Litigation Funding – A Necessity or Deterrence of Justice?'. Read more [here](#).

ELI Austrian Hub

Evening Lecture

On 15 December 2021, the Austrian Hub hosted a second evening lecture in its series on 'Behavioural Public Policy for Sustainable Development.' Read more [here](#).

ELI Succession Law SIG

Conference

On 17 December 2021, the SIG held an event on the Concept and the Role of Courts in Family and Succession Law. Read more [here](#).

ELI Croatian Hub

Tenth Webinar in Hub's Series

On 17 December 2021, the Hub held its 10th webinar aimed at contributing to discussions on recent developments in EU law. Read more [here](#).



Updates on ELI Representation

Below is an overview of ELI's representational activities in November and December 2021.



The European Law Students' Association



United Nations
UNCITRAL

Ukrainian Delegation Visits ELI Secretariat

4 November 2021

ELI's Secretary General, Dr Vanessa Wilcox, welcomed a delegation from Ukraine to the Secretariat. Read more [here](#).

ELI's Secretary General Speaks to Young Lawyers about ELI at ELSA International's Council Meeting

10 November 2021

On the occasion, the Secretary General informed those present about ELI, its aims and current activities. She highlighted, in particular, the various schemes targeted at young lawyers, including the ELI Young Lawyers Award. Read more [here](#).

ELI President and UNCITRAL Secretary Discuss Avenues for Further Cooperation

11 November 2021

ELI's President Prof Dr Pascal Pichonnaz met UNCITRAL's Secretary Anna Joubin-Bret remotely to explore potential avenues for strengthening long-standing ties. Read more [here](#).



United Nations
UNCITRAL



SUPREME COURT OF APPEAL



United Nations
UNCITRAL

ELI President Participates in UNCITRAL's Working Group III Session

15–19 November 2021

ELI's President, Prof Dr Pascal Pichonnaz, represented ELI at the above session, in a bid to intensify relations between ELI and UNCITRAL. Read more [here](#).

ELI's President Informs the President of the South African Supreme Court of Appeal about ELI

24 November 2021

ELI's President, Prof Dr Pascal Pichonnaz, held an exchange with President Mandisa Muriel Lindelwa Maya, the first South African female jurist to serve as President of the Supreme Court of Appeal. Read more [here](#).

ELI Representatives Participate in UNCITRAL's Working Group IV Session

22–26 November 2021

Several ELI members including ELI's President, Prof Dr Pascal Pichonnaz, First Vice-President Lord John Thomas, and ELI's Scientific Director, Prof Dr Christiane Wendehorst, represented ELI at the above session, in a bid to intensify relations between ELI and UNCITRAL. Read more [here](#).



The European Law Students' Association
SWITZERLAND



universität
wien



EUROPEAN
JUDICIAL
NETWORK
Connecting Justice

ELI's President Speaks about ELI and its various projects at an ELSA conference in Fribourg

15 December 2021

ELI's President Prof Dr Pascal Pichonnaz informed a large panel of attendees about ELI, and its activities on new technologies. Read more [here](#).

ELI's Secretary General Speaks to University of Vienna Students about ELI

17 December 2021

ELI's Secretary General Dr Vanessa Wilcox welcomed students of the Law and Empire course at the Institute for Legal and Constitutional History of the University of Vienna to the ELI Secretariat and informed them about ELI. Read more [here](#).

ELI and the European Judicial Network (EJN) Explore Synergies

17 December 2021

The representatives of ELI and EJN met to inform each other about their respective organisations and work programmes. Read more [here](#).



United Nations
UNCITRAL



ELI

EUROPEAN
LAW
INSTITUTE

ELI's Insolvency Law Project Members Participate in UNCITRAL's Working Group V Session

13–17 December 2021

Prof Stephan Madaus, Co-Reporter of ELI's Project on Rescue of Business in Insolvency Law, and Gert-Jan Boon, Project Team member, participated in the above session on behalf of ELI to strengthen the cooperation between both organisations. Read more [here](#).

ELI President at International Scientific Online Conference of the Kopaonik School of Natural Law

22 December 2021

ELI President, Prof Dr Pascal Pichonnaz, gave welcome remarks on the 'Application of Law and Legal Certainty' at the online Conference and participated in an expert session on International Commercial Contract/Arbitration organised by the Kopaonik School of Natural Law. Read more [here](#).

ELI Welcomes its New Members

ELI is pleased to inform you about its new individual and institutional Members.

New Individual Members:

Nataliia Butryn-Boka, West Ukrainian National University, Ukraine

Rau Calvo Sanchez, In-House Counsel, Spain

Pierpaolo Canero, NCTM Law Firm, Italy

Nataliia Chudyk, West Ukrainian National University, Ukraine

Vânia Costa Ramos, Lawyer in Private Practice, Portugal

Victoria Cuartero, University of Castilla-La Mancha (UCLM), Spain

Federico Maria de Luca di Melpignano, Prime Minister's Office, Italy

Laura Ervo, Örebro University, Sweden

Katarzyna Gajda Roszczynialska, University of Silesia in Katowice, Poland

Péter Gárdos, Eötvös Loránd University, Hungary

Gina Gioia, Tuscia University, Italy

Andrea Gorini, Sant'Anna School of Advanced Studies, University of Pisa, Italy

Marina Kasatkina, Maastricht University, Netherlands

Felix Kodolitsch, University of Graz, Austria

Dimitrios Koukiadis, University of Nicosia & Goethe University Frankfurt am Main, Greece

Stephan Madaus, Martin Luther University of Halle-Wittenberg, Germany

New Institutional Member: University of Opole

The University of Opole was established in 1994 as a result of joining one of the best Polish pedagogical academies – the Higher Pedagogical College in Opole and Opole branch of the Catholic University in Lublin. It comprises 12 faculties and 19 research institutes cooperating with other university units, which together form a dynamic, modern and versatile academic organism.



Adriano Maffeo, University of Naples Federico II, Italy

Yseult Marique, University of Essex, United Kingdom

Filippo Morello, University of Pisa, Italy

Elise Muir, Katholieke Universiteit Leuven, Belgium

Valeria Paganizza, University of Padua, Italy

Ronen Perry, University of Haifa, United Kingdom

Tetiana Podkovenko, West Ukrainian National University, Ukraine

Eve Pötter, Notary of Paide, Estonian Chamber of Notaries, Estonia

Niels Rogge, Financial Law Institute, Ghent University, Belgium

Domenico Rosani, University of Innsbruck, Austria

Fabio Saguato, Bocconi University & BonelliErede, Italy

Sebastian Schwamberger, University of Vienna, Austria

Ludovica Sposini, University of Pisa, Italy

Thomas Stadelmann, Swiss Supreme Court, Switzerland

Stanislaw Tosza, University of Luxembourg, Luxembourg

Sophie Turenne, Murray Edwards College, University of Cambridge, United Kingdom

Bernd van der Meulen, University of Copenhagen, Denmark

Paul Verbruggen, Tilburg University, Netherlands

Grzegorz Wąsiewski, Counsel, legal advisor, Poland

Christopher Wray, Legal Graph Company Limited, Portugal

Events Calendar At-A-Glance

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

Jan	18 Jan	Croatian Hub: Protection of Rights of the Vulnerable Persons in the Time of Crisis <i>Online</i>
	25 Jan	Belgio-Luxembourg Hub: Can Investor-State Arbitration Challenge the EU's Climate Policy? <i>Online</i>
Feb	2 Feb	Italian Hub: E-Health Data Sharing <i>Online</i>
	3 Feb	Austrian Hub: International Commercial Contracts and Dispute Resolution <i>Graz</i>
	17 Feb	Belgio-Luxembourg Hub: International Economic Law and Non-Economic Values: A Critical Approach <i>Online</i>
Mar	29 Mar	Belgio-Luxembourg Hub: Corporate Sustainability <i>(Title to be finalised)</i> <i>Online</i>
Apr	25 Apr	Belgio-Luxembourg Hub: Sustainability and Competition Law <i>Online</i>
May	17 May	Belgio-Luxembourg Hub: The Precautionary Principle under EU Law: A Bridge over Economic and Environmental Law <i>Online</i>
	20 May	Spanish Hub: VII Annual Meeting <i>Sevilla</i>
Jun	1 Jun	Belgio-Luxembourg Hub: Environmental Law and Just Transition under the EU Green Deal <i>Online</i>
Sep	5–8 Sep	Annual Conference 2022 <i>Universidad Carlos III de Madrid</i>



ELI

EUROPEAN
LAW
INSTITUTE

6th ELI Young Lawyers Award

Submit Your Paper by 30 April 2022

Through 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 benefit from improvement. A jury comprised of the ELI and other institutions determines the winner. The successful candidate will be invited to present their paper at the 2022 ELI Annual Conference, which, depending on the pandemic situation, will take place either in Madrid (Spain) or online on 5–8 September 2022.

When

The paper must be submitted by 30 April 2022, together with the application form to the following address: secretariat@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:	Pascal Pichonnaz
First Vice-President:	Lord John Thomas
Second Vice-President:	Anne Birgitte Gammeljord
Treasurer:	Pietro Sirena
Other Members:	Bénédicte Fauvarque-Cosson Teresa Rodríguez de las Heras Ballell Aneta Wiewiórowska-Domagalska

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

Schottenring 16/175
1010, Vienna, Austria
T +43 1 4277 221 01
F +43 1 4277 922 1
www.europeanlawinstitute.eu
secretariat@europeanlawinstitute.eu



ELI
EUROPEAN
LAW
INSTITUTE



universität
wien



Supported by
the European Union



City of
Vienna