

## ELI PROJECT GUIDELINES

These Guidelines for the selection, management and approval of projects carried out under the auspices of the European Law Institute (the Guidelines) are issued as a Byelaw of the European Law Institute (ELI) in accordance with Article 12(5) of the ELI's Articles of Association (the Statute).

### *Section 1: Scope of application*

1. The Guidelines apply to all ELI projects within the meaning of Article 12 of the Statute.
2. The ELI may engage in joint projects with other institutions such as the American Law Institute or UNIDROIT. Joint projects will be carried out, and publication rights relating to the project determined, according to the terms of any joint project agreement between the ELI and the other institution.
3. The Executive Committee may determine that these Guidelines are to apply to any specific ELI project only with appropriate adaptations. In particular, such adaptations may be applied to joint projects and/or projects that are either fully or partly funded by another institution or body. Any such adaptations will be set out in a project agreement between the ELI and the relevant funding institution or body. Furthermore such a project agreement should make specific provision in respect of both intellectual property and publication rights. The conclusion of the agreement will constitute the basis for the ELI approval of the project (see Section 14). Before the conclusion of such an agreement the Executive Committee can determine to support the project through an Expression of Interest letter, not least in order to facilitate any application for funding relating to the project.
4. Nothing in the Guidelines shall prevent the ELI from embarking on activities that are not ELI projects, within the fields outlined in Article 3 of the Statute.

### *Section 2: ELI Instruments and Statements*

An ELI project shall either be an Instrument or a Statement. ELI Instruments are medium-to-long-term projects such as draft legislative instruments, model laws or rules, principles of law, implementation studies, or a reassessment of existing laws. ELI Statements are short-term projects which can include ad-hoc responses to current developments i.e. commentaries on legislative proposals, or position papers. Statements can be carried out under the accelerated procedure of Article 12(4) of the Statute.

### *Section 3: Project financing*

ELI projects will either be financed by the ELI or from external sources. Funding questions should be resolved as early as possible. The ELI will only accept external funding of projects if it is provided freely and independently of any condition concerning the nature, scope, and outcome of the project.

#### *Section 4: Project selection criteria*

ELI projects must fall within the scope of Article 3 of the Statute and

- (a) should serve the people, companies and organisations in Europe by improving the law or facilitating its application;
- (b) be principally capable of producing results which can be of immediate practical utility, and in particular be usable directly (e.g. as draft rules) by legislative bodies, judiciaries, or other interested parties;
- (c) be the product of collaborative work conducted by jurists from a wide range of vocational backgrounds; and
- (d) have a genuinely pan-European perspective which takes due account of Europe's various legal traditions.

#### *Section 5: Selection of ELI projects*

1. The ELI Executive Committee is responsible for identifying ELI projects according to the selection criteria set out in Section 4 of the Guidelines and for submitting them as project proposals to the ELI Council.
2. The Executive Committee will act on its own initiative or on the basis of project ideas suggested or developed by Hubs, ELI members or other interested parties. It will do so in consultation with the ELI Senate as well as with experts in the field and relevant stakeholders.
3. Without prejudice to Section 8, no one shall acquire, by submitting a project idea to the ELI or by assisting it in developing a project proposal, the right to be appointed on the Project Team or Advisory Committee under Section 7.

#### *Section 6: Project proposal*

1. Before being submitted to the Council for approval as a project, a project proposal must be prepared with the assistance of the ELI Secretariat, and under the guidance of the Executive Committee. The latter will determine who is to prepare the proposal. The project proposal must demonstrate how the project satisfies the selection criteria set out in Section 4 of the Guidelines. It must specify:
  - (a) the project's subject matter, methodology and the actual results it seeks to achieve;
  - (b) the legal background including information on the project's relationship to what already exists or is being developed and the role it could play in the European legal environment;
  - (c) whether it should be an Instrument or a Statement and, in the latter case, whether or not it should be subject to the accelerated procedure; and
  - (d) options for funding.

To the extent possible, the project proposal should also specify:

- (e) the timescale in which it is to be conducted; and/or

- (f) the name and a short curriculum vitae of anyone who may be asked to contribute to the project either as a Project Reporter or advisor.
2. Once a project proposal is submitted, the Council, in consultation with the Senate, shall decide whether or not to accept it as an ELI project or require it to be revised under the Executive Committee's guidance. If accepted the Council shall decide whether it is subject to the regular or accelerated procedure. Section 14(3) of the Guidelines applies accordingly.

#### *Section 7: Reporters, Project Team and Advisory Committee*

1. The Council, or under the accelerated procedure the Executive Committee, shall appoint, with or without carrying out a call for tender:
  - (a) one or more Reporters who will be primarily responsible for conducting the ELI project, and who will propose additional Reporters or other members, to be appointed by the Council, to form a group that will conduct the work. The Reporters and other group members will together form the Project Team;
  - (b) a group of advisors (the Advisory Committee) to support the work of the Project Team, in consultation with the Reporter(s) and the Executive Committee.

As the project progresses, additional advisors or members of the Project Team may be appointed; where this is requested by the Reporter(s), Section 10(2) and (4) apply accordingly.

2. The composition of the Project Team and the Advisory Committee should be consistent with the principles of diversity specified in Article 2 of the Statute. Diversity in terms of both legal traditions and vocational backgrounds is paramount. Where an agreement with another institution or body has been concluded such composition should take into account the substantive specialisation of the project.
3. All members of the Project Team and all advisors shall be specialists of outstanding reputation in the relevant field and must, whether or not they are a member of the ELI, adhere to the Guidelines and to the values reflected in the Statute. They must give written confirmation to the ELI at an early stage of the project that they are bound by the Guidelines or any relevant agreement concluded with other institutions or bodies, as specified in Section 1 above, and in particular by Section 16 on intellectual property rights.

#### *Section 8: Adopted projects*

1. The ELI may partially or fully adopt projects that have originated outside the ELI, on the basis of an agreement with the individuals leading the project, where:
  - (a) the project meets the selection criteria set out in Section 4 of the Guidelines;
  - (b) it is guaranteed that the ELI, particularly through its Council, Senate, General Assembly, and where applicable, a Members Consultative Committee, can influence the project effectively;and

- (c) a written agreement is reached which guarantees that, from the moment the project is adopted, the Guidelines and the procedures set out herein will be complied with by those carrying out the project; this is without prejudice to paragraph 3 and to Section 1(2), last sentence.
2. A project is deemed to have originated outside the ELI where it has:
    - (a) been fully developed without having solicited the assistance of the ELI Secretariat; or
    - (b) has already commenced outside the ELI.
  3. Where a project is adopted by the ELI under this section:
    - (a) the individuals leading the project will be, and remain throughout the life of the project, the Project Reporters;
    - (b) any further members of the Project Team will not be appointed without the consent of the Project Reporters; and
    - (c) all further matters concerning, amongst other things, the management, revision, intellectual property rights and publication concerning the project will be determined according to a written agreement entered into by the individuals leading the project, any relevant institution or body, and the ELI at the time of its adoption.

#### *Section 9: Members and Networks Consultative Committees*

1. Under the regular procedure, the Council will normally establish a Members Consultative Committee (MCC). All ELI members will be invited to join the MCC.
2. The members who join an MCC shall appoint a chairperson and at least one deputy chairperson. The MCC chairperson will, together with the Secretariat, co-ordinate the MCC's work and shall do so in consultation with the Project Reporter(s).
3. If a Networks Consultative Committee (NCC) has been established in accordance with Article 15 of the Statute, it shall have the same rights as an MCC. Any reference in the Guidelines to the MCC shall apply accordingly to the NCC.

#### *Section 10: Project plan and monitoring*

1. Each ELI project shall be carried out in accordance with a detailed project plan, to be developed by the Reporter(s), which shall cover, at least, all the matters specified in Section 6 paragraph 1 (a-f) of the Guidelines.
2. To the extent that the project plan is not identical with the project proposal already approved in accordance with Section 6 it must be submitted via the Secretariat for approval by the Executive Committee, which in the absence of an objection made within two weeks from the time when the plan is submitted to it, will be deemed to have approved the plan. The same applies for any significant revision of the project plan at a later point in time. Where a deviation from the project proposal approved in accordance with Section 6 or a later revision of the project plan fundamentally

affects the nature or funding of the project or might otherwise raise serious issues the Executive Committee shall ask the Council to reach a decision in consultation with the Senate. Where funding is provided by another institution or body the procedure should be specified in the agreement referred to in Section 1.

3. The Reporter(s) must regularly and whenever the Secretariat or the Executive Committee so request, inform them of the project's progress.
4. If it becomes apparent that a project is not progressing according to the project plan, the Council has the right to review the project's status. Subject to anything to the contrary contained in a project agreement entered into between the ELI and another institution or body, this may result in the Council replacing the Project Reporter(s), other members of the Project Team and/or Advisory Committee. As a last resort, the Council may discontinue the project as an ELI project.

#### *Section 11: Project management under the regular procedure*

1. The Reporter(s) shall, whenever it seems appropriate, consult the Advisory Committee and/or the MCC for comments and advice. The Reporter(s) shall present preliminary results of the work-in-progress to the Advisory Committee and the MCC at least one month in advance of each ordinary ELI General Assembly. The Reporter(s) shall be available to discuss the work-in-progress on the day before the General Assembly. Reporter(s) may at their discretion disclose more materials to, and/or consult, the Advisory Committee as compared to the MCC.
2. Once the project is completed, the Reporter(s) shall submit an Initial Draft to the Advisory Committee and the MCC with a consultation period of no less than two months before it is submitted as a Council Draft.
3. Taking into account all consultations, the Reporter(s) shall submit the Council Draft to the Executive Committee. Following consideration of the Council Draft, the Executive Committee will, within a period not exceeding two months, either forward it to the Council and the Senate or send it back to the Reporter(s) with comments specifying how it considers the draft to require amendment. Once the Council Draft has been forwarded, any member of the Council or the Senate may submit comments and recommendations, and the Council or the Senate may hold a meeting with the Reporter(s) to discuss the draft.
4. Taking into account all comments made by the Council and the Senate, the Reporter(s) shall prepare a Final Draft in consultation with the Advisory Committee and the MCC within a period not exceeding two months or any other timescale specifically agreed upon.
5. The Reporter(s) must take into consideration any recommendations made by the Advisory Committee, the MCC or other relevant ELI bodies but are not under an obligation to adopt them. To the extent that a recommendation by members of the Council or Senate is not being followed, the Reporter(s) shall provide an explanation.
6. Once finalised in the light of any recommendations, the Final Draft shall be submitted for approval to both the Council and the General Assembly, in conformity with Section 14.
7. Where funding is provided by another institution or body the procedure should be specified in the agreement referred to in Section 1.

### *Section 12: Project management under the accelerated procedure*

Project management under the accelerated procedure will depend on the nature of the Statement. Unless otherwise specified in the project plan, Section 11 applies with the following modifications:

- (a) there need not be a Members Consultative Committee;
- (b) there will be no fixed minimum consultation period; and
- (c) the Final Draft shall only be submitted for approval to the Council.

### *Section 13: Communication on the project prior to approval*

1. Members of the Project Team or Advisory Committee may, prior to any approval under Section 14, publicly communicate details of the project, including any preliminary results, in order to improve the project results or enhance the project's visibility. Such communication may, in particular, occur at conferences, in discussions with relevant institutions and stakeholders, or in law journals.
2. Any such communication must, in a clear and prominent manner and at the beginning of any relevant presentation, document or other form of communication,
  - (a) unequivocally make clear that the work does not yet represent the position of the ELI; and
  - (b) duly acknowledge that the work is being conducted on behalf of the ELI and that bodies and members of the ELI have contributed to the work.
3. Paragraphs 3 and 4 of Section 15 apply accordingly to publications made under this Section prior to approval.
4. The Secretariat should be informed of any communication made under this Section.

### *Section 14: Project approval*

1. Completed projects, and the results thereof, may only be published as an official position of the ELI:
  - (a) under the regular procedure, after the approval of both the Council and the General Assembly;
  - (b) under the accelerated procedure, after the approval of the Council.
2. The Council and General Assembly may only approve or reject projects. They may not approve projects subject to conditions.
3. Approval is given by a simple majority of the votes of those ELI Fellows present at a physical meeting or who take part in a vote by means of a distance voting scheme. In the case of a tied vote, the project will be deemed to have been rejected. Abstentions shall not count. Proxy voting may only take place at physical meetings of the Council.
4. Distance voting without a physical meeting may occur, on the Executive Committee's initiative, where approval of a project cannot be postponed until the next physical meeting of the relevant body. Even where a physical General Assembly is held, Fellows shall be permitted to vote via a distance voting scheme.

5. Where a vote is taken by means of distance voting:
  - (a) the President shall give notice via electronic mail to all members of the relevant body, specifying the project submitted for approval;
  - (b) electronic access to the materials for which approval is sought shall be provided to all members of the relevant body;
  - (c) the members shall be given not less than three weeks to vote.

#### *Section 15: Publication*

1. The ELI will publish approved ELI projects, project drafts or background material produced in the course of the development of a project under its own name as editor. The Reporters and, depending on the nature and extent of their contribution, other members of the Project Team will have the status of authors.
2. In the publication, the ELI shall fully acknowledge all those who contributed to the ELI project as a member of the Project Team, Advisory Committee, or MCC.
3. No member of the Project Team, Advisory Committee or MCC may publish the ELI project, any preparatory or other work carried out as part of the project, or any work that is likely to be confused with the ELI project or with parts or revised versions thereof, under their own name or grant others the right to do so under their name without the express consent of the ELI.
4. Where funding or co-funding is provided by another institution or body publication rights will be regulated in the agreement referred to in Section 1. In all cases involvement of the ELI in the project must be mentioned clearly in any publication.
5. Nothing in the Guidelines shall preclude a member of the Project Team, or any other person, from publishing in their own name ideas they have contributed to the ELI project unless such publication could potentially undermine the rule in paragraph 3. Where such ideas have been influenced by group work conducted under the auspices of the ELI due acknowledgement must be made.
6. It is within the discretion of the ELI when it will publish a revised edition of any ELI project, if at all. The ELI shall approach the Reporter(s) before doing so. If the Reporter(s) are not prepared to make any necessary revisions within the time frame specified by the ELI, the ELI may entrust other individuals with this task. Section 14 of the Guidelines applies accordingly to revised editions, unless changes are insignificant.

#### *Section 16: Intellectual property rights*

1. The authors shall, unless expressly agreed otherwise, assign the ELI the exclusive worldwide rights to reproduce, communicate or otherwise make available to the public, and distribute by sale or otherwise, the content published under Section 15(1) or translations thereof, during the full term of copyright and all renewals thereof. The authors shall assign to the ELI the worldwide rights for use by the ELI, including the right to make translations, prepare other versions, quote from or otherwise utilise the work or material based on the work, and the ELI may grant permissions and licenses to third parties to do the same.

2. Unless expressly agreed otherwise, the authors shall get no remuneration from the ELI for their work. Where, however, the ELI at its discretion decides to sell publications, the authors will receive ten per cent of the net proceeds.

#### *Section 17: Conflicts of interest*

Any and all persons involved in carrying out ELI projects are bound by the Conflicts of Interest rules set out in Article 16 of the Statute and any Code of Conduct issued by the Council, and should avoid all conflicts of interest. Where an actual or potential conflict of interest arises, the individual concerned must inform the Executive Committee and the Secretariat promptly. After consulting the Executive Committee, the Council will then decide whether the individual may continue working on the project.

#### *Section 18: Dispute settlement*

Any disputes arising out of the selection, identification, drafting process, approval or publication of ELI projects under the Guidelines shall be settled by the Arbitral Tribunal of the ELI under Article 17 of the Statute, irrespective of whether or not the persons involved are members of the ELI.