



ELI

EUROPEAN
LAW
INSTITUTE

2013 Projects Conference and General Assembly

4-6 September 2013



About the European Law Institute



Sir Francis Jacobs, President of the ELI

"ELI attaches high importance to its independence, which is guaranteed by its Statute and will ensure that it acts independently, in particular, in relations with all governmental bodies and the European institutions. Its members, on joining the Institute, undertake to act independently as a condition of membership."



Bénédicte Fauvarque-Cosson, Vice-President of the ELI

"ELI strengthens the links between the different legal cultures and traditions of the European countries. It enhances our common inheritance and the special place of Europe in the global world. ELI is an extraordinary achievement in terms of innovation and cooperation among jurists from multiple backgrounds."



Christiane Wendehorst, Treasurer of the ELI

"ELI is a community of many hundred, soon maybe several thousand jurists from all kinds of legal traditions, disciplines within the law, and professional backgrounds, who together engage in a lively discussion on the development of law in Europe and who strive to find solutions attracting the broadest possible support from the European legal community."

The law in Europe has a profound impact on the daily lives of European citizens, companies and organisations. As an independent organisation, the European Law Institute (ELI) aims to improve the quality of law, support its development and contribute to its proper implementation both on a national and European level.

At the heart of the ELI's activities are its projects, which can be either Statements or Instruments: the former are usually short-term projects that react to current developments, while the latter are proactive in nature and will often take several years of drafting. The ELI is partly modelled on the American Law Institute (ALI) which was founded in 1923 and has since become a landmark institution in the US-American legal system. Like its American counterpart, the ELI aims to unite jurists of the highest standing from all branches and professions of the law. The Institute operates on its own initiative but is also open for cooperation with other institutions that share its vision, including the ALI.

The work of the ELI is organised and supported by its body of members, who, together with the Secretariat staff, are committed to perpetuating the development of this young Institute. Participation in ELI activities is encouraged amongst all members and those who wish to play a particularly significant and decisive role in the Institute can stand for election to the ELI Council. The ELI is proud of its diverse body of members, and values the variety of expertise and perspectives which they bring to the organisation. Since its foundation, the Institute has established close working relations with European institutions such as the European Parliament, the European Commission and the Council of Europe as well as international organisations such as UNCITRAL and UNIDROIT.

Programme

Wednesday 4 September 2013

Venue: Haus der Europäischen Union

16:30–18:30 Austrian Hub Launch
"Stand und weitere Entwicklung der europäischen Integration –
aus dem Blickwinkel verschiedener Rechtsgebiete")
(* event held in German)

Venue: University of Vienna, Arkadenhof

19:00–22:00 Opening ceremony followed by a reception

hosted by **Heinz W. Engl**, Rector of the University of Vienna

Welcome address:
Sir Francis Jacobs, President of the ELI

Keynote address:
Lance Liebman, Director of the American Law Institute

The ELI Secretariat is hosted by the University of Vienna, which was chosen on the basis of a tender in 2011, the year of the ELI's foundation.



Thursday 5 September 2013 – Projects Conference

Venue: Vienna City Hall, Festsaal

08:00–09:00 Registration

09:00–10:00 Opening addresses:

Bénédicte Fauvarque-Cosson, Vice-President of the ELI

Beatrix Karl, Minister of Justice of the Republic of Austria

Viviane Reding, Vice-President of the European Commission, EU Commissioner for Justice, Fundamental Rights and Citizenship [video message]

10:00–13:00

Project session I

Statement on the Proposal for a Regulation on a Common European Sales Law

10:00–11:15

Part I: The ELI Statement and its ‘Toolbox Approach’ – a preliminary assessment

Chair: Sir John Thomas, Chair of the ELI CESL Working Group, President of the Queen’s Bench Division of the High Court of Justice of England and Wales

Luigi Berlinguer, Member of the European Parliament, Co-rapporteur to the European Parliament Legal Affairs Committee on the Common European Sales Law

Dirk Staudenmayer, Head of Unit A2 - Contract Law, DG Justice, European Commission

Christiane Wendehorst, Member of the ELI CESL Working Group, Professor of law, University of Vienna

In 2012, the ELI adopted and published a Statement examining the Proposal for a Common European Sales Law (CESL), COM(2011) 635 final, in the light of the European Commission’s policy objectives. The ELI Working Group has refrained from commenting on the major political choices made and accepted them as given. It critically examined the CESL and made a number of practical recommendations with the intention of maximising the Instrument’s practical utility.

The Statement also set out concrete proposals for amendments and arranged them in a comprehensive format as a full redraft of the CESL in order to demonstrate how the proposals might work in context. The redraft is, however, not intended to be an alternative, competing, text to the CESL, but rather a range of options for revision that any interested party might wish to draw on.

The panel, featuring representatives of the European Commission, the European Parliament and the members of the ELI Working Group, will focus on the approach taken by the ELI in this Statement.

11:15–11:45

Coffee break



Sir John Thomas is President of the Queen's Bench Division of the High Court of Justice and a judge of the Court of Appeal of England and Wales. He serves as the Vice-President of the Insurance and Reinsurance Arbitration Society (ARIAS (UK)) and the Vice-President of the British Maritime Law Association. He is Co-Chairman of the Trustees of the International Law Book Facility. On 16 July 2013 Sir John was selected as the new Lord Chief Justice of England and Wales, to commence on 1 October 2013.



Luigi Berlinguer has been a Member of the European Parliament since 2009. He serves as S&D Coordinator of the Committee on Legal Affairs and is also member of the Industry, Research and Energy Committee. Previously, Mr Berlinguer held a number of high level positions in Italy, including acting Minister of Higher Education and Scientific and Technological Research (1996-1998), Minister of Education (1996-2000), chair of the Italian Chamber of Deputies' Standing Committee on European Union Policies; member of the Senate Committee on European Communities Affairs, member of the Supreme Judicial Council (2002-2006), Rector of the University of Siena (1985-1994), member of the Tuscany Regional Council (1975-1982) and mayor of the municipality of Sennori (1960-1964). He is also a Founder and former president of the European Network of Councils for the Judiciary (ENCJ). Mr Berlinguer has been awarded the Grand Cross of Merit of the Federal Republic of Germany, the French Legion of Honour and the Grand Cross of the Republic of Italy.



Dirk Staudenmayer is Head of the Contract Law Unit at the Commission's Directorate-General for Justice. He has been working at the European Commission since 1994 and previously held various positions at the Directorate-General for Health and Consumers. Dr. Staudenmayer completed his legal education in the University of Erlangen (Nuremberg), the Centre Européen Universitaire (Nancy) and the University of Bonn. He is an Honorary Professor of Law at the University of Münster and is an associate editor of two law reviews. Dr. Staudenmayer is author of various publications on European contract, consumer, competition and education law.



Christiane Wendehorst is professor of law at the Department of Private Law at the University of Vienna. She has authored numerous articles in law journals, books and commentaries, in particular in the fields of European Private Law and Private International Law, and she is a member of various international research groups as well as Member of the Austrian Academy of Sciences and of the International Academy of Comparative Law (IACL). Christiane Wendehorst is a Founding Member of the European Law Institute and the Institute's Treasurer. She has been serving on the Redaction Committee of the ELI Working Group on the CESL since the Group was established.

11:45–13:00

Part II: Reactions to current developments – a new focus on e-commerce and digital content

Chair: Friedrich Graf von Westphalen, Member of the ELI CESL Advisory Committee, Attorney, Head of the German CCBE-delegation, Honorary Professor of law, University of Bielefeld

Léon Mölenberg, Senior Policy Consultant – Counsellor at Thuiswinkel Organisation, NL

Ursula Pachi, Deputy Director General, The European Consumer Organisation (BEUC)

Michael Patchett-Joyce, Barrister, International commercial arbitrator, Mediator, UK

Since the publication of the ELI Statement on the CESL Proposal in September 2012, lively discussions on this topic have continued throughout Europe. It has become clear that the scope of the proposal might be restricted to distance contracts, in particular those concluded online. Consequently, the issues of digital content and cloud computing should receive more attention.

This panel debate with stakeholder representatives will highlight some of the ELI Working Group's key findings concerning the CESL's application to online transactions and will invite participants to share their views on some of the complex issues that have emerged in this respect.

What will be necessary in order to make this an Instrument specifically designed and truly attractive for e-commerce? How should the scope of a sales laws instrument be defined if it is to play a major role for the marketing of digital products? Where should the dividing line between sales and services be drawn? What rights should be included in the notion of 'digital ownership'?

13:00–14:00

Lunch buffet





Friedrich Graf von Westphalen is the founder and senior partner of the law firm Friedrich Graf von Westphalen & Partner. He has been the vice president of the German Bar Association since 2003 and the head of the German delegation to the Council of European Bars and Law Societies (CCBE) since 2010. He is an honorary professor at the University of Bielefeld. Professor Graf von Westphalen completed his legal education at the universities of Münster, Heidelberg, Cologne and Georgetown University in Washington D.C. As well as frequently contributing to political journals, he has also written many handbooks, commentaries and articles on various matters of national and international contract law.



Léon Mölenberg was a lecturer and legal researcher at Maastricht University in the field of consumer and contract law, civil litigation and private international law from 1987 until 2005. In 1995 he completed his doctoral thesis on collective court action (class action) for consumer organisations in the field of standard contract terms. Since 2006 he has been the senior policy consultant and legal counsellor at Thuiswinkel.org, the Dutch Association of Distant Sellers and Service Providers. He is an expert on distant selling consumer law and in charge of negotiations between Thuiswinkel.org and the Dutch consumer organisation on the standard contract terms which the members (1,900 enterprises) of Thuiswinkel.org use in their contracts with consumers.



Ursula Pacht has been working at the European Consumer Organisation (BEUC) since October 1997, first as Legal Advisor, then as Senior Policy Advisor and currently as Deputy Director General. The primary task of BEUC is to act as a strong consumer voice in Brussels and to try to ensure that consumer interests are given their proper weight in the development of all Community policies. As well as acting as a deputy for the Director General, Ms Pacht is leading BEUC's work on the consumer legislation acquis and is responsible for horizontal and strategic policy issues. Prior to working for BEUC, Ms Pacht worked at the Austrian Federal Ministry of Health and Consumer Protection in Vienna and at the Austrian Consumer Information Association as a member of the Consumer Advisory Board. Ms. Pacht has authored several articles for consumer policy and law journals.



Michael Patchett-Joyce is an experienced barrister, an international commercial arbitrator (FCIArb), and a CEDR accredited mediator. Mr Patchett-Joyce specialises in advocacy and advice relating to general commercial litigation, civil/commercial fraud, VAT and EU law, including References to the CJEU. He is well-versed in bringing the softer skills and strategic thinking often applied in a mediation context to the more formal world of his litigation and advisory work. Between 2002 and 2012, he served as the Bar Council of England & Wales representative on the European Contract Law initiative (now Common European Sales Law).

14:00–15:30

Project session II
Statement on the European Foundation Statute

Chair: Martin Schauer, ELI Project Leader, Professor of law, University of Vienna

Corrado Malberti, Member of the ELI Project Team, Associate Professor of law, University of Luxembourg, Notary in Milan, IT

Ward Möhlmann, DG Internal Market and Services, European Commission

Evelyn Regner, Member of the European Parliament, Rapporteur to the European Parliament Legal Affairs Committee on the European Foundation Statute

Hanna Surmatz, Member of the ELI Advisory Committee, Legal Counsel at the European Foundations Centre

In 2012, the ELI set up a Working Group for a Statement on the Commission's Proposal for a Council Regulation on the Statute for a European Foundation (FE), COM(2012) 35 final. If adopted, this instrument will create the first supranational legal form for the non-profit sector.

The ELI Working Group has been assessing the Proposal and making suggestions for its further development and improvement. Such suggestions, many of which take the form of concrete draft amendments, mainly aim to increase the level of legal certainty and to enhance the instrument's practical utility. The work has been carried out under pressing time constraints and has not yet been finalised.

This panel session poses an opportunity to discuss the preliminary results submitted by the Working Group with members of the project team and advisory committee, as well as with representatives of the European Commission and European Parliament who are involved in the work on the FE Proposal at a political level.

15:30–15:45

Coffee break





Martin Schauer is a professor at Vienna University's Civil Law Institute. He is also a visiting professor and lecturer at various universities including the London School of Economics, Chuo University Tokyo and Jagiellonian University in Krakow. He is a titular member of the International Academy of Comparative Law, a member of the Restatement group of Principles of European Insurance Contract Law and of the Scientific Advisory Board of the Max-Planck-Institute for Comparative and International Private Law as well as the Scientific Advisory Board of SECOLA and the Board of the Austrian Insurance Institute.



Corrado Malberti is an associate professor of commercial law at the University of Luxembourg, a notary in Milan and the chair of the CNUE's working group on company law. He graduated from the University of Milan. He also completed a PhD in commercial law at Bocconi University in Milan and an LLM at the University of Chicago. He has published widely in the fields of company and securities law, in English, Italian and French.



Ward Möhlmann works at the Directorate-General Internal Market and Services of the European Commission where he is in charge of a number of files in the area of corporate governance and company law. Among them is the proposal for a European Foundation Statute. Prior to this position Dr. Möhlmann worked in the international public procurement unit of the same Directorate-General, as a lawyer in a law firm in the Netherlands and as a lecturer in constitutional law at Radboud University in Nijmegen. In 2006 he completed his doctoral degree on 'The Political Institutions of the European Community'.



Evelyn Regner, who studied law at the universities of Vienna and Salzburg, is a Member of the European Parliament and Vice-chair of the Committee on Legal Affairs (JURI Committee). In addition she is a Substitute Member of the Committee on Employment and Social Affairs. She was a member of the European Social and Economic Committee from 2006 to 2009 and worked for the Austrian Trade Union Federation (ÖGB) from 1996 to 2009, leading the ÖGB Europe office in Brussels for nine of those years. She is a co-opted member of the ÖGB Executive and National Executive Boards and is a Member of the Presidium of the Social Democratic Trade Unionists (FSG). Furthermore she is the Rapporteur of the Interim Report on the proposal for a Council Regulation on the Statute for a European Foundation (FE).



Hanna Surmatz has been the Legal Counsel at the European Foundation Centre AISBL (EFC) in Brussels since 2004. Her main responsibilities include the monitoring and mapping/analysis of relevant national and European developments that affect foundations' operating environment, the co-ordination of benchmarking exercises, and facilitating information exchange on foundation law matters through publications and events. She also coordinated the drafting of the EFC recommendations for a European Foundation Statute. Between 2001 and 2004 she was employed by the Association of German Foundations. She studied law at the Westfälische Wilhelms-University Münster, Germany and in Poitiers, France. She also serves on the board of the European Center for Not for Profit Law (ECNL).

Project session III
Towards Restatement and Best Practices
Guidelines on EU Administrative Procedural Law
(joint project with ReNEUAL)

Chair: Jens-Peter Schneider, ELI Project Reporter, Professor of law, University of Freiburg

Ian Harden, Secretary-General of the European Ombudsman

Herwig Hofmann, ELI Project Reporter, Professor of law, University of Luxembourg

María José Martínez Iglesias, Adviser, Office of the President of the European Parliament, Bureau/Conference of Presidents, Legal and Institutional Affairs

Laura Pignataro, Legal Adviser in the European Commission's Legal Service

Jacques Ziller, ELI Project Reporter, Professor of law, University of Pavia

The aim of the project is to produce draft model rules in the field of European administrative procedural law. Such rules are not only intended to restate and simplify the current patchwork of legislation and case law but also to propose best practices or even innovative solutions for unsolved problems of EU administrative law. These problems result especially from the increasingly integrated procedural structures for the implementation of Union law – often described as shared implementation through composite procedures in contrast to the traditional model of clearly separated modes of either direct implementation by EU bodies or of indirect implementation by national authorities.

The panel session will focus on the tentative drafts which are already available, paying particular attention to the general provisions and scope of application, rule-making, single case decision-making, and contracts. The project reporters will debate the drafts with the audience as well as representatives from the European Commission, the European Parliament and the European Ombudsman. This project is a cooperative venture between the ELI and the Research Network on EU Administrative Law (ReNEUAL).



Jens-Peter Schneider is a professor of Public Law at the University of Freiburg, Germany. Among other topics he has taught German, European and Comparative Administrative Law at the Universities of Freiburg (since 2010), Osnabrück (2000-2010) and Hamburg (1993-2000). Professor Schneider has been a Visiting Research Fellow at Brasenose College, Oxford and in 2006 he established the annual International Seminar on European and Comparative Law together with colleagues from the Universities of Birmingham, Oxford, Strasbourg and Tilburg. He is co-founder and coordinator of the Research Network on EU Administrative Law (ReNEUAL). His publications address issues of German and European constitutional, regulatory and administrative law as well as comparative law.



Ian Harden has been Secretary-General of the European Ombudsman's Office since his appointment on 1 August 2006. Mr Harden first joined the European Ombudsman's Office as a Principal Legal Adviser in 1996, becoming Head of Secretariat from 1997 to 1999, then Head of the Legal Department from 2000. Mr Harden studied law at Churchill College, Cambridge, and subsequently joined the Law Faculty at the University of Sheffield, where he was a lecturer from 1976 to 1990, a senior lecturer from 1990 to 1993, and reader from 1993 to 1995 when he became professor of public law. He is a member of the Association Française de Droit Constitutionnel and of the Study of Parliament Group in the United Kingdom and an honorary professor at the University of Sheffield.



Herwig Hofmann is a professor of European and transnational public law and the founder of the University of Luxembourg's Centre of European Law. He has been a visiting scholar, lecturer and professor at various European and US universities and institutions. He has also practiced European and international trade law as an attorney in Brussels and gained experience at the European Court of Justice in Luxembourg and the European Commission in Brussels. His teaching and publications in books and articles address issues of European and transnational constitutional, regulatory and administrative law. Professor Hofmann is on the editorial boards of several law journals and a member of numerous international research institutes and organizations. He is one of the founding members of ReNEUAL, the Research Network on European Administrative Law.



María José Martínez Iglesias has been an official at the European Parliament since 1991, first with the Regional Affairs Committee and later with the Constitutional Affairs Committee. Ms Martínez Iglesias was a member of the Secretariat of the European Convention which drafted the European Constitution. From 2004 until January 2012 she was the Head of Unit of the Legal Affairs Committee. During this period she was also in charge of the Intergovernmental Conferences (IGC) leading to the Treaty of Lisbon and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. Currently Ms Martínez Iglesias is a member of the cabinet of the President of the European Parliament. She is responsible for the governing bodies of the Parliament (Conference of Presidents and the Bureau) and for legal and institutional affairs.



Laura Pignataro is a legal adviser at the European Commission's Legal Service. She graduated summa cum laude from Bologna University in 1990 and in 1992 she obtained a diploma in Advanced International Studies from John Hopkins University at the Bologna Center. Ms Pignataro began working at the European Commission in 1992 and since December 2012 she has been working in the Internal Market team of the Legal Service where she is responsible for environmental matters. Ms Pignataro has represented the European Commission in more than 250 cases before the jurisdictions of the European Union and is the author of a number of publications in different subject matters on European law.



Jacques Ziller is a professor of European Union Law at the University of Pavia, Italy. Dr. Ziller has also taught comparative administrative law and French administrative procedural law (judicial review) as well as EU law at Paris 1, the Panthéon-Sorbonne University and at the European University Institute in Florence. He is a specialist in European Union and Comparative law. Among other publications, Dr. Ziller has authored *Diritto delle politiche e delle istituzioni dell'Unione Europea*, (Il Mulino 2013) and *The European Constitution*, (Aspen/Kluwer 2005) and was co-editor of *The Lisbon Treaty – EU Constitutionalism without a Constitutional Treaty* (Springer 2008).

17:15–18:00

Members Consultative Committees' meetings:

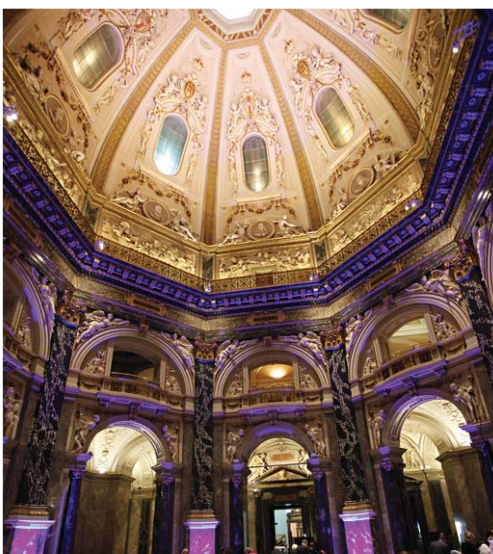
Prevention and Settlement of
Conflicts of Exercise of Jurisdiction
in Criminal Law

Towards Restatement and
Best Practices Guidelines on
EU Administrative Procedural Law

Members Consultative Committees (MCCs) are established by the Council for most ELI projects and will be consulted by the Project Team at various stages of the work. Any ELI Member who is interested in actively contributing to the development of a project is invited to join the MCC, irrespective of the Member's status as a Fellow, Individual Observer or Institutional Observer. There is no limit to the number of Members who can participate, and MCC members need not be experts in the relevant field. MCC members come from various legal professions and may specialise in different areas of law. It is exactly this diversity which enriches the debating potential of the MCC and makes its contribution so valuable. Most of the MCC's work will occur via electronic communication but physical meetings are held at least once a year, prior to the ordinary General Assembly.

19:00 – 22:00

Formal conference dinner at the Kunsthistorisches Museum
(exclusively sponsored by Kunz Schima Wallentin Rechtsanwälte)



Friday 6 September 2013 – General Assembly

Venue: Vienna City Hall, Wappensäle (* for ELI Members only)

08:00–09:00	Registration
09:00–09:10	Welcome and opening address
09:10–11:15	Reports from the standing Council Committees
11:15–11:30	Coffee break
11:30–12:15	Council elections
12:15–13:00	Keynote address: José Angelo Estrella Faria , Secretary-General of UNIDROIT
13:00–14:00	Lunch buffet
14:00–14:30	Election results and closing
15:00–19:00	<i>Meeting of the newly elected Council including Executive Committee elections</i>
20:00–22:00	Informal get together at a traditional Viennese Heurigen <i>[tickets available at the registration desk – € 35 per person]</i>



Locations

A
Haus der Europäischen Union
 Wipplingerstraße 35
 1010 Vienna

B
University of Vienna
 Arkadenhof, Universitätsring 1
 1010 Vienna

C
Vienna City Hall (Rathaus)
 Rathausplatz 1
 1082 Vienna
 [entry from Felderstrasse]

D
Kunsthistorisches Museum (KHM)
 Maria-Theresien-Platz
 1010 Vienna

E
ELI Secretariat
 Schottenring 14
 1010 Vienna

F
Hotel de France
 Schottenring 3
 1010 Vienna

G
Hotel Josefshof
 Josefs-gasse 4-6
 1080 Vienna

H
Hotel Regina
 Rooseveltplatz 15
 1090 Vienna



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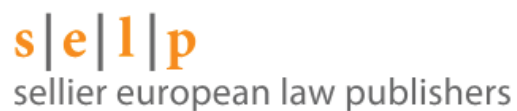
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European Law Institute

- › 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 the ELI can contribute to its projects and gain access to an international network of jurists. Apart from various other activities, the ELI organises a three-day event every year that includes its ordinary General Assembly, a project conference and several social functions – bringing together some of Europe's leading experts in the field of law.

ELI in Vienna

The Secretariat of the 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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