ELRA'S INTERVIEW WITH

TERESA RODRÍGUEZ DE LAS HERAS

President of European Law Institute (ELI)

Teresa RODRÍGUEZ DE LAS HERAS

President of European Law Institute (ELI)

> *"ELI produces model rules, principles, recommendations and best practices, and toolkits across a wide range of legal fields. Its recognised strengths lie in rule-of-law governance, digitalisation, and climate-related legal innovation that are today the three pillars around which ELI's mission is structured"*
>
> *Teresa Rodríguez de las Heras*
> *President of European Law Institute (ELI)*

ABOUT HER WORK AT THE EUROPEAN LAW INSTITUTE (ELI)

Could you briefly introduce the European Law Institute (ELI) and its main mission within the EU legal landscape?

ELI is an independent, pan-European organisation founded in 2011 to enhance the quality of law, strengthen the rule of law, and support effective, future-proof legal reform. Operating both on its own initiative and at the request of European (EU and non-EU), international, and national bodies, the Institute relies on wide consultation across a network of roughly 1,800 Individual Members and 180 Institutional Members.

Through this broad coalition, ELI produces model rules, principles, recommendations and best practices, and toolkits across a wide range of legal fields. Its recognised strengths lie in rule-of-law governance, digitalisation, and climate-related legal innovation that are today the three pillars around which ELI's mission is structured. The Institute is optimally positioned to support jurisdictions worldwide in addressing emerging legal and technological challenges.

Its institutional constituency includes the European Parliament, the Court of Justice of the European Union (CJEU), UNCITRAL (United Nations Commission on International Trade Law), UNIDROIT (International Institute for the Unification of Private Law), numerous Supreme Courts, Supreme Administrative Courts and Supreme Constitutional Courts as well as leading professional organisations such the International Bar Association (IBA), the Council of Bars and Law Societies of Europe (CCBE), the Council of the Notariats of the European Union (CNUE), the European Network of Councils for the Judiciary (ENCJ), the Network of the Presidents of

the Supreme Judicial Courts of the European Union and the European Consumer Organisation (BEUC), alongside major law firms and law faculties.

Today ELI's members represent 64 countries. ELI also maintains close partnerships with the American Law Institute (ALI), the US Uniform Law Commission (ULC), and the Uniform Law Conference of Canada (ULCC), and collaborates extensively with the European legislature, ministries of justice and NGOs.

ELI's Individual Members comprise court presidents, senior judges, eminent academics, and practitioners across 64 jurisdictions globally.

ELI's convening power, bringing together courts, academics, practitioners, European institutions and international organisations, is central to the relevance and impact of its work. Independent yet supported by the authority of the highest courts and leading European and international institutions, ELI is uniquely positioned to produce rigorous, consensus-based legal standards that are both operationally relevant and genuinely globally adaptable. Its multidisciplinary methodology ensures outputs that meet real-world needs, are inherently scalable and implementable across diverse legal systems, and carry the legitimacy required for cross-jurisdictional uptake.

Thus, I am very proud to acknowledge that ELI offers a rare combination of credibility, expertise, and agility, enabling it to deliver synthetic legal products suitable for deployment far beyond Europe

During your inaugural speech you mentioned the three pillars of your work in the new mandate. As President of ELI, what are your main priorities for the coming years?

On Tuesday, 23 September 2025, in a magnificent evening at the Palais Ferstel on the occasion of the Gala Dinner of the ELI 2025 Annual Conference in Vienna, I was handed over the presidency of the ELI by the former president, Prof. Pascal Pichonnaz. It was an emotional moment, full of symbolism, as all we knew it was fundamental to our institution in a complex, turbulent, challenging geopolitical context.

Three words symbolised my inauguration as the new ELI President: one to acknowledge the past I was receiving (gratitude),

another to face the present (responsibility) and a third one to guide us towards the future (imagination).

Gratitude to all those who have made ELI possible until now: a unique, precious and valuable gift. Honouring the inspiration, effort, dedication and commitment of so many people (previous Presidents, Secretariat, members of the Executive Committee, the Council, the Senate, our Scientific Director and each and every one of our individual and institutional members) to become today truly the voice and soul of the legal community.

Responsibility, a deep sense of responsibility to feel uncomfortable and dissatisfied with the present and to take action. This discontent should not turn into frustration, but leads me, lead us, to the third word with which to address the future: **Imagination**. Why imagination? Because it is the only way to deal with uncertainty, not by waiting for a future that supposedly already exists, that we have to achieve. It is the Renaissance vision of the utopias of Francis Bacon, Tomás Moro, and Tommaso Campanella. Utopias were metaphorically conceived as places that could be reached, places to which one had to go. However, we can only imagine them, which is why imagination is fundamental. We have to imagine possible futures and build them. The responsibility to imagine these possible futures is decisive. Let us imagine possible futures that respond to our aspiration, to this ideal, and let us build them. That is why ELI's mission is so determined: if we do not imagine them, they will not exist.

Against such a backdrop, inspired by gratitude, responsibility and imagination, I set the priorities for the coming years. First, to place 'ELI in the World'. The current global context requires more urgently than ever building bridges and creating links of cooperation with other institutions within and beyond Europe, and with other regions of the globe. Multilateralism is based on cooperation, mutual respect, and shared confidence. Second, to enhance ELI's influential role in policy and law making, in shaping market practices and defending rule of law. ELI develops projects and produce outputs. These outputs, 'ELI instruments', are aimed to have an impact on policy debate, provide guidance, fill gaps, and set standards. Third, to enlarge ELI's diversity. ELI is today the voice and the soul of the legal community. That means that ELI must keep representing all legal vocations, geographical and linguistic diversity, and all fields of law, around a common mission.

"ELRA is an active and precious institutional fellow of ELI. Its membership provides a productive and fruitful framework of cooperation and mutual interaction on a systematic and well-structured basis. ELRA's membership ensures that the fundamental role that land registration plays in real property and capital markets is properly understood and taken into account in all ELI's projects, activities, and instruments"

ELI AND ELRA COLLABORATION

How do you envisage the collaboration with ELRA?
ELRA is an active and precious institutional fellow of ELI. Its membership provides a productive and fruitful framework of cooperation and mutual interaction on a systematic and well-structured basis. ELRA's membership ensures that the fundamental role that land registration plays in real property and capital markets is properly understood and taken into account in all ELI's projects, activities, and instruments. That means that land registry's views and insights are incorporated into the deliberations and all discussions of ELI's projects. This is the first and crucial layer of our collaboration. ELRA can participate in ELI's projects as well as comment on ELI's instruments and outputs where aspects related to land registries

are concerned – see https://www.europeanlawinstitute.eu/projects-instruments/current-projects/.

In a second layer, ELI and ELRA can develop join projects and initiatives. Thus, partnership is decisive and will continue being in various areas. We are already working on these joint projects - See https://www.europeanlawinstitute.eu/projects-instruments/prospective-projects/-

Yet, ELRA cooperation will also be critical in testing and implementing ELI's instruments – see https://www.europeanlawinstitute.eu/projects-instruments/instruments/. At the implementation stage, ELI instruments deploy their full potential and materialise their influence. Therefore, ELI's instruments must be tested, discussed, applied, and implemented by relevant stakeholders. In this last stage, ELRA's cooperation is also treasured.

What benefits does this partnership bring to EU citizens and the European Union more broadly? What kind of instruments could be developed together?

Registries provide *ex ante* legal certainty. Registry models are, therefore, key component of a legal system protecting citizens' rights, ensuring legal certainty for all market players, and reducing cost of transactions by enhancing predictability and reducing conflicts.

ELI works on providing guidance, recommendations, principles, and model rules to enhance the law's effectiveness, protect rights more effectively, and increase legal certainty. ELI is a catalyser of policy debate and an expertise-driven forum. ELI gathers opinions and views of all legal vocations and stakeholders.

Synergies are multiple and visible. From the modern forms of tokenisation in real estate to the debate on housing affordability and accessibility in our societies, ELI and ELRA can work effectively together and develop joint instruments. These instruments can be shaped as model rules, practical guidance, guiding principles or even model clauses addressed to lawmakers, organisations, registrars, or parties.

Mihai Taus and Teresa Rodríguez de las Heras

> *"ELI works on providing guidance, recommendations, principles, and model rules to enhance the law's effectiveness, protect rights more effectively, and increase legal certainty. ELI is a catalyser of policy debate and an expertise-driven forum. ELI gathers opinions and views of all legal vocations and stakeholders."*

SOFT LAW AND DIGITAL REGULATION

You have written extensively about soft law, can you explain briefly what it is for our audience? What soft law do you consider to be the most efficient: ex ants or ex post?
Governance and regulation models may be classified in four broad categories: self-regulation, technical standards, soft law, and hard law. All these models interact each other and often, they are present in a jurisdiction in a combined or mixed fashion. Each model has its advantages and benefits, but rarely one single model, impermeable to other forms of governance or regulation, is optimal. Depending upon the complexity of the phenomenon to be regulated, the interests and rights at stake, the condition of the parties, the market structure or the need for public-private cooperation, one of the governance and regulatory models would be preferable or should prevail. The choice of the right model and the devising of a proper interaction among models are instrument to the success of a policy strategy.

Within this framework, particularly in areas with intense cross-border or international elements, soft law has proven to play a decisive role. Soft law provides flexibility and adaptability to evolving reality, while it starts establishing common principles, concepts and legal standards. Soft law facilitates consensus and crystallised agreed standards, where hard law is unreachable. Unlike self-regulation, soft law provides mechanisms to internalise all interests in play, and ensure a 'soft' uniform approach to conflicts and novel issues. Compared to hard law, soft law can provide quicker and more agile responses to emerging realities or rapidly changing phenomena. As its adoption is normally less burdensome, soft law is less exposed to obsolescence insofar as, at least theoretically, it may be subject to less onerous amendment procedures. Its non-binding character raises lesser opposition and facilitate compromise solutions.

Nonetheless, soft law is neither perfect nor always the most advisable governance and regulatory model. Soft law may need to be complemented by other models or, occasionally, it may play only a minor role in the policy strategy. Therefore, a proper assessment of the adequacy, the feasibility, and the advisability of soft law as a governance and regulation model is fundamental. And more importantly, the functions that soft law can performed in the conception, the development, or the implementation of the policy strategy must be duly understood.

Basically, soft law can play either an ex-ante role or an ex-post role. Soft law may be the first stage in the regulation process. By adopting soft law, common principles and agreed standards start to sediment. Then, soft law paves the path towards hard law, when necessary. Should consensus be unattainable, and discrepancies are large, soft law offers a walkable route to begin cooperation and harmonisation. As drafting soft law instruments is less tedious and challenging, adoption processes are usually shorter and less controversial. However, despite its lack of binding character, soft law can serve as a primary source of inspiration not only for lawmakers in their

Teresa Rodríguez de las Heras

subsequent regulation attempts, but also for courts, and other authorities, and for parties. However, its lack of binding character cannot be disregarded. In many cases, binding rules are not only advisable, but certainly necessary to protect rights, repair market failures, alleviate asymmetries, prohibit unacceptable practices or control access to market. Then, hard law is the recommended model to follow. Soft law is not there the trigger but may still play a crucial role ex post. Soft law instruments can be crucial tools for interpretation, gap-filling, or integration.

The pervasive expansion of the digital economy has witnessed this powerful and synergetic combination of governance and regulation models. Transition processes from self-regulation to soft law or/and from soft law to hard law, supplemented or complemented by technical standards, explain the approaches to AI governance, digital assets, automated decision-making, or data sharing, *inter alia*. Sometimes these transition periods are reversed, and hard law is adopted at an initial stage, while soft law, technical standards or limited self-regulation are fundamental for application, implementation, and compliance.

There is not a uniform, undisputed definition of soft law. In a precise sense, it is not easy to delimit the contours of 'soft law', beyond an apparently natural contraposition to 'hard law'. As a matter of fact, soft law might encapsulate anything other than binding rules or mandatory law.

RESPONSES TO AI BROADLY FALL INTO FOUR MAIN MODELS:

1. Industry self-regulation, relying on proximity to the market and minimal legislative intervention;
2. Voluntary guidelines and ethical soft law at national or supranational level;
3. Development of technical norms and standards to mitigate risks;
4. Legislative or regulatory intervention through mandatory law (hard law) that defines uses and imposes obligations throughout the AI value chain.

However, that could lead to a conceptualisation of soft law as an umbrella concept for code of conducts, technical standards, ethical principles, standard contractual terms or even default rules that are indeed provided for by pieces of legislation.

In order to maintain the logic of the four-model approach to governance and regulation as explained above, soft law is not deemed to include neither technical standards nor self-regulation outcomes. Instead, soft law is characterised by three features. First, in contrast to commercial customs and rules such as codes of conduct, soft law is not created by private business organizations or companies. Second, soft law lacks binding legal force. Third, soft law, despite its legally non-committal quality, it resembles law, and may produce certain legal effects in protocolising diligence, as a standard of care, as an interpretation tool or in arbitration proceedings.

Yet, the notion of soft law – used in this context, although it is not absolutely precise - may comprise guiding principles, recommendations, model rules, and also model contractual terms, statements or guidance.

How do you see the latest European Commission initiative such as the AI Act interacting with soft law approaches?

Artificial intelligence (hereinafter AI) is the undisputed protagonist of technological transformation in the contemporary era. The overwhelming expansion and widespread penetration of AI in society have marked the beginning of a new stage in technological evolution. AI has dominated the world stage, permeated public and media opinion, arousing mixed feelings of fear and fascination, and attracted the attention of legislators and regulators in response to a growing and

> *"The European response, with undisputed leadership in this field, has taken the most ambitious route and opted for the most regulation-intensive governance model. The response of the European Union is the paradigm of a governance model based on mandatory regulation (hard law, in particular, of regulatory nature)"*

sometimes alarming perception of the risks. A growing, broader and stronger consensus has highlighted the critical (and urgent) need to reconcile its promises and dangers at the global level. However, as explained above, governance models and regulatory approaches to AI differ significantly. Each of them addresses and prioritises, in varying order of importance, a range of factors, spanning a broad spectrum from an unquestionable commitment to innovation, competitiveness and growth, to the submission of all initiatives to ethical considerations, the protection of human rights, democracy and the rule of law.

Thus, we can see how, in the different responses to the possibilities and challenges of AI, diverse balances are assumed, articulated or expected between the expectations of its promises and the perception of its dangers. And it is this balance that determines the timing, intensity and content of the regulatory response and the governance model.

From this geometry of benefits and risks, responses to AI broadly fall into the four main models that I referred to before. First, there is the model that delegates governance to industry self-regulation, relying on proximity to the market, self-management of its interests and minimal or non-existent legislative intervention. MICROSOFT Responsible AI Standards, June 2022; Google AI Principles; publications by IBM's Ethics Board; Forética, *Manifesto for Responsible and Sustainable Artificial Intelligence*. Second, the model that relies on the inspirational and guiding effect of voluntary guidelines, primarily ethical in content, in the form of principles and recommendations, at the national or supranational level (soft law) – inter alia, OECD *AI Principles*; UNESCO Recommendation on the Ethics of AI; G7 AI Principles and Code of Conduct (AIP&CoC), Hiroshima, 2023; United Nations General Assembly Resolution on AI, Australia voluntary AI Ethics Principles. Thirdly, the approach that focuses all efforts on the development of technical norms and standards, with the conviction that the assimilation of AI into a product that meets certain standards will mitigate risks and solve challenges - as an illustration of this model, ISO/IEC 23894:2023, Information technology — Artificial intelligence — Guidance on risk management; C2PA standards, *Coalition for Content Provenance and Authenticity*. Finally, the approach that advocates for necessary legislative or regulatory intervention, for mandatory law that defines uses and imposes regulatory obligations and requirements throughout the AI value chain for the development, marketing, deployment and use of AI systems - in particular, the Council of Europe Framework Convention on AI and Human Rights, Democracy and the Rule of Law, 2024; and the European Union AI Regulation, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Regulation) OJ L, 2024/1689, 12.7.2024.

The European response, with undisputed leadership in this field, has taken the most ambitious route and opted for the most regulation-intensive governance model. The response of the European Union is the paradigm of a governance model based on mandatory regulation (hard law, in particular, of regulatory nature) which, under a classification of risks according to use, prohibits, limits or subjects to conditions the development, marketing or deployment of AI systems for certain purposes or specific ends. The technology is not regulated in general and in the abstract, but

rather according to its intended applications and uses, based on the risks it may generate and the rights and interests at stake. It will be the intended use that will gauge regulatory intervention, determining the application of the regulation and its scope and intensity.

With this pioneering and also very forceful approach, the EU is positioning itself on the AI governance map with a very well-defined, robust and solid stance. A position that, firstly, from a static analysis, in the current state of global governance, has not been without criticism, but also unconditional support for the values it embodies, for the courage of action on the global stage and for the broad democratic consensus that backs it. Nonetheless the foregone, a single, isolated hard-law approach of regulatory nature has proven to be unsuccessful and insufficient. As the implementation of the AI Act depends upon the 'regulatory machinery' putting into motion, soft law and other ancillary initiatives have demonstrated to be instrumental not only to compliance and enforcement, but even to the entering into force (pursuant to the staggered calendar). The Digital Simplification Package - COM(2025) 837; COM/2025/836 -responds to the acknowledgment that the AI Act poses implementation challenges. In addition to other reasons, the rationale behind the unfortunate decision to postpone the application of some of the provisions of the AI Act – the core requirements and obligations for high-risk AI systems – is that some parts of the regulatory machinery are not yet ready – such as the harmonised standards, common specifications, or all expected Commission guidelines. Thus, it can be seen how the hard-law model does also interact and, to a certain extent, depend upon the operation of other components of soft-law character.

Yet, in the example of the AI Act and the EU approach, it is visible how the four governance models coexist and interact with each other. Although they are often presented as alternative models, none of them acts completely independently and autonomously. On the contrary, their effects combine in the market in the form of cycles and feedback loops. In fact, EU has opted for a hard-law-driven model to which the other three models would contribute and converge. In this scenario, the first model of self-governance would end up losing its own entity and would act as a tool to bring the norm closer to and adapt it to the sector or, alternatively, to complete or cover areas that legislation leaves unaddressed in detail (Code of Practice, good practices or guidelines to assist in compliance). The second model would continue to perform a valuable 'compass' function, guiding legislative actions towards the coordinates previously set by consensus on common principles based on an ethical approach. Finally, the third model anchors legislative and regulatory decisions in harmonised standards that provide companies with technical benchmarks in their compliance process. In this sense, technical standards do not function in isolation, but rather 'protocolise' the due diligence obligations that actors in the AI value chain face in relation to regulations.

Mihai Taus and Teresa Rodríguez de las Heras

Teresa Rodríguez de las Heras

> *"The adoption of 'enabling rules' that prepare the Union's private law to be a framework that supports the market and a safety net that generates legal certainty in business may be necessary to establish the anchors of European digital sovereignty"*

The role of soft law, in the sense used here, is two-fold in the AI Act landscape. On the one hand, ethical recommendations and guiding principles have embodied the necessary consensus to trigger and guide the legislative/regulatory action (ex-ante role). On the other hand, other instruments ranging from interpretation guidelines to code of practice, from model clauses to standards for compliance have proven to be critical and decisive for enabling compliance, enforcement, and effective application (ex-post role).

VISION AND FUTURE PERSPECTIVES

What kind of legal culture or mindset should Europe foster to remain both innovative and protective of its citizens in the digital era?

The adoption and publication of the AI Regulation marked a turning point in the regulatory strategy for the digital economy in the EU. It acts as a hinge between two institutional cycles that are very different both in their internal configuration and in terms of external pressure due to the new geopolitical situation in which we have been immersed since the beginning of 2025. The regulatory intensity of the 2019-2024 Commission gives way to a cautious regulatory vision, focused on implementing the instruments adopted, and contained, concerned with injecting competitiveness into the common market with strategies to simplify the regulatory and administrative burden, including 'deregulation', 'postponement' of enter-into-force dates, and targeted measures, to facilitate business compliance. Faced with the regulatory exuberance of the 2019-2024 cycle, the 2024-2029 Commission relies on the fine diagnosis of the Draghi Report and Letta Report to respond with a 'regulatory pause', in addition to simplifying, consolidating and codifying legislation and testing the soundness and coherence of the acquis communautaire.

These new coordinates, so critical for navigating the complex and uncertain geopolitics of

the coming years, should guide the future of the EU towards a genuinely European model. A model that cannot ignore its regulatory positioning and leadership in the face of digital transformation, painstakingly developed and built up over previous years. Therefore, the new cycle must leverage this leadership, turning the regulatory framework into a vision and inspiration for others (with an expanded, qualified 'Brussels effect') rather than a drag on growth and competitiveness. Moves toward this objective to articulate this vision are being taken. The EU has reacted with the AI Continent Action Plan, complemented by the Apply AI Strategy, that reaffirms the commitment to enhance Europe's competitiveness in the AI sector by preserving the values and key goals of the AI Act, and the Digital Simplification Package that acknowledges and faces the implementation challenges.

From this perspective, the EU must approach the future with a two-pronged approach. Firstly, agility in implementation, consistency in application and effectiveness in enforcement will have to mark this exercise of bringing the regulation to the market and society. Secondly, it must move beyond the regulatory perimeter and explore other areas that may require attention in order to complete, expand or strengthen the European response to the digital economy. Even from a strict 'regulatory pause' perspective, total regulatory or legislative inactivity is not desirable. Understanding the institutional cycle that begins as a period of passivity, as a supposed counterpoint to criticised legislative 'hyperactivity', would lead to undesirable results. The EU must be constantly attentive to technological, social and economic changes, as well as political ones, in the face of the 'transactional' narrative of international relations that seems to be spreading, and this attention may involve changes or new initiatives on the regulatory agenda. This is not a contradiction; it is possible (and necessary) to regulate better, and the adoption of genuinely enabling rules does not hinder, but rather accelerates, innovation and competitiveness. Therefore, conscious, responsible, thoughtful and efficient use must be made of the regulatory process, without thinking that fleeing from it or avoiding it is, in itself or on its own, economically sufficient or socially desirable.

"The EU must approach the future with a two-pronged approach. Firstly, agility in implementation, consistency in application and effectiveness in enforcement will have to mark this exercise of bringing the regulation to the market and society. Secondly, it must move beyond the regulatory perimeter and explore other areas that may require attention in order to complete, expand or strengthen the European response to the digital economy."

The current institutional cycle 2024-2029 does not necessarily have to be immerse in a total regulatory anaemia, although it will be one of a pause in regulatory euphoria, with efforts focused on effective implementation, ensuring the coherence of the system, simplifying, codifying and even deregulating where necessary. The adoption of 'enabling rules' that prepare the Union's private law to be a framework that supports the market and a safety net that generates legal certainty in business may be necessary to establish the anchors of European digital sovereignty.

As I have already advocated elsewhere, neither regulatory fatigue nor the successes or failures of the regulatory strategy on the digital economy can or should displace a deep and imaginative reflection on future legislative needs. In this effort of recreation and imagination, I have put forward two proposals. Firstly, the notion of AI-Human hybridisation as an imaginary scenario to test rules and develop legal fictions. 'Hybridisation' goes beyond a mere evolution or sophistication of the digital economy. Secondly, the enabling and protective role of private law as a key component of the strategy to drive the AI adoption, promote innovation, and unlock AI potential for competitiveness. Enabling rules and default rules are not a burden but a catalyst.