

TRANSNATIONAL CIVIL PROCEDURE -
FORMULATION OF REGIONAL RULES
ELI – UNIDROIT Rules of Transnational Civil
Procedure
Steering Committee
Rome, 12-13 May 2014

Study LXXVIA
UNIDROIT 2014
Original : English
SC I – Doc. 2

Report

1. On 12 and 13 May 2014, the Steering Committee of the ELI/UNIDROIT project on the preparation of Transnational Principles of Civil Procedure for Europe met at the seat of UNIDROIT in Rome.¹

Item 1 on the Agenda: Welcome

2. The Secretary-General of UNIDROIT, Mr José Angelo ESTRELLA FARIA, and the President of the European Law Institute, Ms Diana WALLIS, welcomed participants. Mr Faria recalled the meeting and Workshop that had been held in Vienna in October 2013 and thanked the ELI for the two excellent events. Mr Faria and Ms Wallis informed the Committee that the ELI/UNIDROIT project was regulated by the Memorandum of Understanding that the two Institutes had signed on 13 March 2014. This Memorandum also specified a timetable for the project (Article 2.2).

3. Mr Faria informed the Steering Committee that the Governing Council of UNIDROIT had decided to ask the General Assembly to increase the priority status of this project to at least medium level.

Item 2 on the Agenda: Election of the Chairpersons

4. Ms Diana Wallis and Mr José Angelo Estrella Faria were elected joint Chairpersons of the Steering Committee.

Item 3 on the Agenda: Adoption of the Agenda

5. The draft Agenda was adopted as proposed, with one addition: Item 4 should deal with both purpose and scope of the project, not only its purpose.²

Item 4: Purpose and Scope of the Project

(a) NATURE OF END PRODUCT

6. The nature of the end product was discussed, the question being whether the end product should

¹ For a list of participants, see Annex 2.

² For the Agenda as adopted, see Annex 1.

be a model code or a Restatement, or an instrument that would act in a manner similar to the general parts of codes which introduce the specific parts. It was decided that it was not necessary to take a stand on this question at this meeting.

(b) SCOPE

7. The questions considered were:

- Should the target be national courts or arbitration?
- Should the end product apply only to transnational disputes or to all disputes, domestic disputes included?
- Should the end product apply only to commercial disputes or to all disputes?

8. The feeling was that the target should first and foremost be national courts, although whether or not a solution worked for arbitration should be considered, and the end product should apply to all disputes, not only commercial disputes, both transnational and domestic.

(c) TOPICS

9. It was decided that the first topics to be examined should be

- evidence,
- interim measures and
- the service of documents.

10. These three topics should be followed by

- *res judicata* and
- obligations of the parties and lawyers (case management) (which included the role of the courts).

11. Lastly, *enforcement* should be dealt with, but, in the estimate of one of the members of the Steering Committee, it alone would require five or six working groups as it was a vast subject. *Structure* was also considered, no conclusion being reached.

12. It was decided that *costs* and *collective actions* should not be dealt with.

Item 5: Methodology

13. It was agreed that a draft prepared by a Working Group should be submitted to the Steering Committee and thereafter to the larger Advisory Committee. If modifications were necessary, the draft would be sent back to the Working Group which would make the modifications, send it back to the Steering Committee. As the drafts often interacted, annotations would be made and cross-checks carried out.

(a) REPORTERS

14. The decisions taken in Vienna were confirmed, the reporters of the topics selected in the first instance being (in alphabetical order):

Evidence: Prof. Neil ANDREWS
Prof. Fernando GASCÓN INCHAUSTI

Interim measures: Prof. Neil ANDREWS
Prof. Gilles CUNIBERTI

Service of documents: Prof. Astrid STADLER
Ms Eva STORSKRUBB

(b) LANGUAGES

15. It was felt that at least one native French speaking expert should be included in each Working Group, as the best way to prepare the Principles was to do so in the two languages at the same time, to the greatest extent possible. Often a problem in one language led to the text being changed in the other.

(c) DISCUSSION DRAFT

16. It was recommended that a text should be prepared as soon as possible, possibly by the Chairperson of the Working Group, even if the text was merely a discussion draft, intended to stimulate discussion and thought, which would be modified and was not intended to be published in any way.

17. The possibility was also considered of a working document, the discussion draft or another, being made accessible electronically to all members of the Working Groups, possibly also the Steering Committee and Advisory Committee. The possibility of inter-active access, with the text being modified electronically by any of those who have access to the document, would be examined.

Item 6: Sources of inspiration

18. Participants agreed that the ALI/UNIDROIT Principles of Transnational Civil Procedure were the basis on which to build. They could, in fact, serve as a checklist when preparing the European Principles. It was suggested that the ALI/UNIDROIT Principles should be looked at first, to see if what they proposed was acceptable (or at least not unacceptable) at a European level, after which the Reporters' Rules prepared for the ALI/UNIDROIT Principles could also be looked at to see if they were acceptable.

19. Other texts to be consulted were the French Code of civil procedure and other codes, cases of the European Court of Justice and the European Court of Human Rights, and the *acquis communautaire*, directives and regulations.

Item 7: Working Groups and Consultative Groups: setting up and membership

(a) WORKING GROUPS

20. It was decided that the Working Groups should have at the most 6-8 members, ideally from different parts of Europe and from the different legal professions (academics, practicing lawyers, judges). However, if that was not possible, the legal professions might be represented on the Advisory Committee.

21. The different areas of Europe to be covered were: Scandinavia (Nordic countries); the German area, the French area, the common law, Southern Europe and Eastern Europe. A question raised was what countries would be included under the general term "Eastern Europe" and it was felt that it would include Russia.

22. The reporters proposed to contact a number of experts asking whether they would be interested in becoming members of the Working Groups. The experts they proposed to contact were (in alphabetical order):

Evidence: Ms Laura ERVO (Lecturer at the University of Örebro, Sweden)
Prof. Frédérique FERRAND (Université Jean Moulin, Lyons, France)
Dr Viktória HARSÁGI (Pázmány Péter Catholic University, Budapest, Hungary)
Prof. Michael STÜRNER (University of Konstanz, Germany).

Interim measures:	Prof. Torbjörn ANDERSSON (University of Uppsala, Sweden) Prof. Xandra KRAMER (Erasmus University, Rotterdam, The Netherlands) Prof. Fernando de la MATA (Associate Professor, ESADE Law School, Barcelona, Baker & McKenzie, Barcelona, Spain) Prof. Alan UZELAC (University of Zagreb, Croatia).
Service of documents:	Prof. Marco DE CRISTOFARO (University of Padua) Dr Wendy KENNETT (Assistant Professor, University of Central Lancashire, Larnaka, Cyprus) Prof. Emanuel JEULAND (Université Paris 1 Panthéon-Sorbonne, Paris, France) Prof. Dimitrios TSIKRIKAS (University of Athens, Greece).

23. The proposed members of the Working Groups should be contacted first by the reporters. Subsequently, if they accepted, their *curricula* would be circulated among the members of the Steering Committee. They would be contacted by the Chairpersons of the Steering Committee to confirm their participation in the Working Group and also to confirm their commitment to the project.

(b) ADVISORY COMMITTEE AND OBSERVERS

24. In addition to the Working Groups, it was decided that there should be an Advisory Committee (Advisory Council, or Consultative Committee). The role of such an advisory body would be much the same as the ALI Members Consultative Group and the International Consultants that had commented on what were to become the ALI/UNIDROIT Principles of Transnational Civil Procedure. The members would be free to comment on the drafts, but were not necessarily obliged to. The Advisory Committee would be a larger group than the Working Groups, comprising experts from almost all European countries and including representatives of the different legal professions. Some of the experts proposed that did not join the Working Groups would be invited to join the Advisory Committee. In addition to members from the European States, a few experts from outside Europe would be invited to join the Committee. Among possible candidates as member of the Advisory Committee were representatives of the European Commission, the European Court of Justice, the European Court of Human Rights, the Council of Bars and Law Societies of Europe (CCBE) and the American Law Institute (ALI).

25. It was stressed that there should be a clear division between the Advisory Committee and the Working Groups. While it was possible to change from Group to Committee or vice versa, only one appointment at a time would be possible.

26. It was also decided that observers could be attached to the Advisory Committee. Some of those indicated as possible members of the Advisory Committee could instead be observers.

Item 8: Funding

27. In relation to the question of funding the Memorandum of Understanding between the ELI and UNIDROIT was referred to, which described the financial commitment on the part of the two Institutes in Article 3. In addition, funding from the European Union and foundations such as the Thyssen Foundation might be sought. Academic institutions might also support the project.

28. Prof. Andrews offered to host one meeting of each of the Working Groups he was a member of in Cambridge. He would be able to offer accommodation, but not travel expenses. Prof. Cuniberti stated that Luxembourg would be able to host one meeting and might be able to offer also travel expenses.

Item 9: Any other business

29. The way forward was discussed. It was envisaged that one meeting of the Working Groups should be held in July 2014, after which interim results would be discussed at a meeting to be held on 27-28 November in Rome. In March 2015 work would have been brought a stage further with a view to producing a draft text by November 2015. By the same date, preliminary results might be expected of the work of the next Working Groups.

30. The possibility of organising events to publicise the work underway was discussed, Ms Wallis suggesting that the ELI should be able to organise such an event.

AGENDA

1. Welcome by the Secretary-General of UNIDROIT
2. Election of the Chairpersons
3. Adoption of the Agenda
4. Purpose and scope of the project
5. Methodology: the role of the ALI/UNIDROIT Transnational Principles of Civil Procedure
6. Other sources of inspiration: common European standards and rules of civil procedure; case law of European courts; comparative studies; etc.
7. Working Groups and Consultative Groups: setting up and membership
8. Funding
9. Any other business

ANNEX 2**LIST OF PARTICIPANTS****STEERING COMMITTEE****EUROPEAN LAW INSTITUTE**

Ms Diana WALLIS
President
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Vienna (Austria)

Mr Remo CAPONI
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Dipartimento di scienze giuridiche
Università di Firenze
Florence (Italy)

Mr John SORABJI
Principal Legal Adviser to the Lord Chief Justice and Master
of the Rolls
Judicial Office for England and Wales
Royal Courts of Justice
London (United Kingdom)

UNIDROIT

Mr José Angelo ESTRELLA FARIA
Secretary-General
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Ms Anna VENEZIANO
Deputy Secretary-General
UNIDROIT
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Institut für deutsches und ausländisches Zivilprozessrecht
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RAPPORTEURS

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University of Cambridge
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M. Gilles CUNIBERTI
Professeur à l'université du Luxembourg
Directeur du Bachelor en Droit
Faculté de Droit, d'Économie et de Finance
Luxembourg

Mr Fernando GASCÓN INCHAUSTI
Professor of Law
Universidad Complutense de Madrid
Facultad de Derecho
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