



EN

GOVERNING COUNCIL
93rd session
Rome, 7 - 10 May 2014

UNIDROIT 2014
C.D. (93) 7
Original: English
March 2014

**Item No. 8 on the agenda: Transnational Civil Procedure –
formulation of regional rules**

(prepared by the Secretariat)

<i>Summary</i>	<i>Developments relating to the joint ELI/UNIDROIT project on the development of regional rules based on the adaptation of the ALI/UNIDROIT Principles</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress</i>
<i>Mandate</i>	<i>Work Programme 2014-2016</i>
<i>Priority</i>	<i>Low</i>
<i>Related documents</i>	<i>UNIDROIT 2014 – C.D. (93) 8 and 12</i>

1. The ALI / UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute / UNIDROIT Working Group and adopted in 2004 by the UNIDROIT Governing Council, were intended to help reduce the impact of differences between legal systems in lawsuits involving transnational commercial transactions. Their purpose was to propose a model of universal procedure that followed the essential elements of due process of law. They were accompanied by a set of "Rules of Transnational Civil Procedure", which were not formally adopted by either UNIDROIT or ALI, but constituted "the Reporters' model implementation of the Principles, providing greater detail and illustrating concrete fulfilment of the Principles". The Rules might be considered either for adoption "or for further adaptation in various legal systems," and along with the Principles can be considered as "a model for reform in domestic legislation".¹

2. With the aim of resuming work on the development of the "Rules", UNIDROIT decided to focus on regional implementation and on adapting the Principles to the peculiarities of specific legal systems. In this respect, the possibility of a joint project on the development of European rules of civil procedure was discussed within the framework of the institutional co-operation with the newly founded European Law Institute (ELI) the main task of which is to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development.

¹ Reporters' Study, *Rules on Transnational Civil Procedure, Introductory Note*, in ALI/UNIDROIT Principles of Transnational Civil Procedure, Cambridge University Press, 2006, 99.

3. The joint ELI / UNIDROIT project was considered to be the means to provide a useful tool to avoid a fragmentary and haphazard growth of European civil procedural law. At the same time, from the point of view of UNIDROIT, it was seen as a promotion of the ALI / UNIDROIT Principles and as a first attempt towards the development of other regional projects adapting the ALI / UNIDROIT Principles to the specificities of regional legal cultures, leading the way to the drafting of other regional rules.

4. At its 92nd session in 2013, the Governing Council took note of the proposal for future work in the field of transnational civil procedure and recommended that the General Assembly assigned medium priority to the project when adopting the Work Programme of the Institute for the triennium 2014-2016 (see UNIDROIT 2013 – C.D. (92) 17, 20, para. 111). At its 72nd session (5 December 2013), the General Assembly approved the Work Programme for the triennium 2014-2016 but decided to lower the priority of the project (see UNIDROIT 2013 – A.G. (72) 9, 8, paras. 26-28).

5. The first joint ELI-UNIDROIT Workshop entitled "*From Transnational Principles to European Rules of Civil Procedure*", in cooperation with the American Law Institute, was held in Vienna on 18 and 19 October 2013. Speakers were invited to provide an initial analysis of a series of different topics, ranging from service of process to enforcement, with a view to identifying the most promising issues and the most appropriate methodological approach for the project (for more details see Annual Report, pp. 16-17, and the attached programme of the Workshop).

6. In 2014, UNIDROIT continued its cooperation with ELI by agreeing on a Memorandum of Understanding specifically related to the project on civil procedure, which clearly identifies role and responsibility of each party. A Steering Committee was set up, composed by representatives of both organisations and by Reporters for three initial topics (service and information; interim measures; evidence). A first meeting of the Steering Committee is planned for 12 and 13 May 2014 in Rome and will focus on the clarification of the purpose of the joint project and of its methodology, in order to achieve a coordinated approach. A meeting of the Working Group (to be nominated at the Steering Committee's meeting), with the participation of a representative of ALI, is expected to take place in November 2014 in Rome and to present interim results. As detailed in the Memorandum of Understanding, a final report on the feasibility of formulating European model Rules of Civil Procedure on the basis of the ALI/UNIDROIT Principles as well as a list of topics to be covered by the future European Rules are expected to be completed by 2015.

ACTION TO BE TAKEN

7. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in the implementation of the Work Programme concerning transnational civil procedure.*



ELI

EUROPEAN
LAW
INSTITUTE



ELI-UNIDROIT Project:
From Transnational Principles to
European Rules of Civil Procedure

In cooperation with

The American Law Institute (ALI)

1st Exploratory Workshop
Vienna, 18 and 19 October 2013

The Background

In 2004, the ALI (American Law Institute) and UNIDROIT (the International Institute for the Unification of Private Law) adopted and jointly published 'Principles of Transnational Civil Procedure'. The aim of the work was to reduce uncertainty for parties litigating in unfamiliar surroundings and promote fairness in judicial proceedings through the development of a model universal civil procedural code. The Principles, developed from a universal perspective, were accompanied by a set of Rules of Transnational Civil Procedure, which were not formally adopted by either UNIDROIT or the ALI, but constituted the Reporters' model implementation of the Principles, providing greater detail and illustrating how they might be developed. The Rules were to be considered either for adoption or for further adaptation in various legal systems, and along with the Principles can be considered as a 'model for reform in domestic legislation'.

In 2013, the ELI (European Law Institute) and UNIDROIT agreed to cooperate in order to adapt the Principles from a European perspective and develop European Rules of Civil Procedure. This work will take as its starting point the 2004 Principles and will develop them in the light of: i) the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union; ii) the wider *acquis* of binding EU law; iii) the common traditions in the European countries; iv) the Storme Commission's work; and v) other pertinent European sources.

The 1st exploratory workshop, to be held in Vienna on 18 and 19 October 2013, aims at an initial analysis of a series of different topics, ranging from service of process to enforcement, with a view to identifying the most promising issues and the most appropriate methodological approach for the project. The event will be divided into a public conference which gives a general introduction for a wider audience and an expert seminar which should lay the foundation for the elaboration of the ultimate project design by ELI and UNIDROIT.

PROGRAMME

Venue: Justizpalast, Schmerlingplatz 11, A-1011 Vienna, Austria

Friday, 18 October: Public Conference

Chair: *Loïc Cadiet (University Paris 1; President of the International Association of Procedural Law)*

10:30-11:00	Opening and Welcome <i>José Angelo Estrella Faria (Secretary-General of UNIDROIT) and Diana Wallis (President of the ELI)</i>
11:00-12:00	The 2004 ALI/UNIDROIT Principles <i>Geoffrey C. Hazard and Antonio Gidi (ALI)</i>
12:00-12:30	General discussion
12:30-13:30	<i>Buffet lunch</i>
13:30-14:00	The European Acquis of Civil Procedure: Constitutional Aspects <i>Alexandra (Sacha) Prechal (Court of Justice of the European Union)</i>
14:00-14:30	The European Acquis of Civil Procedure: The Existing Body of Rules <i>Burkhard Hess (Max Planck Institute Luxembourg)</i>
14:30-14:45	Civil Procedure: The Agenda of the European Commission <i>Michael Shotter (European Commission)</i>
14:45-15:15	General discussion

Friday, 18 October: Expert Seminar

Chair: *Thomas Pfeiffer (Heidelberg University)*

15:30-16:00	Structure of the Proceedings <i>Xandra Kramer (Erasmus University Rotterdam)</i>
16:00-16:30	Provisional and Protective Measures <i>Gilles Cuniberti (University of Luxembourg)</i>
16:30-17:00	Access to Information and Evidence <i>Nicolò Trocker (University of Florence)</i>
17:00 -17:30	General discussion

Saturday, 19 October: Expert Seminar ctd.

Chair: *Marcel Storme (Professor Emeritus; Honorary President of the International Association of Procedural Law)*

- 09:00-09:30 Due Notice of Proceedings
Eva Storskrubb (Senior associate at Roschier, Stockholm)
- 09:30-10:00 Obligation of the Parties and Lawyers
C. H. (Remco) van Rhee (University of Maastricht)
- 10:00-10:30 Multiple Claims and Parties
Rachael Mulheron (Queen Mary University of London)
- 10:30-11:00 Coffee break

Expert Seminar ctd.

Chair: *Verica Trstenjak (University of Vienna; External Scientific Member of the Max Planck Institute Luxembourg)*

- 11:00-11:30 Costs
Neil H. Andrews (University of Cambridge)
- 11:30-12:00 Lis Pendens and Res Judicata
Frédérique Ferrand (University Jean Moulin Lyon 3)
- 12:00-12:30 Transparency of assets and enforcement
Miklós Kengyel (University of Pécs)
- 12:30-13:00 General discussion
- 13:00-13:15 Closing remarks
Rolf Stürner (University of Freiburg)
- 13:15-14:30 Lunch
- 14:30 -16:00 Strategic Meeting: Next steps
Venue: Marietta-Blau Saal, Universitätsring 1, 1010 Vienna

Contact details:

Secretariat of the European Law Institute (ELI)
Schottenring 14, 1010 Wien (Austria)
Phone: +43 (0)1 4277 22101 | Fax: +43 (0)1 4277 9221
secretariat@europeanlawinstitute.eu