



EN

GOVERNING COUNCIL
94th session
Rome, 6 - 8 May 2015

UNIDROIT 2015
C.D. (94) 7
Original: English
March 2015

**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>Medium</i>
<i>Related documents</i>	<i>UNIDROIT 2015 – C.D. (94) 2; UNIDROIT 2014 – C.D. (93) 7</i>

1. The ALI/UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute/UNIDROIT Study Group and adopted in 2004 by the Governing Council of UNIDROIT, aimed at reconciling the differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones. 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 fulfillment of the Principles. The Rules could be considered either for adoption or for further adaptation in various legal systems and along with the Principles could be considered as a model for reform in domestic legislation (Reporters' Study, Rules on Transnational Civil Procedure, Introductory Note, Cambridge University Press, 2006, 99).

2. During its 92nd Session in 2013, the Governing Council considered the proposal by the Secretariat to resume work on the development of the "Rules" with particular focus on regional implementation (see UNIDROIT 2013 – C.D. (92) 13, paras 44-45). In this connection, the Secretariat submitted that in the short term, the most promising partner for institutional co-operation regarding civil procedural law would be represented by the newly founded European Law Institute (ELI), created with the aim to initiate, conduct and facilitate research, make recommendations and provide practical guidance in the field of European legal development. A joint ELI/UNIDROIT project on the development of regional rules based on the adaptation of the ALI/UNIDROIT Principles would serve as a useful tool to avoid a fragmentary and haphazard growth of European civil procedural law, while at the same time supporting the promotion of the ALI/UNIDROIT Principles. Furthermore, it would respond to the interest expressed by ELI in co-

operating with UNIDROIT in areas of common interest. It could also represent a first attempt towards the development of other regional projects by adapting the ALI/ Unidroit Principles to the specificities of regional legal cultures, leading the way to the drafting of other regional rules. The proposal was approved by the Governing Council at its 92nd Session and UNIDROIT General Assembly thereafter, at its 72nd session in 2013, included the topic in the UNIDROIT Work Programme 2014-2016 and assigned to it a low priority status (UNIDROIT 2013, A.G. (72) 9, para 26). For the activities that took place in 2013 see the Annual Report 2013 (C.D.(93)02, para 5).

3. In 2014, UNIDROIT and ELI agreed on a Memorandum of Understanding specifically related to the project on civil procedure, which clearly identified role and responsibility of each party. A Steering Committee was set up, co-chaired by ELI President Diana Wallis and the UNIDROIT Secretary-General José Angelo Estrella-Faria and composed of representatives of both organisations¹ and of Reporters for the first three Working Groups that were established ("access to information and evidence"², "provisional and protective measures"³, and "service of documents and due notice of proceedings"⁴). A first meeting of the Steering Committee and Co-Reporters was held on 12 and 13 May 2014 in Rome and focused on the clarification of the purpose of the joint project and of its methodology, in order to achieve a coordinated approach. It also stressed the importance of ensuring a wide representation of different European legal systems in the Working Groups as well as input from judges and practicing lawyers. It was finally decided to set up a list of advisers drawn both from academia and the legal professions that would serve as an expert "soundboard" for the work of the groups.

4. A joint meeting of the Steering Committee and Working Groups was held on 27 and 28 November 2014 at the seat of UNIDROIT in Rome. At the joint meeting, preliminary reports produced by the first three Working Groups were discussed and two further groups ("*lis pendens* and *res judicata*"⁵ and "obligations of the parties and lawyers")⁶ were set up. A time-table for the preparation and examination of the texts was agreed, the aim being to finalise the Rules by early 2017.

5. The November meeting was attended by a significant number of Observers from Intergovernmental Organisations (Hague Conference on Private International Law (HCCH)), European Institutions (the European Commission, the European Parliament (JURI Committee), and the Court of Justice of the European Union), Professional Associations (the Association for International Arbitration (AIA), the Council of Bars and Law Societies of Europe (CCBE), the Council of the Notariats of the European Union (CNUE), the European Network of the Councils of the Judiciary (ENCJ), the International Bar Association (IBA), the *Union Internationale des Avocats*

¹ In addition to the Co-Chairs: John Sorabji (Principal Legal Adviser to the Lord Chief Justice and Master of the Rolls), and Remo Caponi (University of Florence), for ELI; UNIDROIT Deputy Secretary General Anna Veneziano and Rolf Stürner (University of Freiburg and former Co-Reporter for the ALI-UNIDROIT Principles) for UNIDROIT.

² Neil Andrews (Clare College, University of Cambridge) (co-reporter); Fernando Gascón Inchausti (University Complutense of Madrid) (co-reporter); Laura Ervo (University of Örebro); Frédérique Ferrand (Université Jean Moulin Lyon 3); Victória Harsági (Pázmány Péter Catholic University, Budapest); Michael Stürner (University of Konstanz).

³ Neil Andrews (Clare College, University of Cambridge) (co-reporter); Gilles Cuniberti (Université de Luxembourg) (co-reporter); Mr Torbjörn Andersson (University of Uppsala); Fernando de la Mata (Baker & McKenzie); Alan Uzelac (University of Zagreb).

⁴ Astrid Stadler (University of Konstanz) (co-reporter); Eva Storskrubb (University of Uppsala) (co-reporter); Marco De Cristofaro (University of Padua); Emmanuel Jeuland (Université Paris 1 Panthéon-Sorbonne); Wendy Kennett (Cardiff University); Dimitrios Tsikrikas (University of Athens).

⁵ Co-reporters C.H. van Rhee (Maastricht University) and Alan Uzelac.

⁶ Co-reporters Frédérique Ferrand and Burkhard Hess (Director of the Max Planck for International, European and Regulatory Procedural Law, Luxembourg).

(UIA), the *Union internationale des huissiers de justice* (International Union of Judicial Officers) (UIHJ)), and Research Institutions (the International Association of Procedural Law and the Max-Planck Institute of Luxembourg for International, European and Regulatory Procedural Law). The American Law Institute (ALI), which prepared the ALI/UNIDROIT Principles of Transnational Civil Procedure jointly with UNIDROIT, also attended.

6. At its 73rd Session in 2014 the UNIDROIT General Assembly, following the proposal by the Governing Council at its 94th Session, decided to increase the priority of the project from low to medium, considering the working assumption established with the European Law Institute regarding the respective financial contributions to the project and the fact that raising the priority would not negatively affect any other project.

7. The next meeting of the Steering Committee and the Co-Reporters of the Working Groups will be held on 16 April 2015 in Brussels. The meeting will consider the second progress reports of the first three Working Groups and the preliminary report of the two new Groups established in November 2014. It will also set up another two groups, so as to offer a coverage of most of the issues addressed in the ALI-UNIDROIT Principles and for which European rules will be considered to be both useful and feasible.

8. On the same date (16 April 2016) a presentation of the project will be made to the Committee on Legal Affairs of the European Parliament (JURI Committee) at a hearing specifically organised to this end.

9. A presentation of the ELI-UNIDROIT project will also feature at the forthcoming 2015 ELI Annual Conference that will take place in Vienna on 2-4 September at the Austrian Academy of Sciences, as one of the highlights of this year's programme. The UNIDROIT Secretary-General will co-chair the presentation together with the President of ELI Diana Wallis.

10. Finally, the second full meeting of the Steering Committee, the Reporters and Working Group Members as well as Observers is planned for late autumn 2015.

ACTION TO BE TAKEN

11. *The Governing Council is invited to take note of the progress made in the implementation of the project on transnational civil procedure – preparation of regional rules.*