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**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 made since its last session</i>
<i>Mandate</i>	<i>Work Programme 2014-2016 renewed for Work Programme 2017-2019</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2017 – C.D. (96) 7; UNIDROIT 2018 – C.D. (97) 2</i>

I. PROJECT HISTORY

1. The ALI/UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute (ALI)/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 follows 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

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

2. With the aim of resuming work in this area, UNIDROIT focused on the promotion and implementation of the ALI/UNIDROIT Principles through the development of regional rules based on them. In this respect, the possibility of a joint project on the development of European rules of civil procedure was discussed within the framework of an institutional co-operation with the European Law Institute (ELI). 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. 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 the ELI President and the UNIDROIT Secretary-General and composed of representatives of both organisations.²

3. The project was authorised by the UNIDROIT General Assembly at its 72nd session (Rome, 5 December 2013) and inserted in the Work Programme of the Institute for the triennium 2014-2016 (see UNIDROIT 2013 – A.G. (72) 9, 8, paras. 26-28). At its 73rd session (Rome, 11 December 2014) the UNIDROIT General Assembly, upon proposal of the Governing Council at its 93rd session (Rome, 7-10 May 2014), decided to increase the priority of the project (UNIDROIT 2014 – A.G. (73) 9, para. 30). The UNIDROIT General Assembly, at its 74th Session (Rome, 1 December 2016), upon proposal of the Governing Council at its 95th Session (Rome, 18-20 May 2016) approved the continuation of the project within the Work Programme of the Institute for the triennium 2017-2019.

II. ARCHITECTURE OF THE PROJECT

4. The drafting of the Rules was entrusted to Working Groups (WGs), one for each main topic covered by the ALI/UNIDROIT Principles, led by two Co-Reporters. The WGs started functioning in successive waves (to keep the project manageable and to permit to some members of the earlier WGs to join the newer ones, in order to make full use of their experience): a total of eight WG's were established ("access to information and evidence", "provisional and protective measures", "service of documents and due notice of proceedings", "*lis pendens and res judicata*", "obligations of the parties and lawyers", "Costs", "Judgments", "Parties" and "Appeals"), with the first three having finalised their drafts in 2017 for inclusion in a consolidated text reviewed by an overarching "Structure Group" set up with the task of providing substantive coordination. Bi-annual plenary meetings of the Steering Committee and active WG's Reporters (and members) hosted by the two sponsoring organisations were held to discuss draft texts and provide coordination. The Steering Committee further decided to invite to the Annual Plenary Meetings a number of institutional Observers from Intergovernmental Organisations (Hague Conference on Private International Law (HCCH)), European Institutions (the European Commission, the European Parliament and the Court of Justice of the European Union), Professional Associations and Research Associations and Institutions as well as the American Law Institute (ALI). Finally, it was decided to set up a list of advisers drawn both from academia and the legal professions, among which a number of members of the UNIDROIT Governing Council.

² 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.

III. PRESENT STATUS OF THE PROJECT AND PLANNED ACTIVITIES

5. As regards the activities which took place in 2017, Steering Committee members, Co-Reporters and members of the Working Groups of the ELI/UNIDROIT joint project convened on 5-7 April 2017 in Rome to discuss issues pertaining to the finalisation of the drafts of the first three Working Groups and progress drafts and reports of the other Working Groups. On the first day, the Working Group on “Structure” discussed, together with the Steering Committee and representatives of Co-Reporters of the WGs, the consolidated text of three final drafts on “Service and due notice of proceedings”, “Access to information and evidence” and “Provisional and protective measures”, as well as general issues regarding project coordination. The Steering Committee also decided to set up a ninth, and last, Working Group mainly composed by existing members of other WGs and dealing with Appeals, so as to round up the issues addressed in the ALI/UNIDROIT Principles and for which European rules were considered to be both useful and feasible. The Joint Steering Committee meeting with members of the Project took place in the next two days, under the chairmanship of the Secretary-General of UNIDROIT, José Angelo Estrella Faria, and the ELI President, Diana Wallis. All members of the Steering Committee were present as well as Co-reporters and numerous members of all of the Project’s Working Groups.

6. The aforementioned consolidated draft, as well as a proposed preliminary structure outline, was presented to the Governing Council at its 96th session on 10-12 May 2017 (see C.D. (96) 7). An excerpt of the Governing Council Report concerning the project was circulated as feedback to the Working Groups shortly thereafter (see C.D. (96) 15, pp 18-20).

7. On 7 September 2017, the ELI/UNIDROIT project was presented at the 2017 ELI Annual Conference in Vienna. ELI President Diana Wallis and Secretary-General *ad interim* of UNIDROIT Anna Veneziano co-chaired a panel of the “Structure” Group. The panel presented the first consolidated draft of the Rules resulting from the work of the first three Working Groups.

8. On 16-17 November 2017, Steering Committee members, Co-Reporters and members of the Working Groups, as well as Advisers and Observers convened in the Palais Trautson of the Austrian Ministry of Justice for a plenary meeting. Diana Wallis (Past ELI President) and Anna Veneziano (UNIDROIT Secretary-General *a.i.*) opened the meeting. During the two-day event, Members of the Project heard presentations and debated on *res judicata and pendency*, parties, costs, and judgments. The overarching working group “Structure” also presented an updated version of the consolidated draft of the Rules.

9. Steering Committee member Professor Rolf Stürner had the opportunity to present the Project at the Congress of the Association of German, Austrian and Swiss Proceduralists, which was held on 28 February – 2 March 2018 in Basel.

10. A plenary meeting of the Steering Committee, Co-reporters and active Working Groups members will be held in Rome on 9-10 April 2018. Similarly to the meeting held in 2017, a portion of the allocated time will be dedicated to a closed session, to discuss the coordination of the drafts and progress of the Groups, while another part will allow participants including observers and advisers to discuss advanced drafts of the Groups on “Parties”, “Costs”, “Judgments” and “Appeals”.

11. An advanced version of the Rules will be again presented at the ELI General Assembly which will be held in Riga on 5-7 September 2018. The project will be discussed at a joint ELI/UNIDROIT conference organised in cooperation with the Academy of European Law (ERA) which will be held at ERA’s Headquarters in Trier (Germany), on 26-27 November 2018. The “Structure Group” is expected to deliver a further version of the consolidated draft rules following the Conference in November. Finally, Steering Committee Member Professor Rolf Stürner and

Structure Group Co-Reporter Professor Xandra Kramer have been invited to deliver a presentation at the Congress of the Association for International Procedural Law, scheduled for 13-15 March 2019 in Hamburg.

12. Given the proximity of the April meeting with the Governing Council session, a revised version of this document will be issued shortly afterwards including Annexes of the most recent draft Rules (disseminated confidentially to the Governing Council) as well as an update on the work of the Structure Group on general principles, pleadings and structure of the proceedings.

IV. ACTION TO BE TAKEN

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