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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</i>
<i>Priority</i>	<i>Medium</i>
<i>Related documents</i>	<i>UNIDROIT 2015 – C.D. (94) 7; UNIDROIT 2016 – C.D. (95) 2</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, are intended to help reduce the impact of differences between legal systems in lawsuits involving transnational commercial transactions. Their purpose is to propose a model of universal procedure that follows the essential elements of due process of law.

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), founded in 2011, 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. For more information on the events that took place in 2013 see Annual Report 2013 (C.D. (93) 2, p. 16).

3. The project was authorised by the UNIDROIT General Assembly at its 72<sup>nd</sup> session (Rome, 5 December 2013). At its 73<sup>rd</sup> session (Rome, 11 December 2014) the UNIDROIT General Assembly, upon proposal of the Governing Council at its 93<sup>rd</sup> session (Rome, 7-10 May 2014), decided to increase the priority of the project from low to medium.

4. 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 UNIDROIT Secretary-General José Angelo Estrella-Faria and composed of representatives of both organisations<sup>1</sup> and of Reporters for the first three Working Groups that were established (“access to information and evidence”,<sup>2</sup> “provisional and protective measures”,<sup>3</sup> and “service of documents and due notice of proceedings”<sup>4</sup>). Two further groups (“*lis pendens* and *res judicata*”<sup>5</sup> and “obligations of the parties and lawyers”<sup>6</sup>) were set up in November 2014. A significant number of observers were invited to join the project and effectively participated in the first plenary session held in November 2014.<sup>7</sup> For more information on the activities which took place in 2014, and in particular on the preliminary meeting of the Steering Committee and Co-Reporters (UNIDROIT, Rome, 12-13 May 2014), on the presentation of the project at ELI’s General Assembly (Zagreb, 25 September 2014) and on the first plenary meeting of the Steering Committee, Working Groups and Observers (UNIDROIT, Rome, 27-28 November 2014) see Annual Report 2014 – C.D. (94) 2, p. 14-15 and UNIDROIT 2015 – C.D. (94) 7.

5. A second meeting of the Steering Committee and the Co-Reporters of the Working Groups was held on 16 April 2015 in Brussels. On the same date, the project was presented at a hearing of the European Parliament. Speakers at the hearing were ELI President Diana Wallis, UNIDROIT Deputy Secretary-General Anna Veneziano, Working Group Co-Reporters Gilles Cuniberti, Fernando Gascón Inchausti and Eva Storskrubb, as well as Steering Committee member Rolf Stürner. A discussion of the ELI-UNIDROIT project was also featured at the 2015 ELI Annual Conference (Vienna, 2-4 September), both in the general presentation of the project (chaired by UNIDROIT Secretary General José Angelo Estrella-Faria and ELI President Diana Wallis) and during the session of the Member Consultative Committee (MCC) created by ELI on this project and chaired by Matthias Storme.

<sup>1</sup> 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.

<sup>2</sup> 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); Vítória Harsági (Pázmány Péter Catholic University, Budapest); Michael Stürner (University of Konstanz).

<sup>3</sup> 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 (ESADE Law School Barcelona, Baker & McKenzie); Alan Uzelac (University of Zagreb).

<sup>4</sup> 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).

<sup>5</sup> C.H. van Rhee (Maastricht University, Co-Reporter); Alan Uzelac (University of Zagreb, Co-Reporter); Emmanuel Jeuland (Université Paris 1 Panthéon-Sorbonne); Bartosz Karolczyk (DZP, Warsaw); Walter Rechberger (University of Vienna); Elisabetta Silvestri (University of Pavia); ); John Sorabji (Principal Legal Adviser to the Lord Chief Justice and Master of the Rolls); Magne Strandberg (University of Bergen).

<sup>6</sup> Frédérique Ferrand (Université Jean Moulin Lyon 3, Co-Reporter); Burkhard Hess (Director of the Max Planck for International, European and Regulatory Procedural Law, Luxembourg, Co-Reporter); Neil Andrews (Clare College, University of Cambridge); Alexander Arabadjiev (Judge, European Court of Justice); Marco De Cristofaro (University of Padua); Tania Domej (University of Zürich); Fernando Gascón Inchausti (University Complutense of Madrid); Kalliopi Makridou (Aristotle University of Thessaloniki); Jarkko Männistö (lawyer in Finland); Karol Weitz (University of Warsaw).

<sup>7</sup> 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* (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) is co-sponsoring the project.

6. Finally, the second plenary meeting of the Steering Committee, Co-Reporters, Working Group members as well as Observers took place on 26-27 November 2015 at a joint ELI-UNIDROIT conference in cooperation with the Academy of European Law (ERA), entitled “From Transnational Principles to European Rules of Civil Procedure”, at ERA’s Headquarters in Trier (Germany). The conference was attended on behalf of ELI and UNIDROIT by ELI President Diana Wallis, UNIDROIT Deputy Secretary-General Anna Veneziano and Steering Committee members Remo Caponi, John Sorabji and Rolf Stürner. The conference was organised in five different sessions, each featuring presentations by the five active Working Groups of the project. About 70 participants, from diverse legal and institutional backgrounds, attended the event.

7. At the November meeting the Steering Committee formalised the creation of two further Working Groups (respectively on “costs and funding” and “judgments”), in order to provide coverage of most of the issues addressed in the ALI- UNIDROIT Principles and for which European rules were considered to be both useful and feasible.

8. The next Steering Committee and Co-Reporters meeting will be held at UNIDROIT in Rome on 21-22 April 2016. The first five Working Groups are expected to present and discuss advanced drafts of the respective Rules. The meeting will also discuss the mandate to a “Structure Group” chaired by Loïc Cadiet<sup>8</sup> and Xandra Kramer<sup>9</sup>, composed of representatives of the existing groups and entrusted with the task of better coordinating the outputs of each of them.

9. The developments of the joint project will be the object of further presentations and discussions at the next ELI Annual Conference and General Assembly which will be held in Ferrara on 7-9 September 2016.

10. Finally, a plenary meeting of the Steering Committee, Working Group Co-Reporters and Members as well as Observers has already been agreed upon and will be hosted by ELI in Vienna on 21-22 November 2016.

## **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 – formulation of regional rules.*

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<sup>8</sup> Université Paris 1 Panthéon-Sorbonne, General Secretary of the International Association of Procedural Law.

<sup>9</sup> Erasmus University of Rotterdam.