



Commentary on Proportionality in Cross-Border Discovery (November 2024)

The *Commentary on Proportionality in Cross-Border Discovery* (“*Commentary*”) examines the landscape of the overlapping legal analyses of proportionality and comity, offering summaries and commentary on various approaches before recommending a framework that starts with proportionality as a first step—as a threshold issue of discovery scope—while recognizing that proper proportionality analysis may consider the effect of compliance with the non-U.S. law at issue. If the discovery is proportional to the needs of the case, when so considered, *then* courts should conduct a separate comity analysis. Applying these analytical steps in strict order should minimize analytic and doctrinal problems that can arise with common factors.

The *Commentary* begins with an introduction. The second section outlines the scope of discovery and proportionality in the U.S. The third section of the *Commentary* provides an overview of data protection laws outside of the U.S. and the potential burdens these requirements might place on a party trying to comply with discovery requests or court orders from the U.S. The fourth section discusses comity considerations in detail. The fifth section focuses on U.S. proportionality rules applied in the cross-border context. The sixth section sets forth the aforementioned recommended approach for U.S. courts applying a proportionality analysis in the cross-border context. The final section of the *Commentary* offers practice points for addressing proportionality in cross-border discovery.

The full text of *Commentary on Proportionality in Cross-Border Discovery*, is available free for individual download from The Sedona Conference website at:

https://thesedonaconference.org/publication/Commentary_on_Proportionality_in_Cross-Border_Discovery

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