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FINANCE COMMITTEE
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Item No. 6 on the Agenda: Draft amendments to the UNIDROIT Regulations on financial matters

1. On 19 March 2010, the Secretariat received a Note Verbale from the Embassy of the Federal Republic of Germany in Italy containing the following proposal:

"Germany noticed that, unlike in all other comparable international organisations, no specific financial regulations beside partial rules in the Statute apparently exist in the International Institute for the Unification of Private Law (UNIDROIT). This is considered a serious gap with regard to a clear distribution of responsibilities and transparency in UNIDROIT's financial matters.

"Consequently, Germany proposes to establish comprehensive financial regulations within UNIDROIT and has attached a draft text for consideration of the Finance Committee.

"This proposal mirrors the established budgetary practices and the already existing Regulations in the Statute and Regulations of UNIDROIT and does not intend to change UNIDROIT's current financial mechanisms.

"Germany would be grateful if UNIDROIT would kindly set this item on the agenda of the Finance Committee meeting scheduled for the 25 March 2010 and communicate the attachment to the UNIDROIT member States."

2. Those proposals, which were set out in document (UNIDROIT - 2010 F.C. (67) 4), were considered by the Finance Committee at its 76th session (Rome, 25 March 2010). At that session, the Committee was reminded that, in an intervention made at the 65th session of the General Assembly (Rome, 2 December 2009), Canada had proposed a functional and financial review of UNIDROIT, covering not only the Institute's financial or budgetary situation, but also its strategic planning. The Committee agreed that the scope of such a review went beyond its competence, and that the matter could be taken up by the Governing Council, if it so chose (UNIDROIT 2010 - F.C. (67) 5 - Report of the session, para. 40). The Committee then held a brief exchange of views on the proposals by Germany for amendments to the provisions of the UNIDROIT Regulations dealing with financial administration of the Institute. The Committee accepted a suggestion that those proposals, too, could be taken into account by the Governing Council at the occasion of the

discussion on the review suggested by Canada. The Committee, therefore, agreed that the matter should be reported to the Governing Council, and invited the Secretary-General to formulate his opinion on the proposal (UNIDROIT 2010 - F.C. (67) 5 – Report of the session, para. 46).

3. The Governing Council completed an in-depth substantive review of the Strategic Plan of the Organisation at its 90th session (Rome, 9-11 May 2011), and concluded with request to the Secretariat to draw up a revised version of the Strategic Plan, taking into account the Council's deliberations. That document will be submitted to the Council and the General Assembly for their information, at their joint session in May 2012. It should be noted, however, that the Governing Council chose to focus on broad strategic objectives, rather than on financial management issues and preferred to leave it for the Finance Committee to undertake an initial review of the provisions of the UNIDROIT Regulations dealing with financial administration of the Institute.

4. *In the light of the above, the Finance Committee may wish to resume its consideration of the proposals originally submitted by Germany in 2010, which are set out in the Annex I to this memorandum. For ease of reference, the proposed new texts are shown in tabular form, together with the corresponding provisions in the existing Regulations, if any, followed by comments by the Secretariat.*

<i>FINANCIAL REGULATIONS (proposals by Germany)</i>	<i>Existing UNIDROIT Regulations</i>	<i>Comments by the Secretariat</i>
<p><i>Article 1 The objectives of the Financial regulations</i></p> <p>1.1 The financial regulations shall regulate the financial management of the International Institute for the Unification of private Law (UNIDROIT). In case of conflict between the financial regulations and the statute of UNIDROIT the latter prevails.</p>	<p><i>Statute, Article 17</i></p> <p>1.- Rules governing the administration of the Institute, its internal operations and the conditions of service of the staff shall be adopted by the Governing Council and must be approved by the General Assembly and communicated to the Italian Government.</p>	<p><i>The proposed financial regulations could be incorporated into part II of the UNIDROIT Regulations.</i></p>
<p>1.2 The financial year shall run from 1 January to the 31 December.</p>	<p><i>Article 23</i></p> <p>The financial year shall run from 1 January to 31 December.</p>	
<p><i>Article 2 Budget</i></p> <p>2.1 Every year by 15 March the Secretary-General shall submit a proposal for a draft budget for the following financial year to the Finance Committee, for preliminary opinion. This draft budget, amended as</p>	<p><i>Article 31</i></p> <p>Every year by 15 March the Secretary-General shall submit a proposal for a draft budget for the following financial year to the Finance Committee, for preliminary opinion. This draft budget, amended</p>	<p><i>Article 2 Budget</i></p> <p><i>The proposed text in 2.1 corresponds to Article 31 of the UNIDROIT Regulations</i></p>

<p>necessary to reflect the Finance Committee's opinion, shall then be submitted to the Governing Council for consideration and, subsequently, communicated to member Governments for comment. Any such comments shall reach the Secretary-General by 30 September at the latest. The draft budget shall then be submitted, with any such comments, to the Finance Committee, for final opinion, and, with any amendments recommended by the Finance Committee, laid before the General Assembly for approval.</p>	<p>as necessary to reflect the Finance Committee's opinion, shall then be submitted to the Governing Council for consideration and, subsequently, communicated to member Governments for comment. Any such comments shall reach the Secretary-General by 30 September at the latest. The draft budget shall then be submitted, with any such comments, to the Finance Committee, for final opinion, and, with any amendments recommended by the Finance Committee, laid before the General Assembly for approval.</p>	
<p>2.2 The budget shall be divided into chapters and articles. It shall present an introduction, a table of the expected receipts, including the estimated balance of the previous year and the special contribution of the host country, with explanatory notes, as well as a table of the expected expenditures with explanatory notes. The budget shall include forecast expenditure and revenue which balance out. It shall include a statement on the main changes in comparison with the budget of the previous financial year and such further annexes or statements as the Secretary-General or the General Assembly deems necessary.</p> <p>Forecast expenditure and revenue shall be expressed in the currency which is legal tender in Italy.</p>		<p><i>The proposed texts in 2.2 reflects the existing practice in UNIDROIT.</i></p>

<p>2.4 The Secretary-General shall make all necessary arrangements in order that member States at the General Assembly may have at their disposal all elements necessary to form an opinion at least two weeks before the General Assembly at which the budget is to be adopted and the amount of the members' financial contributions is to be set.</p>	<p>None</p>	<p><i>The proposed text in 2.4 reflects the existing practice in UNIDROIT.</i></p>
<p>2.5 The General Assembly shall, by consensus, adopt the budget and set the amount of the members' financial contributions based on the draft submitted by the Secretary-General.</p>	<p><i>Statute, Article 5</i></p> <p>2. - The Assembly shall be convened in Rome by the President at least once a year, in ordinary session, to approve the annual accounts of income and expenditure and the budget.</p>	<p><i>The proposed new text in 2.5 reflects the existing practice in UNIDROIT.</i></p>
<p>2.6 The Secretary-General shall notify, at the end of the General Assembly, each of the members of the amount of their financial contribution as set by the General Assembly for each financial year.</p> <p>The compulsory financial contributions shall be calculated in the currency which is legal tender in Italy and shall be paid in that currency or in another currency accepted by the Secretary-General. The entire contribution is due at the beginning of each year. As of</p>	<p><i>Statute, Article 16</i></p> <p>1. - The yearly expenditure relating to the operation and maintenance of the Institute shall be covered by the income specified in the budget of the Institute, including in particular the ordinary basic contribution of the Italian Government, the promoter of the Institute, as approved by the Italian Parliament, which that Government declares to be set, as from 1985, at 300 million Italian lire per annum, a figure</p>	<p><i>The proposed new text in 2.6 reflects the existing practice in UNIDROIT. It is useful, however, to codify such practice and the Secretary-General welcomes the proposal in its present form.</i></p>

the 1st of January of the following calendar year, the unpaid financial contribution or its debit balance shall be considered as in arrears for one year.

New members must pay a contribution for the year during which they become members; it shall be

calculated pro rata temporis, based on the actual date of membership.

The Secretary-General shall regularly present the status of collection of the compulsory annual financial contributions to the Finance Committee and to the General Assembly.

which may be revised at the end of each period of three years by the law approving the budget of the Italian State, as well as the ordinary annual contributions of the other participating Governments.

2. - For the purpose of apportioning the part of the yearly expenditure not covered by the ordinary contribution of the Italian Government or by income from other sources among the other participating Governments, the latter shall be classified in categories. Corresponding to each category shall be a particular number of units.

Regulations, Article 24

The Institute's revenue shall be composed of:

- (1) the contribution of the Italian Government;
- (2) the contributions of other member Governments;
- (3) any other contributions, donations or legacies accepted by the Governing Council;
- (4) income derived from the Institute's activities;
- (5) income from the Institute's property.

<p>2.8 At the close of the financial year, any residual balance made up of the difference between revenue on the one hand, and expenditure and liabilities on the other hand, shall be posted as a cash balance.</p> <p>The Secretary-General may propose to the Finance Committee:</p> <p>a) to record the surplus as revenue in the next financial year, thus reducing assessed contributions of members;</p> <p>b) to use the surplus for any other purpose.</p> <p>On the basis of these proposals, the Finance Committee shall make a recommendation to the General Assembly.</p>		<p><i>There is currently no provision similar to the proposed 2.8.</i></p> <p><i>The Finance Committee may wish to reverse the order of the two alternatives, thereby making (b) as the default solution.</i></p> <p><i>Furthermore, the Finance Committee may wish to delete the last sentence of draft 2.8 ("On the basis of these proposals, the Finance Committee shall make a recommendation to the General Assembly"), since it would not be practicable to await the General Assembly session, which usually takes place at the end of the calendar year, to decide on the allocation of surplus funds.</i></p>
<p style="text-align: center;"><i>Article 3 Financial management</i></p> <p>3.1 In adopting the budget for the financial year, the General Assembly authorises the Secretary-General to incur expenses and make payments within the approved limits.</p>	<p>None</p>	<p><i>There is currently no provision similar to the proposed article 3.1, but this rule is implied in the existing regulations.</i></p>
<p>3.2 The Secretary-General may authorise transfers within a same budget chapter, or, with the approval of</p>	<p><i>Article 32</i></p> <p>2. – Any transfer from one chapter of the budget</p>	<p><i>The proposed text in 3.2 corresponds essentially to article 32, paragraph 2, of</i></p>

<p>the Finance Committee, from one chapter to another.</p>	<p>to another shall be authorised by the Finance Committee or, in urgent cases, by the President, pending ratification by the Finance Committee. Transfers from one article to another of the same chapter shall be authorised by the President.</p>	<p><i>the Regulations.</i></p>
<p>3.3 The management accounts for each financial year shall specify all revenue and expenditure.</p>	<p>None</p>	<p><i>There is currently no provision similar to the proposed article 3.3, but this rule is implied in the existing regulations.</i></p>
<p>3.4 The Secretary-General may set up specific accounts within the budget framework which shall be subject to audits of UNIDROIT. He/she must, in such cases, inform the Finance Committee and precisely define the objectives and the conditions for the establishment of each specific account. He/she shall report on any such accounts to the Finance Committee.</p>	<p>None</p>	<p><i>This provision may be useful so as to provide a transparent auditing and reporting system for the receipt and disbursement of voluntary contributions.</i></p> <p><i>However, in order to clearly distinguish between statutory and extraordinary income, the Secretariat suggests the deletion of the words "within the budget framework".</i></p>
<p>3.5 The Secretary-General shall choose the bank(s) where the funds of UNIDROIT are to be deposited. He/she shall be authorised to invest such funds as are not necessary for the immediate running needs of UNIDROIT, on the condition that he/she take due care in making</p>	<p><i>Article 26</i></p> <p>1. – All Institute funds shall be deposited in banks selected by the Finance Committee.</p>	<p><i>The proposed new rules are not identical with articles 26 and 30 of the regulations, and may usefully replace the existing article 26(2), which has become obsolete.</i></p>

<p>investments and in selecting establishments in which he/she has no vested interest. The Secretary-General shall account for the results of any such investments.</p>	<p>2. –The Institute may also possess a post office current account.</p> <p style="text-align: center;"><i>Article 30</i></p> <p>The President may delegate to the Secretary-General (or a person replacing him in accordance with Article 20) and to the Treasurer or his substitute the power to sign on behalf of the Institute.</p>	<p><i>It would also reflect current practice to clearly state that it is the Secretary-General, and not the Finance Committee that chooses the bank where UNIDROIT funds are deposited.</i></p>
<p>3.6 The Secretary-General shall establish any rules and methods he/she deems necessary to ensure the discipline and efficiency of management. He/she shall, in particular:</p> <ul style="list-style-type: none"> a) set rules for the incurring of expenses; b) prescribe that all payments be made upon the presentation of supporting documentation and proof that the services or products have actually been provided and have not previously been paid for; c) authorise members of staff, responsible to the Secretary-General, to receive funds, incur expenses and carry out payments in the name of UNIDROIT; 	<p style="text-align: center;"><i>Article 27</i></p> <p>The Institute’s property and assets shall be handled in the manner decided by the Finance Committee.</p> <p style="text-align: center;"><i>Article 33</i></p> <p>Every proposal for expenditure shall be entered on a special form, accompanied by supporting documents where necessary, and stating:</p> <ul style="list-style-type: none"> (a) the name and address of the proposed recipient of payment; 	<p><i>The proposed new rules are not identical with articles 27 and 33 of the regulations, and may usefully replace the existing article 27), which contemplates a responsibility which the Finance Committee never exercised.</i></p>

<p>d) execute the internal controls as provided for in articles 33 – 36 of the UNIDROIT Regulations.</p>	<p>(b) the amount payable; (c) the object of the expenditure; (d) the relevant item of the budget.</p>	
<p>3.7 The Secretary-General shall set rules for the acquisition of equipment, goods, facilities and supplies as well as for the implementation of works or external services. A tender process shall be instituted each time that it appears necessary to the Secretary-General to do so in order to guarantee transparency and the best possible use of resources.</p>	<p style="text-align: center;"><i>Article 34</i></p> <p>The Secretary-General, on the advice of the Treasurer, shall approve the proposal where appropriate and sign an order for payment.</p> <p style="text-align: center;"><i>Article 35</i></p> <p>The Treasurer shall execute orders for payment signed by the Secretary-General and obtain receipts for payment.</p> <p style="text-align: center;"><i>Article 36</i></p> <p>The Treasurer, acting as head of supplies, shall provide each member of staff with the office articles he needs. He shall keep an inventory of such articles and, whenever the Secretary-General so requests, prepare a statement showing how they have been used.</p>	<p><i>The proposed new rule is not identical with articles 34-36 of the Regulations, and could usefully supplement them.</i></p>
<p style="text-align: center;"><i>Article 4 General accounting</i></p> <p>4.1 The Secretary-General shall manage the general</p>	<p style="text-align: center;">None</p>	<p><i>There is currently no provision similar to the proposed article 5.3. While the proposed text generally reflects current</i></p>

<p>accounting for each financial year, monitoring:</p> <ul style="list-style-type: none"> a) revenue and expenditure; b) the use of voted appropriations; c) the financial situation, in the form of a balance sheet, including: <ul style="list-style-type: none"> - assets: fixed assets, securities, disposable assets and funds to be collected; - liabilities: the amount of the statutory reserve funds, provision accounts, outstanding debts and accrual liability accounts. 		<p><i>practice, the Finance Committee may wish to consider whether regulations at this level of detail is necessary.</i></p> <p><i>In any event, if this provision is introduced, the reference to "fixed assets, securities, disposable assets" should be deleted, since the accounts provided by UNIDROIT are exclusively financial accounts and not an economic balance sheet.</i></p>
<p>4.2 The accounting system shall be expressed in the currency which is legal tender in Italy.</p>	<p>None</p>	
<p style="text-align: center;"><i>Article 5 Auditing of accounts</i></p> <p>5.1 The General Assembly, by a weighted qualified majority vote, shall appoint a financial auditor, upon the nomination of the President. The auditor shall be appointed for a term of five successive financial years (renewable). The auditor may be removed from office under the same conditions as those of appointment.</p>	<p style="text-align: center;"><i>Article 37</i></p> <p>The accounts shall be balanced as at 28 February and, after preparation for examination during the month of March, communicated to the auditors by 1 April. They shall then be submitted to the member Governments whose observations thereon shall be communicated to the Secretary-General by 15 September. They shall subsequently be submitted with the observations, if any, of</p>	

	<p>Governments, to the Finance Committee for opinion and to the General Assembly for approval.</p> <p style="text-align: center;"><i>Article 38</i></p> <p>The auditors shall submit directly their report to the General Assembly. They may attend all meetings of the General Assembly, of the Governing Council, of the Permanent Committee and of the Finance Committee, having the right to take the floor but not to vote. They may also submit to the said bodies, at any time, a report on matters which in their opinion call for action on their part.</p>	
<p>5.2 The auditor must have all titles and qualifications required for the carrying out of necessary duties, which shall consist of the annual auditing of the accounts and ensuring that the provisions of the Financial Regulations are abided by.</p>	<p style="text-align: center;"><i>Statute, Article 17</i></p> <p>3. - The General Assembly shall, on the nomination of the President, appoint one or two auditors responsible for the financial control of the Institute. They shall be appointed for a period of five years. Should two auditors be appointed, they must be of different nationalities.</p>	

<p>5.3 The auditing of accounts shall include the implementation of controls deemed useful by the financial auditor, over the course of year and then at the end of the year, both on and off site, such as checking the balance of the accounts for the general accounting, the consistency between the accounting entries and the bank statements, the reconciliation of entries and revenue and expenditure supporting documents.</p>	<p>None</p>	<p><i>There is currently no provision similar to the proposed article 5.3. While the proposed text generally reflects current practice, the Finance Committee may wish to consider whether regulations at this level of detail is necessary.</i></p>
<p>5.5 The financial auditor's report shall be delivered to the Secretary-General at the latest three months after the close of the corresponding budget year. To this end, the management accounts, the financial position, and the general accounts shall be submitted to the auditor, at the latest, by the 15th of March following the end of the corresponding financial year.</p>	<p>None</p>	<p><i>There is currently no provision similar to the proposed article 5.4. While the proposed text generally reflects current practice, the Finance Committee may wish to consider whether regulations at this level of detail is necessary.</i></p>
<p style="text-align: center;"><i>Article 6 Approval of the accounts</i></p> <p>6.1 The members of the Finance Committee shall have available to them the financial auditor's report, explanatory documents and any further background information, insofar as possible, one month before the date of the meeting at which the Finance Committee considers the first estimates for the budget of the following year.</p>	<p>None</p>	<p><i>It is generally desirable for the Finance Committee to systematically review the accounts of the previous financial year at the same time as the Committee considers the first budget estimates for the following year, and the Secretary-General has made the accounts available at that occasion in recent years.</i></p>

		<p><i>However, since the accounts of UNIDROIT are closed on 28 February, it is not feasible to deliver the accounts of the previous year "one month before the date of the meeting at which the Finance Committee considers the first estimates for the budget of the following year" while complying with article 31 of the Regulations which requires the first estimates to be submitted to the Finance Committee every year by 15 March.</i></p>
<p>6.2 Based on the report of the financial auditor and any additional information supplied by the Secretary-General, the Finance Committee shall make a determination, at the close of each financial year, on the management accounts, the balance sheet, the Working Capital Fund, the assignment of any surplus and the final discharge of the Secretary-General for the management of the said financial year.</p>		<p><i>There is currently no provision similar to the proposed article 6.2, but the text reflects current practice.</i></p>
<p>6.3 Member States shall be provided with the financial auditor's report, explanatory documents and any further background information, one month before the General Assembly at which the management accounts of the previous financial year and the budget for the following</p>		<p><i>There is currently no provision similar to the proposed article 6.3, but the text reflects current practice.</i></p>

<p>financial year are to be submitted for approval.</p>		
<p>6.4 Based on the report of the financial auditor and any additional information, instructions or recommendations from the Finance Committee, the General Assembly shall decide whether to approve the management accounts, the balance sheet, the Working Capital Fund, the proposals for the appropriation of any surplus and whether to discharge (give quietus to) the Secretary-General, before voting on the budget for the following financial year.</p>	<p>None</p>	<p><i>There is currently no provision similar to the proposed article 6.4, but the text reflects current practice.</i></p> <p><i>However, the reference to "management accounts" and "balance sheet" should be replaced with "accounts" only.</i></p>
<p><i>Article 7 Special provisions</i></p> <p>7.1 The Secretary-General may delegate in his/her discretion, all or part of his/her duties, to UNIDROIT staff members if he/she considers this necessary for the implementation of the Financial Regulations. However, such staff members cannot sub-delegate the duties entrusted to them by the Secretary-General. The Finance Committee must be informed of any delegation of duties.</p>	<p><i>Article 30</i></p> <p>The President may delegate to the Secretary-General (or a person replacing him in accordance with Article 20) and to the Treasurer or his substitute the power to sign on behalf of the Institute.</p>	
<p>7.2 In the event of appointment of a new Secretary-General, and to ensure continuity of the financial</p>		<p><i>There is currently no provision similar to the proposed article 7.1. While the</i></p>

<p>management of UNIDROIT, the transfer of related instructions between the exiting Secretary-General and the new Secretary-General shall be carried out. A provisional status of the management accounts and balance sheet shall be established from the date at which the Secretary-General assumes his/her duties when this does not take place at the end of the financial year. This statement shall be co-signed by each party and is addressed for information purposes to the Finance Commission of UNIDROIT and kept in the accounting files of UNIDROIT.</p>		<p><i>proposed text would not be incompatible with current practice, the Finance Committee may wish to consider whether regulations at this level of detail is necessary.</i></p>
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