



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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**Item No. 5 on the agenda: Amendments to the Work Programme of the Organisation
for the 2020-2022 triennium**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Amendments to the Work Programme of the Organisation for the 2020-2022 triennium</i>
<i>Action to be taken</i>	<i>To adopt the recommended amendments to the current Work Programme</i>
<i>Related documents</i>	<u>UNIDROIT 2020 – C.D. (99) B.Misc. 2</u> ; <u>UNIDROIT 2020 – C.D. (99) A.8</u> ; <u>UNIDROIT 2020 – C.D. (99) A.2</u> ; <u>UNIDROIT 2020 – C.D. (99) B.7</u> ; <u>UNIDROIT 2020 – C.D. (99) B.3</u> ; <u>UNIDROIT 2020 – C.D. (99) B.4 rev.</u>

I. INTRODUCTION

1. This document formally requests the General Assembly to consider adopting amendments to the Institute's 2020-2022 Work Programme, as recommended by the Governing Council at its 99th session in April/May and September 2020 for consideration by the General Assembly at its 79th session (Rome, 17 December 2020) (see [UNIDROIT 2020 – C.D. \(99\) A.8](#)).

II. CONSIDERATION OF THE INCLUSION OF A NEW ITEM IN THE WORK PROGRAMME:

A Model Law on Warehouse Receipts

2. At the first meeting of the 99th session of the Governing Council held by remote written procedure in April/May 2020, the UNIDROIT Secretariat formally introduced the proposal to include the drafting, jointly with UNCITRAL, of a Model Law on Warehouse Receipts as a new project with high priority status in the 2020-2022 Work Programme ([UNIDROIT 2020 – C.D. \(99\) A.2, para. 1](#)). The Council unanimously endorsed this proposal and agreed to recommend the inclusion of the proposed new project in the current Work Programme, subject to approval of a parallel mandate by UNCITRAL's Commission ([UNIDROIT 2020 – C.D. \(99\) A.8, para. 21](#)), to the General Assembly at its 79th session.

3. The proposal of this new joint project had originated from an invitation received by the UNIDROIT Secretariat from UNCITRAL's Secretariat to consider undertaking joint work towards the drafting of legislative work on Warehouse Receipts, pursuant to a resolution from the 52nd UNCITRAL Commission Session held in July 2019. At that time, the UNIDROIT Governing Council had already discussed the proposals for inclusion in the 2020-2022 Work Programme at its 98th session (Rome, 8-10 May 2019), and therefore it could not be discussed together with other proposals. Nonetheless, the existing need, as ascertained by international institutions working on the ground, and the potential relevance of a state-of-the-art Model Law, prompted the UNIDROIT Secretariat to propose this new project to the Governing Council, despite the current Work Programme being already underway.

4. The invitation from UNCITRAL to conduct joint work can be contextualised in the long-standing relationship between both institutions, their expertise on topics relevant and complementary to warehouse receipts, and in the adequate fit of the topic within their current work programmes and strategic plans.

5. Warehouse receipts are documents -paper or in electronic form- issued by warehouse operators that state the ownership of a commodity and may be traded or used as collateral to obtain credit. A supportive legal framework is widely regarded as a prerequisite for a well-functioning warehouse receipt system that can foster transactions and facilitate access to finance, especially in the agricultural sector and with particular importance for smallholders and small and medium-sized enterprises. Many countries need to modernize their national legal frameworks for warehouse receipts to take into account the new developments in the sector over recent times, in particular the challenges and opportunities presented by new technologies.

6. The need for a legislative guidance instrument on warehouse receipts to facilitate legislative reforms had been ascertained based on a feasibility study conducted by the Kozolchuk National Law Center that was presented to the UNCITRAL Commission in 2019,¹ as well as preliminary research conducted by both the UNCITRAL and UNIDROIT Secretariats. Furthermore, both organisations co-

¹ UNCITRAL, Warehouse receipts: Developing an UNCITRAL Instrument on Warehouse Receipts, 2019, available at https://uncitral.un.org/sites/uncitral.un.org/files/warehouse_receipts_report_final.pdf.

organised a webinar on 26 March 2020 to discuss the proposal of legislative work on warehouse receipts with a broad audience of experts and organisations active in the field.²

7. Given the nature of the topic, and considering their previous experience in this field, both UNCITRAL and UNIDROIT have an important comparative advantage for developing legislative guidance on warehouse receipts. For UNIDROIT, undertaking work on warehouse receipts is not only directly linked with its expertise on commercial contracts and secured transactions, but above all it is closely related to –and complementary with– its work on “Private Law and Agricultural Development” introduced following the Colloquium held in Rome on 8-10 November 2011 on “Promoting Investment in Agricultural Production: Private Law Aspects”.³ The new project would focus on access to finance while reinforcing the transactional side of the Institute’s work on agriculture. It would be consistent with this Secretariat’s vision of future work on the area, as conveyed to the Governing Council concerning the adoption of the 2020-2022 Work Programme at its 98th session in May 2019, where it was expressly stated that future work on agricultural finance “could seek to improve access to financing – a key impediment to efficiency and technology improvements in the agricultural sector”.⁴

8. The scope of the project as proposed by the two institutions would encompass the development of legislative guidance in the form of a Model Law on the private law aspects of warehouse receipts.⁵ With regard to the cooperation between the organisations, and in accordance with the UNCITRAL Secretariat, the Secretariat recommends that the General Assembly would allow UNIDROIT to lead the joint preparatory work through a UNIDROIT Working Group, developing a first comprehensive draft of the Model Law; it is envisaged that the Institute’s usual partners in the work conducted on law and agricultural development (e.g., the Food and Agriculture Organization of the United Nations, FAO, and the International Fund for Agricultural Development, IFAD) will be actively involved. Once the UNIDROIT Working Group completes the draft Model Law, the instrument will be submitted for intergovernmental negotiations through an UNCITRAL Working Group, given the legislative nature of the project. The envisaged final outcome would be a joint, co-branded UNCITRAL/UNIDROIT Model Law. Given the extraordinary fit of the project with the current work and expertise of the UNIDROIT Secretariat, it is suggested that it would be completed quickly and with limited resources. The Secretariat intends to have the joint preparatory work completed by the UNIDROIT Working Group within a period of two years (for details on the proposed scope, methodology and duration of the project, see [UNIDROIT 2020 – C.D. \(99\) A.2, paras. 24-28](#)).

9. A project proposal consistent with the one submitted to the Governing Council at its 99th session in April/May 2020 was submitted by the UNCITRAL Secretariat to the Commission at its 53rd session held virtually in September 2020 for approval ([UN Doc. A/CN.9/1014](#)). The proposal received very positive reactions from the delegations and was approved by the Commission without amendments.

10. *The Governing Council, at its 99th session, agreed to unanimously recommend to the General Assembly to allocate high priority to the development of legislative guidance on warehouse receipts, in form of a Model Law, jointly with UNCITRAL, as part of the Institute’s Work Programme for 2020-2022.*

² The Summary Report of the UNCITRAL/UNIDROIT Webinar on Warehouse Receipts (26 March 2020) is available at <https://www.unidroit.org/english/news/2020/200326-warehouse-receipts/report-e.pdf>.

³ The Acts of the Colloquium were published in the Uniform Law Review, XVII UNIF. L. REV. (2012-1/2).

⁴ [UNIDROIT 2019 – C.D. \(98\) 14 rev. 2, para 78](#).

⁵ It should be noted that, while the Secretariats of both UNCITRAL and UNIDROIT consider that the most useful final product would be a Model Law, it is UNCITRAL’s practice to defer the final decision on the form of an instrument to its Member States.

III. CONSIDERATION OF ITEMS ALREADY INCLUDED IN THE WORK PROGRAMME

A. Best Practices of Effective Enforcement

11. At its 78th session 2019, the General Assembly included the project on effective enforcement in the 2020-2022 Work Programme under the title “Principles of effective enforcement”. In the course of 2020, the project was renamed as “Best Practices of Effective Enforcement” in order to reflect the nature of the instrument to be developed – a guidance document providing legislators with a catalogue of what would be identified as already existing best practices on enforcement, while also looking forward and thinking of new solutions beyond the current state of the art.

12. Upon recommendation of the Governing Council, at its 78th session in December 2019, the General Assembly assigned medium priority to this project. The assigned level of priority was merely formal. The Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as an enhanced feasibility analysis. Subject to agreement with the Secretariat’s enhanced note to be presented at the 99th session, the Governing Council would reconsider a high priority status.

13. As requested by the Governing Council, the Secretariat conducted further research and produced guidance for the future development of the project with a more refined scope ([UNIDROIT 2020 – C.D. \(99\) B.3](#)), which was approved by the Council at the second meeting of its 99th session held in hybrid form on 23-25 September 2020.

14. *Accordingly, the Governing Council, at its 99th session, agreed to recommend to the General Assembly to allocate high priority to the project on Best Practices of Effective Enforcement.*

B. Digital Assets and Private Law

15. At its 99th session in September 2020, the Governing Council approved the temporary change of name of this project from “Law and technology: Artificial Intelligence/Smart Contracts/DLT” to “Digital Assets and Private Law” in order to reflect the narrowed scope of the project.

16. The General Assembly had accepted the Governing Council’s recommendation to include this item in the 2020-2022 Work Programme at medium priority at its 78th session. The Secretariat was asked by the Council to conduct further research to narrow down the scope of the project for presentation at its 99th session, at which point the Council would adopt a decision on the final scope of the project, and reassess its level of priority as well as the proposed form of the joint work with UNCITRAL.

17. Accordingly, over the course of 2020, the Secretariat worked on narrowing down the scope of the project and identifying specific areas for future work. It submitted a first document to the Governing Council’s remote session in April-May 2020 ([UNIDROIT 2020 – C.D. \(99\) A.4](#)), containing the Secretariat’s proposal on the most appropriate scope for the project. Subsequently, the Secretariat set up an Exploratory Working Group and prepared a Preliminary Issues Paper, which was presented at the September session of the 99th Governing Council ([UNIDROIT 2020 – C.D. \(99\) B.4 rev.](#)).

18. *In light of the above, the Governing Council, at its 99th session, agreed to recommend to the General Assembly to allocate high priority to the project on Digital Assets and Private Law.*