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**Item No. 8(b) on the agenda: Transnational civil procedure –
Principles on Effective Enforcement**

(prepared by the Secretariat)

<i>Summary</i>	<i>Status of the project</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the document</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>Low</i>
<i>Related document</i>	<i>UNIDROIT 2018 – C.D. (97) 2</i>

I. HISTORY OF THE PROJECT AND STATUS

1. The ALI/UNIDROIT Principles of Transnational Civil Procedure, prepared by a joint American Law Institute / UNIDROIT Study Group and adopted in 2004 by the Governing Council of UNIDROIT, aim at reconciling the differences among various national rules of civil procedure, taking into account the peculiarities of transnational disputes as compared to purely domestic ones.

2. Although the ALI/UNIDROIT Principles are comprehensive, they are mainly designed to give guidance for first instance procedures and only minimally do they address issues of enforcement. In particular, Principle 29 emphasises the need for speedy and effective enforcement, but the comment makes it clear that the topic as such was beyond the scope of the 2004 ALI/UNIDROIT Principles. The same can be said of the work on transnational civil procedure approved so far by other intergovernmental organisations such as UNCITRAL, the UN and The Hague Conference. While single instruments may contain specific rules dealing with enforcement, there is a lack of a more general guidance document in this area.

3. The right to effective enforcement represents an integral part of the fundamental right to a fair and effective procedure. Moreover, the economic significance of effective enforcement mechanisms embraces decision-making and execution and has been considered by the World Bank as well as in an increasing number of national governments a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes. During the last decades, many States have introduced important reforms of their enforcement law (e.g. Japan, China, France, England, Spain, Germany) and in some States reforms are still in process. While in the European Union the law of enforcement is, in principle, within the competence of the individual States, the EU enacted legislation facilitating cross-border debt recovery and initiated reports on the present status of the enforcement laws of the member States of the European Union. All these activities document an increasing concern about inefficient enforcement mechanisms at national and transnational level. Transnational Principles of Enforcement could provide a helpful guideline for legislators wishing to improve their national law, while at the same time contributing to the emergence of common minimum standards for national procedures as the necessary basis of the improvement of international cooperation in this area.

4. A preliminary feasibility study was conducted by Rolf Stürner, Emeritus Professor at the University of Freiburg (Germany) and former co-reporter of the ALI/UNIDROIT Principles of Transnational Civil Procedure. It was submitted to the Governing Council at its 95th session. The Study provides a more detailed analysis of the legal obstacles created by the lack of general principles on enforcement mechanisms in transnational civil procedure and of the advantages of filling in the gaps of the ALI/UNIDROIT Principles of Transnational Civil Procedure in this regard.

5. The Governing Council decided to recommend this topic for inclusion in the UNIDROIT Work programme for the triennium 2017-2019 by the General Assembly, proposing to assign it with a low level of priority. The General Assembly endorsed this recommendation at its 75th session, on 1 December 2016.

6. Pending the conclusion of the ELI-UNIDROIT project on Regional Rules of Transnational Civil Procedure, which is assigned a higher priority in this area of work, the Secretariat undertook some basic research activities focussing on existing international instruments addressing, one way or the other, issues of enforcement, and on compiling a list of bibliographical references. The Secretariat will continue to monitor developments in this area with a view of commencing more substantial work when specific resources will become available.

II. ACTION TO BE TAKEN

7. *The UNIDROIT Secretariat would invite the Governing Council to take note of the Status of the project.*