



GOVERNING COUNCIL
99th session (A)
Remote session April/May 2020

EN
UNIDROIT 2020
C.D. (99) A.8
Original: English
June 2020

REPORT

(prepared by the UNIDROIT Secretariat)

TABLE OF CONTENTS

Item 1:	Adoption of the annotated draft agenda (C.D. (99) A.1)	2
Item 2:	Matters concerning the 2020-2022 Work Programme	2
	(a) Consideration of the inclusion of a new item in the Work Programme: A Model Law on Warehouse Receipts (C.D. (99) A.2)	2
	(b) Consideration of items already included in the Work Programme	4
	i. Best Practices for Effective Enforcement	4
	ii. Work on Artificial Intelligence, Smart Contracts and DLT (C.D. (99) A.4).....	9
Item 3:	International Sales Law: Approval of the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) (C.D. (99) A.5)	12
Item 4:	Administrative matters	14
	(a) Preparation of the draft Budget for the 2021 financial year (C.D. (99) A.6)	14
	(b) Readjustments to the Budget for the 2020 financial year (C.D. (99) A.7)	15
APPENDIX I	LIST OF PARTICIPANTS	16
APPENDIX II	AGENDA.....	19

1. In light of the COVID-19 crisis, the Secretariat proposed that the 99th session of the Governing Council be separated into two meetings, a first one held remotely via e-mail and to address the most urgent matters. In order to conduct the remote session, the Secretariat drew up Rules of Procedure, which were submitted to the members of the Governing Council in advance, and approved unanimously on 27 March 2020 (C.D. (99) A Misc. 1).
2. The Rules of Procedure proposed that the remote session of the Governing Council be chaired by the acting President, currently the First Vice President and doyen of the Governing Council, Mr. Arthur Hartkamp. The members of the Governing Council approved the proposal, and also appointed Mr. Alexander Komarov as second Vice President.
3. According to the abovementioned Rules of Procedure, the efficacy of the approvals provided, except for the documents included in Items No. 3 and 4, was in principle to be limited to the period between the remote and in person meeting, tentatively re-scheduled to 23-25 September 2020.
4. All documents were circulated to the Governing Council on 6 April 2020 for members to:(i) approve, (ii) reject, (iii) provide comments, (iv) raise doubts/request for clarifications or (v) request a remote meeting of the Governing Council. All feedback was to be provided for each item on the agenda in writing, copying the rest of the members of the Governing Council, within three weeks (by 27 April 2020).
5. Three days later, on 30 April 2020, the Secretariat provided the Governing Council with a document summarising the status of each item on the agenda including a) number of approvals, b) number of rejections, and c) the Secretariat's response to the doubts raised and comments to any objections presented.
6. The Governing Council was then provided until 6 May 2020 to approve or reject the different items or to present changes to their previous decision on the different items. Those who had notified their decision in the initial 3-week period and did not want to change it were not required to respond.
7. Without the request for a remote meeting, all items were deemed approved as of 8 May 2020, based on the general Rules concerning the required majorities and quorum under article 14 of the Regulations.

Item 1: Adoption of the annotated draft agenda (C.D. (99) A.1)

8. *The Governing Council adopted the agenda as proposed in document C.D. (99) A.1.*

Item 2: Matters concerning the 2020-2022 Work Programme

(a) Consideration of the inclusion of a new item in the Work Programme: A Model Law on Warehouse Receipts (C.D. (99) A.2)

Summary of original proposal

9. The Secretariat introduced the proposal to include a joint project with UNCITRAL to draft a Model Law on Warehouse Receipts as a new item in the 2020-2022 Work Programme. The Governing Council was invited to consider recommending that the General Assembly include the proposed project with high priority status in the triennial Work Programme (C.D. (99) A.2, para. 1).
10. The proposal had originated from an invitation from UNCITRAL's Secretariat, pursuant to a resolution from its 52nd Commission Session in July 2019. At that time, the UNIDROIT Governing Council had already discussed the proposals that would be included in the 2020-2022 Work Programme at its 98th session in May 2019. The Secretariat explained that UNCITRAL's invitation to conduct joint work could be contextualised in the long-standing relationship between both institutions, their expertise on topics relevant to warehouse receipts, and the project's adequate fit within their current work programmes (C.D. (99) A.2, paras. 3-8).

11. The need for a legislative instrument on Warehouse Receipts, possibly in the form of a Model Law, had been ascertained based on a feasibility study conducted by the Kozolchyk National Law Center that had been presented to the UNCITRAL Commission in 2019 ([C.D. \(99\) A.2](#), para. 6), as well as preliminary research conducted by both the UNCITRAL and UNIDROIT Secretariats ([C.D. \(99\) A.2](#), paras. 9-16). Further, both organisations had co-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 ([C.D. \(99\) A.2](#) para. 17 et seq.).

12. The Secretariat highlighted the comparative advantage that UNCITRAL and UNIDROIT held for the development of a Model Law on Warehouse Receipts. It noted that for UNIDROIT, for instance, undertaking work on warehouse receipts was not only directly linked with its expertise on commercial contracts and secured transactions, but above all it was 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" ([C.D. \(99\) A.2](#), paras. 21-23).

13. The scope of the project as proposed by the two institutions would encompass the development of a model law on the private law aspects of warehouse receipts. With regard to the cooperation between the organisations, and in accordance with the UNCITRAL Secretariat, the Secretariat proposed that the Governing Council would allow UNIDROIT to lead the joint preparatory work through a UNIDROIT Study/Working Group, developing a first comprehensive draft of the model law; it was envisaged that the Institute's usual partners in the work conducted on law and agricultural development (e.g., FAO, IFAD) would be actively involved. Once the UNIDROIT Study/Working Group completed the draft model law, the instrument would be submitted for intergovernmental negotiations through an UNCITRAL Working Group, given the legislative nature of the project. The 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 was suggested that it would be completed quickly and with limited resources. The Secretariat intended to have the joint preparatory work completed by the UNIDROIT Study/Working Group within a period of two years (for details on the proposed scope, methodology and duration of the project see [C.D. \(99\) A.2](#), paras. 24-28).

14. The Secretariat noted that a project proposal consistent with the one submitted to the Governing Council in document [C.D. \(99\) A.2](#) would be submitted by the UNCITRAL Secretariat to the Commission at its 53rd session in July 2020 for approval. Governing Council members would be instantly informed of the Commissions' process of approval. In the meantime, work conducted by UNIDROIT would be purely preparatory in nature. No funds would be allocated until the project was approved by the Governing Bodies of both institutions.

Votes received

15. The Secretariat received express approval from all 25 members of the Governing Council.

Summary of comments received

16. Three comments on this project proposal were received from Governing Council members. One member questioned the feasibility of holding the first project meeting in the summer of 2020, given the current Covid-19 pandemic situation, suggesting the introduction of more flexibility on the project timeline.

17. Another member expressed reservations about the benefits of the project on a global scale, while ultimately deferring to the majority opinion of the Governing Council members. Further, a Council member raised the concern that assigning high priority status to the project might require the reallocation of resources between existing projects, possibly affecting the work of the Secretariat as a result.

Summary of answers by the Secretariat

18. On the timing of the first meeting, the Secretariat advocated for a conservative approach even if the health crisis continued to evolve positively and proposed that the meeting be held remotely. Organising the first meeting in the summer of 2020 seemed to be beneficial for a number of reasons. An early start would facilitate completion of the first phase of the project within the 2020-2022 Work Programme, and within the calendar tentatively agreed with UNCITRAL. Holding a timely kick-off meeting would also allow the Secretariat to capitalise on the momentum generated by the recent Warehouse Receipts Workshop (26 March 2020). In addition, an early meeting would help UNIDROIT space out the use of resources during the rest of this calendar year.

19. With regard to the global impact of the project, the Secretariat noted that the need for, and the potential global benefits of, a Model Law on Warehouse Receipts had been the focus of the joint workshop co-organised with UNCITRAL. The expert participants from various geographic regions had reached the consensus that there was a real need for a Model Law, which would benefit many countries in need of modernising their national legal frameworks, especially in light of a widespread demand to address new technologies. International organisations, working on the ground in developing and middle-income jurisdictions, had reached the same conclusion. Based on the above, the Secretariat considered it valid to expect that this project would bring concrete benefits on a global scale.

20. Regarding the level of priority to be assigned to the warehouse receipts project, the Secretariat explained that the inclusion of this project would not imply the subordination of other projects that were already classified as high priority. Rather, the increased workforce of the Institute and the nature of this project, which shared content – and possibly experts – with other projects (e.g., the Model Law on Factoring, the projects on law and agriculture, ongoing work on secured transactions and information technology), would seem to allow its realisation with limited resources.

Final decision

21. The Council unanimously agreed to recommend that the General Assembly 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.

(b) Consideration of items already included in the Work Programme**i. Best Practices for Effective Enforcement ([C.D. \(99\) A.3](#))***Summary of original proposal*

22. Regarding the project on “Best practices for effective enforcement”, which had been approved for inclusion in the UNIDROIT 2020-2022 Work Programme, the Secretariat submitted document [C.D. \(99\) A.3](#) to the Governing Council to more precisely determine the project’s scope and to comply with the mandate it had received from the Governing Council at its 98th session and from the General Assembly at its 78th session. While there had been substantial agreement on the importance of the topic and on the impact of the work to be conducted, the assigned level of priority had been merely formal, pending a more refined scope of the proposal and an enhanced feasibility analysis on the part of the Secretariat.

23. The Secretariat’s document underscored the economic importance of effective enforcement of contractual claims and presented a summary of current common challenges to enforcement in jurisdictions around the world ([C.D. \(99\) A.3](#), paras 8-11). Additionally, it referred to the need to find solutions which would take the changed asset structure of firms and companies and the rapid spread of digitalization into account ([C.D. \(99\) A.3](#), paras 12-13). The Secretariat further provided a brief overview of existing and planned global and regional international instruments dealing with enforcement, concluding that there was a lack of an instrument that set out global standards in a comprehensive and practice-oriented manner, capable of offering guidance to national legislators on best practices for the efficient enforcement of commercial claims ([C.D. \(99\) A.3](#), paras 15-23). Finally, the Secretariat presented the envisaged scope of the project and the issues to be considered.

The project would cover enforcement of a broad range of contractual claims, and special attention would be devoted to the enforcement of commercial secured and unsecured debts. Enforcement in insolvency was included in the scope of the project in view of its fundamental importance to ensure satisfaction, particularly of secured creditors' claims. The envisaged instrument would cover both judicial enforcement, and extrajudicial enforcement, and take full advantage of the solutions offered by developments in technology ([C.D. \(99\) A.3](#), paras 24-33).

24. The Secretariat invited the Governing Council to approve the proposed scope of the project and to raise its priority status, allowing the Secretariat to establish a Working Group ([C.D. \(99\) A.3](#), para 34).

Votes received

25. The Secretariat received feedback from all 25 members of the Governing Council, 20 of which were in favour of the approval of the document and 5 of which moved to postpone the decision until a more precise definition of the scope of the project had been obtained following further deliberation and discussion among Governing Council members (either remotely via video-conference or at the next in-person meeting in September 2020).

Summary of comments received

26. The Secretariat received very helpful questions and comments, which generally underscored the practical relevance of enforcement, as well as its major economic, social and political importance. It was noted that a global instrument would help create a level-playing field for investors and be of particular value in times of economic crisis. Some Governing Council members highlighted the significance of the project, its support by the World Bank, and the alignment of the topic with recent work of UNIDROIT, as additional positive factors.

27. More specific questions regarded the type of instrument envisaged, its intended goals and users, as well as various aspects related to the scope of the project. In particular, one member asked whether the draft would be in the form of principles alone or principles accompanied by rules (such as the ALI/ UNIDROIT Principles). Two members queried what the target audience and goals of the project would be. The challenges posed by the project, arising from the need to carefully balance all the interests involved in enforcement, as well as to consider the possible sensitivities at the level of State sovereignty were also mentioned. One member stressed the desirability of ensuring coordination with other intergovernmental organisations working in the field of enforcement. Concerning the level of priority of the project, one Council member expressed the view that the project should only be upgraded to a higher priority if necessary for the establishment of an expert group, and that a decision on the priority could be taken at a later time. In relation to the definition of the scope of the project, a member raised a series of questions which were shared by other members regarding (i) the coverage of contract enforcement in addition to debt enforcement; (ii) the inclusion of both secured and unsecured claims, and the added value of dealing with extrajudicial enforcement of secured debts in view of the existence of UNCITRAL secured transactions' instruments and modernised domestic laws; (iii) the feasibility of universal principles on self-help enforcement; and (iv) the inclusion of enforcement in insolvency.

28. Concerning the latter issue, a member expressly suggested that consideration ought to be given to its exclusion from the scope of the project, while according to others its inclusion was to be carefully evaluated by the Working Group. Two Governing Council members asked for further clarification on the meaning of extrajudicial enforcement. Finally, one member suggested that the Working Group should consider not only the mechanisms and procedures of enforcement, but also other factors that may contribute to the success of an enforcement system, such as the existence of debtor's registries.

Summary of answers by the Secretariat

29. In relation to the questions on the type of instrument envisaged for the project, the Secretariat responded that, in line with the original proposal received from the World Bank, it was reluctant to recommend that the Working Group develop an instrument in the form of a set of principles alone, or principles accompanied by rules, as had been done for the ALI/ UNIDROIT Transnational Civil Procedure project. Accordingly, the proposed title of the project did not expressly refer to the development of principles. The Secretariat suggested a guidance document of a more discursive nature, highlighting examples of present obstacles to effective enforcement; pointing to relevant potential issues to be considered in reforming or further developing this area of the law; suggesting examples of best practices drawn from existing models; and also considering recent developments linked to the use of technology as possible mechanisms to make enforcement more efficient. This type of instrument appeared to be better suited to provide useful guidance where there were significant differences among legal systems, and where legislators may benefit from more information on the pitfalls and advantages of different options and their interaction. Moreover, this type of instrument would be better suited to tactfully deal with sensitivities related to State sovereignty. The envisaged document would seek to identify best practices and analyse the different options and interests concerning the solutions labelled as best practice. In a sense, the document would thus be akin to a legal guide.

30. This clarification also shed light on what was meant by “best practices”: while many legal systems would indeed benefit from consideration of procedures and mechanisms that facilitated enforcement and improved its effectiveness, it was deemed necessary to find appropriate ways of balancing the different competing interests normally at stake in enforcement. Once again, examples of how such interests would be concretely taken into account, without undermining the goal of effectiveness, could be useful for legislators wishing to reform the domestic normative framework.

31. Considering the questions on the addressees of the instrument, the Secretariat noted that the main goal of the project would be to offer national legislators a set of global standards and best practices designed to improve the domestic normative framework applicable to enforcement (C.D. (99) A.3, paras 25-27). Thus, the main addressees would be domestic lawmakers wishing to modernise their legal system. This would include enforcement in a purely domestic context but also in a cross-border scenario (bearing in mind that existing instruments addressing cross-border decisions stopped short of regulating the domestic law procedures and mechanisms that were triggered upon recognition of the enforceability of such decisions: C.D. (99) A.3, para. 15). Moreover, other stakeholders, such as international organisations or professional bodies, could also be interested in such an instrument as a basis to develop proposals, documents and tools which were more specifically tailored to one or more jurisdictions. In this regard, the fact that this project had been prompted by a proposal of the World Bank represented a clear indication that there would indeed be support for this type of instrument. The World Bank’s support would, therefore, greatly facilitate UNIDROIT in the task of bringing the finalised instrument to the attention of the most appropriate users.

32. Responding to the questions and comments on the general feasibility of the project, the need to coordinate with the work of other intergovernmental organisations and the determination of the its level of priority, the Secretariat expressed its awareness of the fact that the project’s scope could present some challenging elements, as it would involve knowledge of different areas of the law, including recent national reforms and new technologies. At the same time, its goal was not to offer a comprehensive comparative legal treatise on enforcement: the prospective instrument would seek to offer guidance at a global level, singling out standards and best practices that could be useful for legislators wishing to reform the domestic normative framework. The Secretariat therefore believed the project to be feasible, provided that the Working Group could be set up in such a way as to ensure the input of experts in national civil procedure, representing different legal traditions and with extensive knowledge of comparative law, as well as experts in comparative secured transactions’ law, and in the relationship between technology and law. The project would, at least partly, draw on the Secretariat’s previous experience and involvement in projects related to technology and the law. Moreover, the Secretariat would closely monitor any related present or future work of other

intergovernmental organisations, particularly UNCITRAL, to ensure coordination and avoid duplication of efforts, and consider work already conducted by other organisations such as the European Union. The Secretariat would also seek the most appropriate ways to involve experts with practical experience in the field. In this respect, the input of qualified observers (e.g. the World Bank or the *Union Internationale des Huissiers de Justice* among others) could be crucial to ensure the practical relevance of the project.

33. Finally, in relation to the comment made by one member on the level of priority, the Secretariat expressed its belief that the envisaged level of priority was consistent with the recognised practical importance of the project as well as its challenges, particularly considering the need to involve experts from different legal traditions and with diverse areas of expertise. In any case the Secretariat would exercise its customary caution in the use of its limited resources, bearing in mind the goal of delivering a useful and balanced instrument.

34. On the questions specifically regarding the determination of the scope of the project, the Secretariat first considered the proposal to limit the scope to debt enforcement. The Secretariat noted that the proposal by the World Bank received in 2018, and included in the 2020-2022 Work Programme, was entitled “Best Practices on Debt Enforcement” and its scope was accordingly both secured and unsecured debt enforcement. In line with the World Bank’s proposal, the Secretariat had suggested that particular attention be devoted to enforcement of commercial unsecured and secured debts (C.D. (99) A.3, para. 28 *et seq.*), which had been indicated as the main focus of the instrument. This limitation was deemed to work well particularly with regard to secured credit, where the main concern in relation to enforcement was to ensure satisfaction of creditors’ claims while taking into account the interests of the debtor and relevant third parties. At the same time, the Secretariat had preferred not to exclude *a priori* a wider consideration of contractual claims. For example, in the case of a contract of sale, if the project were only to focus on the enforcement of the claim of the party who owed a monetary obligation, this could introduce an imbalance of the respective positions of the parties. The Secretariat recognized, however, that consideration of contractual claims other than monetary obligations could give rise to additional complex issues, such as the extent of specific performance and its enforcement, or even enforcement of the obligations to do or not to do something.

35. Taking these arguments into account, the Secretariat could see merit in more explicitly limiting the *initial* scope of the future instrument to debt enforcement and to pose the question of a wider consideration of contractual claims as one of the issues that could be brought to the attention of the Exploratory Working Group as suggested below (see proposed action ii. below, para. 43).

36. In relation to the question of including both judicial and extrajudicial enforcement mechanisms in one single instrument, the Secretariat, following the proposal of the World Bank, strongly supported the inclusion of both in the coverage of the project. Limiting the scope of the instrument to one or the other would not appear to serve the purpose of developing best practices in this area of the law.

37. On the one hand, out-of-court enforcement, if appropriately designed, was seen as fundamental in reducing length and cost of the procedure, easing the burden on courts and maximising creditor satisfaction ultimately in the interest of all parties involved. This was particularly important for secured debt and was rightly considered an integral part of modern secured transactions laws. The Secretariat noted that mechanisms to allow this type of enforcement were however lacking, or not practically applicable, in many jurisdictions around the world. Providing best practices and examples of balanced mechanisms of out-of-court enforcement, particularly for secured claims, would therefore be an essential element in an instrument dealing with best practices in enforcement. The Secretariat expected that most of the part of the project devoted to out-of-court enforcement would be focused on secured debt, which would also allow for a better definition of the scope of the project in relation to extrajudicial enforcement. Within out-of-court enforcement, considering examples of well-functioning self-help remedies including the mechanisms to protect debtors and third parties would indeed be useful. The Secretariat would further expect this part of

the project to particularly benefit from looking at existing mechanisms using modern technology, the advantages and disadvantages of which should be addressed.

38. On the other hand, the Secretariat noted that the main challenge faced by legal systems in relation to extrajudicial enforcement lied in how to strike the proper balance between prompt and effective realisation and the protection of the interest of debtors and relevant third parties. Modern legal systems had developed mechanisms, such as transparency requirements and ex-post evaluation, which could be considered as existing best practices. Many normative frameworks around the world, however, allowed debtors to raise objections or to appeal orders or decisions at any stage of the proceedings and without meaningful control or sanctions for abusive behaviour, forcing creditors to take the ordinary judicial route. This was one of the instances where the relationship with judicial enforcement came to the fore, and with it the need to consider appropriate solutions and best practices both for extrajudicial and judicial claims.

39. In relation to the interaction of the project with instruments in the field of secured transactions developed by other organisations, the Secretariat noted that existing uniform law instruments on secured transactions such as the UNCITRAL Model Law (and, specially, the Legislative Guide that preceded it) already contained some recommendations and provisions on the enforcement of a security right. In the case of the Model Law, concerning, for example, general collateral, such enforcement rights could be exercised either by application to a national court or other national authority or without such an application. In the first case, the Model Law suggested the introduction of expedited procedures, however *without further specifications*; in the second case, it provided some guidance on the exercise of such rights and the limits thereto, *again however without specifying the modalities* of the procedures to be followed, particularly in case of objections. The project on enforcement should draw upon such existing models, but there would be significant scope for exploring what could be appropriate mechanisms to fill in their gaps, particularly considering the relationship between extrajudicial and judicial procedures. In other words, this project would pick up where the existing texts stopped offering guidance. Instead of overlapping, the project on enforcement would complement the Model Law and other similar instruments.

40. The question of whether insolvency-related enforcement should be included within the scope of the project or not was raised by a number of Governing Council members. As had been noted in the document C.D. (99) A.3 (para. 28), the Secretariat expressed its awareness of the special status and nature of insolvency legislation in domestic laws, but it suggested that enforcement in insolvency be included in the scope of the project in view of its fundamental importance to ensure satisfaction particularly of secured creditors' claims. As suggested in the World Bank's proposal, mechanisms outside of insolvency should be designed to work in harmony with insolvency. Security rights – and, a *fortiori*, their realisation via enforcement – were often worth only as much as their value in insolvency. Thus, excluding insolvency enforcement altogether from the scope of the analysis would limit the usefulness of any enforcement procedure and mechanism that was not insolvency-specific. Moreover, in relation to possible overlaps with future work of other organisations and in particular UNCITRAL, and as already noted in the document C.D. (99) A.3 (para. 23), UNIDROIT would closely monitor any developments with regard to legislative initiatives that could be undertaken by UNCITRAL in the specific area of asset-tracing and recovery and involve UNCITRAL representatives in its work on enforcement, with a view to coordinate and avoid duplication of efforts.

41. Should this issue raise particular concerns, however, the Secretariat stated that it would be ready to relay the issue as a question to the Exploratory Working Group to determine the scope of the project (see proposed action ii. below, para. 43).

42. One Governing Council member had pointed out that the project should not only take into account the mechanisms and procedures of enforcement, but also other factors that may contribute to the success of an enforcement system, such as, for example, the existence and role of debtors' registries which may have a significant impact on the way an enforcement system works. The Secretariat replied that it would add this specific point to the issues to be considered by the Exploratory Working Group. More generally the Secretariat underscored that enforcement could be strongly influenced by the broader legal context and by the interconnection with other areas of the

law ([C.D. \(99\) A.3](#), para. 26). While the envisaged instrument could not address the specificities of each legal system, it should point to relevant factors that may play a significant role.

Amendments to original proposal

43. In light of the overall positive response from Governing Council members, while taking into account the helpful comments, suggestions, questions, as well as the responses provided, the Secretariat invited the Governing Council to consider the following course of action:

- i. approve the project's scope and level of priority as indicated in the document prepared by the Secretariat;
- ii. authorise the Secretariat to set up an Exploratory Working Group with which the Secretariat would initially share the document as well as the list of questions on the scope of the future instrument raised by Governing Council members, particularly flagging the limitation to debt-enforcement and the initial inclusion or non-inclusion of insolvency enforcement - this would enable the Secretariat to receive further input and advice on the scope of the project;
- iii. authorise the Secretariat to explore the additional possibility of convening a workshop, with participation of the experts who accepted the invitation as well as Governing Council members and selected observers, in order to finalise the scope for the project. The Secretariat suggested that the workshop could take place on Monday 21st September, before the planned in-person Governing Council meeting, unless the Governing Council preferred that the workshop be held remotely at a different time.

Final decision

44. The Governing Council members unanimously agreed to approve the scope and upgrade the level of priority, as well as to follow the amended proposed action by the Secretariat.

ii. Work on Artificial Intelligence, Smart Contracts and DLT ([C.D. \(99\) A.4](#))

Summary of original proposal

45. The Secretariat submitted to the Governing Council document [C.D. \(99\) A.4](#), in order to comply with the mandate received from the Governing Council at its 98th session and from the General Assembly at its 78th session to more precisely determine the scope of the project on "Work on Artificial Intelligence, Smart Contracts and DLT" which had been approved for inclusion in the 2020-2022 Work Programme. While there was substantial agreement on the importance of the topic and on the impact of the work to be conducted, the Secretariat had been asked to conduct further research to refine the scope of the proposal and reassess the assigned level of priority.

46. The Secretariat's document presented a summary of the background and history of the project, along with a summary of the second joint UNCITRAL-UNIDROIT workshop which gathered experts in Vienna in March 2020 to further explore potential work in the area ([C.D. \(99\) A.4](#), paras. 12-15). Setting the scene for the current proposal, it highlighted the growing economic importance of tokens and other digital assets, and provided a brief overview of existing and planned amendments to various national legislations on the subject to convey the benefits offered by legal harmonisation of the private law structure underpinning the market for tokens and other digital assets [C.D. \(99\) A.4](#), paras. 18-22). The Secretariat then outlined UNIDROIT's comparative advantage by drawing a parallel with the way in which national law had developed in a piecemeal fashion in relation to the holding of securities through intermediaries and how UNIDROIT tackled the issue of fragmentation through its work on the Geneva Securities Convention ([C.D. \(99\) A.4](#), para. 23). Finally, the Secretariat laid out the proposed scope of the project along with the specific questions to be addressed. The project would establish a general legal taxonomy, and undertake consideration of specific issues arising in various important contexts, such as insolvency, secured transactions,

identification of applicable law in cross-border transactions, and the legal position of intermediaries involved in the token markets, such as exchanges and custodians ([C.D. \(99\) A.4.](#), paras. 24-33).

47. The Secretariat invited the Governing Council to approve the proposed scope of the project and to reassess upward the priority status given to it, allowing the Secretariat to establish a Working Group ([C.D. \(99\) A.4.](#), para. 34).

Votes received

48. The Secretariat received feedback from all 25 members of the Governing Council: a majority (14) of which were in favour of approval of the project as proposed; 3 approved the setting up of a Working Group and the upgrade of priority in principle while asking that the Secretariat continue refining the details of the project at the September meeting; finally, 8 asked for a postponement of the decision until a more precise definition of the scope of the project was obtained following further deliberation and discussion among Governing Council members (either remotely via video-conference or at the next in-person meeting in September 2020).

Summary of comments received

49. The Secretariat received very helpful questions and comments of the Governing Council members in relation to this project. Members thanked the Secretariat for preparing a clear project description and convincingly articulating the relevance of the proposal. Several members queried whether it would be best to postpone the decision regarding certain aspects of this project until the in-person Governing Council meeting in September, citing the need to first obtain any documents resulting from the joint UNCITRAL- UNIDROIT workshop held in Vienna on 10-11 March 2020. Several members welcomed the collaboration with UNCITRAL in undertaking joint work in this area. In this regard, four members sought additional information regarding the role of UNIDROIT and its added value, in particular, in view of the fact that other organisations are also looking to undertake work in related areas (i.e. UNCITRAL, EU, ALI-ELI).

50. Two members requested a clarification regarding the anticipated duration of the project, observing that the field of digital assets is characterised by constant technological innovations. Regarding the proposed scope, one member commented that it must be narrowed down further and requested clarification as to what kind of instrument was envisaged. Feedback was also provided by one member who welcomed the proposal's functional and neutral approach, focused on legal relationships rather than technology, and encouraged coordination between this project and UNIDROIT's work on warehouse receipts and intermediated securities.

Summary of answers by the Secretariat

51. In its reply to the feedback received from the Governing Council, the Secretariat provided a detailed response to the various comments and questions posed by Governing Council members.

52. The Secretariat noted that a document providing a summary and the preliminary conclusions of the workshop had already been shared informally by UNCITRAL with this Secretariat, and that the conclusions included in the aforementioned preliminary document had already informed the preparation of the project proposal contained in the document ([C.D. \(99\) A.4.](#)). Further, it observed that the UNCITRAL Secretariat was in the process of preparing three separate documents for their Commission's 53rd session (New York, 7-19 July 2020). It was anticipated that these documents, based on the conclusions of the said workshop, as well as on substantial previous exploratory work, would include a proposal to the Commission to consider undertaking preparatory legislative work on (i) the use of artificial intelligence in the negotiation and performance of certain contracts and on (ii) property aspects and obligations of the parties in data transactions; moreover, it was understood that the proposal would also ask the Commission to consider allowing further exploratory work in (iii) the area of digital assets, particularly in the areas of security interests and insolvency. Thus, it was anticipated that UNCITRAL might not be undertaking self-standing legislative work in the area of digital assets, for the time being, beyond its consideration under the taxonomy project as well as

on any aspect that is linked with their existing instruments (e.g. secured transactions and insolvency).

53. In light of the foregoing, it was observed that UNIDROIT's project in the area of digital assets was to be evaluated on its own merits and the Governing Council's deliberation of the decision in this regard would not be significantly impacted by the content of the final report on the Vienna workshop. Subject to the Commission's decision, UNCITRAL could be doing legislative work on aspects that do not coincide with the scope of UNIDROIT's project, as currently included in the Work Programme. Accordingly, UNCITRAL's joint work with UNIDROIT, at least for the time being, would be limited to the part of the taxonomy concerning digital assets as well as to any specific item of UNIDROIT's project which affects their existing instruments. The Commission had given the Secretariat a mandate to conduct only exploratory work, and it is in that context they would be joining UNIDROIT's project.

54. While UNIDROIT welcomes and would continue seek close collaboration with UNCITRAL and other organisations carrying out work in this area, given that scope for further work in the area of digital assets had been identified previously and, given the momentum that had already been generated by the two joint workshops held so far, UNIDROIT would seem uniquely positioned to carry forward that work. The Secretariat also noted that several relevant organisations working in the field had already been identified and stable contacts established; highly reputed experts had shown interest in collaborating; and UNIDROIT's work methodology makes it particularly suited to address such a dynamic, fast-evolving topic. In any case, and as stated in document [C.D. \(99\) A.4](#), the project seeks to use a functional and analytical method, where legal concepts would be applied to the main technological characteristics of digital assets, those least likely to change. The project would seek to avoid "chasing" technology at all costs. Moreover, the project would seek to employ a neutral approach in relation to technology, so as to "future proof" the principles: it would seek to develop principles that could apply to any system in which data could constitute a token, rather than being specifically applicable to systems based on DLT or blockchain, or any other specific technology. In this way, by focusing on the legal concepts and legal relationships, the risk that the work would be overtaken by technological or market developments would be minimised. This Secretariat took note of the comments made by a member warning that certain aspects of the approach included in the project description might be too technology-based. This useful warning would need to be heeded in the next steps of the project, since an analysis at this level of detail might be more appropriate for discussion within the Working Group.

55. Because of the momentum generated through a year of exploratory work, the Secretariat estimated a duration of the project which falls within the current Work Programme. Naturally, this would be subject to further adjustments as deemed to be appropriate by the members of the Working Group. The Secretariat strongly agreed with the comments of a member that the project is directly linked with parts of other projects of its Work Programme, in particular with some possible parts of the work on the drafting of a model laws on warehouse receipts and factoring, as well as with ongoing and past work on electronic registries. The Secretariat expressed its conviction that this project may, in fact, help other UNIDROIT projects by feeding relevant analyses on the technological component of the latter.

56. It was noted that the idea of this project is precisely to narrow the analysis to the category of digital assets designed to avoid double spending by the use of different types of technology (cryptography, blockchain, DLT). By focusing on tokens within the realm of digital assets, the project seeks to further refine the scope, covering only those assets that can be transferred but not replicated. This is, precisely, where the main difference with data transactions lies: between tokens and general data there is a relationship of genus vs specie (and hence the difference with the current work of the ELI).

Amendments to original proposal

57. Considering the overall positive response from Governing Council members, while taking into account the helpful comments, suggestions, questions, as well as the responses provided, the Secretariat invited the Governing Council to consider the following course of action:

- i. In summary the Secretariat noted an overall positive response from Governing Council members, with a large majority (17) advocating at least for the commencement of work, and only 3 members limiting their response to a straight postponement of any decision.
- ii. In light of this situation, the Secretariat considered it prudent – and respectful with the majority view – to begin work on the project (i) remotely, in order to avoid costs, and (ii) limited to further refining the scope of the project as well as to clarifying the doubts that have already arisen in the discussion of [C.D. \(99\) A.4](#).
- iii. In order to conduct this limited work until the second meeting of this session of the Governing Council in September, the Secretariat requested authorization to select a limited group of experts, which would naturally evolve into the core of the future Working Group. This core group would assist the Secretariat in the preparation of a more developed document for the September meeting. In addition to incorporating comments and analysing topics arisen as a consequence of this discussion, said document would include (i) details of the full Working Group, (ii) a detailed time-line of a proposed action plan, and (iii) an explanation as to how this project would feed into – and hence create synergies – with other projects of the current Work Programme.

Final decision

58. The Council agreed, with the positive vote of 24 members, to approve the scope and upgrade the level of priority, as well as to follow the amended proposed action by the Secretariat.

Item 3: International Sales Law: Approval of the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) [\(C.D. \(99\) A.5\)](#)

Summary of original proposal

59. The Secretariat submitted to the Governing Council document [C.D. \(99\) A.5](#), which presented, the English version of the draft *Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales)* for approval. The draft had been developed in cooperation by the Secretariats of the United Nations Commission on International Trade Law (UNCITRAL), the Hague Conference on Private International Law (HCCH) and UNIDROIT. The draft Legal Guide had been the result of a non-legislative project for the creation of a roadmap to the existing texts in the area of international contract law (sales contracts) prepared by each organisation, primarily the UN Convention on Contracts for the International Sale of Goods (CISG), the UN Convention on the Limitation Periods in the International Sale of Goods (Limitation Convention), the UNIDROIT Principles of International Commercial Contracts (UPICC), the HCCH Principles on the Law Applicable to International Commercial Contracts (HCCH Principles) and, in addition, the UN Convention on the Use of Electronic Communications in International Contracts ([C.D. \(99\) A.5](#), paras. 1 and 14).

60. The drafting had been entrusted to a small panel of experts of international commercial contract law and/or private international law representing different jurisdictions, who had worked together with the three Secretariats ([C.D. \(99\) A.5](#), paras. 3-5). Between December 2019 and March 2020, the draft Legal Guide had been submitted to consultation and approval within the HCCH and shared with Governing Council members for comments ([C.D. \(99\) A.5](#), paras. 6-9 and ANNEXE II), which had been taken into account in revising the Guide. UNCITRAL planned to discuss and approve the Guide at the 53rd Session of the Commission in July 2020.

61. Document [C.D. \(99\) A.5](#) contained a short introduction to the revised version of the Guide, noting that its aim was to provide an overview of the applicability, scope and content of the uniform law instruments as well as guidance on the interactions between them, with the goal to facilitate

promotion of their appropriate use, uniform interpretation, and/or adoption. In its first part, the Guide discussed private international law issues, focusing on the HCCH Principles and their relation to the CISG and the UPICC, with a view to explaining the extent to which the contractual parties may choose the law applicable and the consequences of not making such a choice. The Guide then provided an overview of the content of the CISG and the Limitation Convention, before turning to the nature, use and content of the UPICC, highlighting similarities among the uniform texts. Finally, the Guide referred to a number of recurrent legal issues related to sales contracts, including the use of electronic means, distribution, agency and software / data intellectual property issues (C.D. (99) A.5, paras. 13-15).

Votes received

62. The Secretariat received feedback from all 25 members of the Governing Council, with all in favour of the approval of the Tripartite Legal Guide in its current form.

Summary of comments received

63. Comments received expressed great satisfaction with the outcome of the cooperation between the three sister organisations. The feedback commended the accuracy and comprehensiveness of this tool as an informative guidance to existing complementary uniform law texts, as well as its user-friendliness and usefulness for various addressees. Governing Council members extended warm congratulations to the drafters.

64. Three Governing Council members agreed that para. 92 of the Legal Guide could benefit from further clarifying the distinction between ordinary mandatory rules and overriding mandatory rules, as well as between overriding mandatory rules and public policy. On the other hand, two members noted the impracticability of providing too much detail in a general guidance document.

Summary of answers by the Secretariat

65. The Secretariat expressed its gratitude for the comments that had been made by Governing Council members during the remote consultation held in February 2020. The feedback had been discussed and implemented in coordination with UNCITRAL and the HCCH in order to improve the text.

66. The Secretariat was also grateful for the comments received during the remote session of the Governing Council and noted that an amendment had already been made to address the issue in para. 92 of the draft Tripartite Guide. The draft had been modified to introduce three paragraphs which addressed ordinary mandatory rules, overriding mandatory rules and public policy separately (paras. 92-94 of the Legal Guide included in [C.D. \(99\) A.5](#), ANNEX I), in order to better clarify this distinction and point to the similarities and differences in their application, within the limits of a general guidance document.

67. The Secretariat further noted the importance of the unanimous approval of the project by the Governing Council, and underlined the fact that the current content of the document was the result of a careful, well-pondered discussion by the appointed experts and the Secretariats of all three organisations concerning the use of the different instruments in the area of international commercial contracts.

Final decision

68. In light of the unanimous support for this item, the Governing Council approved the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts in its current form, subject to such minor adjustments as may be introduced by the discussion which will take place at the UNCITRAL Commission session in 2020.

Item 4: Administrative matters**(a) Preparation of the draft Budget for the 2021 financial year ([C.D. \(99\) A.6](#))***Summary of original proposal*

69. The Secretariat submitted the Draft Budget for the year 2021 to the Governing Council, which was called upon to draw up the Budget for the following year. The first estimates of receipts and expenditure for the 2021 financial year had been prepared by the Secretariat ([F.C. \(88\) 2](#)) and examined, by the Finance Committee at its 88th session, which had been held remotely via e-mail due to the COVID-19 pandemic ([F.C. \(88\) 5](#)), in accordance with Article 26 of the UNIDROIT Regulations.

70. On the basis of those initial estimates and as set forth in the Appendix to document [C.D. \(99\) A.6](#), the Governing Council was asked to approve the draft Budget for 2021 to be communicated to the Governments of Member State, which would then have until 4 September 2020 to submit their observations. As per practice, those comments and the draft Budget would be transmitted to the Finance Committee, which would be requested to formulate a recommendation at its 89th session, to be submitted to the General Assembly at its 79th session.

Votes received

71. Out of the 25 responses of the members of the Governing Council, the Secretariat received express approval from 9 members. The remaining members either expressly stated they had no comment (13 members) or did not refer to the document in question at all in their responses (3 members).

Summary of comments received

72. The Secretariat received one comment, which did not preclude approval, inquiring about the need for a €13,000 increase in expenditure under Chapter 1, article 4 (Committees of Experts), in light of the COVID-19 crisis entailing a reduction of flights and an increase in online meetings.

Summary of answers by the Secretariat

73. The Secretariat firstly clarified that any increases in proposed expenditure in the Budget 2021 merely offset the estimated increase in contributions of Member States (the Institute's zero growth policy had not changed). Given the initial stages of the Work Programme and the predicted surge in activity for the new projects, the Secretariat had deemed it prudent to allocate the extra resources towards meetings of experts that might take place in-person in 2021.

74. At the time the draft Budget had been submitted to the Finance Committee (mid-February 2020) the Secretariat had deemed it premature to adequately foresee any impact at all of the COVID-19 outbreak on the expenditure of the 2021 Budget, given the uncertainty of its duration and the lack of a reliable quantification of its financial impact on the current financial year at that time. To address the latter point, the Secretariat noted that it was already calculating the impact that the very significant recourse to alternative methods of meeting, due to travel restrictions, was likely to have in the 2020 financial year.

75. Hence, as detailed in document [C.D. \(99\) A.7](#), the further adjustments to the Budget 2020 would be brought before the Finance Committee at its 89th session in the autumn (scheduled for late October 2020), along with the Budget 2021, which by then would have been circulated to Member States and taken their comments and proposals into account. The Secretariat anticipated that it would likely receive many comments on the Budget 2021 and that the Finance Committee would consequently reconsider expenditure in the various Chapters at that stage.

76. The Secretariat further noted that early adjustments to the Budget had already been applied to the current financial year as a result of the deliberations of the General Assembly concerning the

transition to a new system of Contributions, which had resulted in an estimated drop in receipts of €42,070.00. Hence, the document proposed a €10.000 cut in expenditure for article 4 in any case.

77. Concerning Document [C.D. \(99\) A.6](#), the Secretariat reminded Governing Council members that they were mandated to draw up the Draft Budget under article 11 of the UNIDROIT Statute. Having received differentiated responses as detailed above (para. 71), the Secretariat stated that it would deem the document approved by majority counting all express approvals and expressly noted lack of any comment as no objections. Governing Council members were thus invited to provide any objections to this approval by 6 May 2020.

Final decision

78. In the absence of any comments, the Council was deemed to have considered the draft Budget for the 2021 financial year and to have authorised the Secretariat to transmit it to Member States without amendments.

(b) Readjustments to the Budget for the 2020 financial year ([C.D. \(99\) A.7](#))

Summary of original proposal

79. The first estimates of receipts and expenditure for the 2020 financial year prepared by the Secretariat ([F.C. \(86\) 2](#)) had been examined by the Finance Committee at its 86th session (Rome, 4 April 2019), in accordance with Article 31 of the Regulations. Those first estimates had then submitted to the Governing Council, which at its 98th session (Rome, 8-10 May 2019), established the draft Budget for 2020, as set forth in the Annex to that document ([F.C. \(86\) 2](#)), taking into account the opinion expressed by the Finance Committee.

80. In line with the Institute's practice, the draft Budget resulting from this procedure had then been submitted to the Governments of UNIDROIT Member States for observations, which were then presented to the Finance Committee at its 87th session (Rome, 10 October 2019) ([F.C. \(87\) 6](#)), which had resulted in a positive recommendation to the General Assembly, who had adopted the Draft Budget at its 78th session ([A.G. \(78\) 12](#)).

81. Though the document indicating any adjustments that may need to be made to the Budget for the current financial year was normally submitted by the Secretariat to the Finance Committee at its autumn session, and not normally under the purview of the Governing Council, the Secretariat had considered that it was necessary to introduce a few adjustments to the budget for the 2020 financial year as detailed in document [C.D. \(99\) A.7 \(Appendix I\)](#). The adjustments had been approved by the Finance Committee at its 88th session in March 2020, and were thus submitted to the Governing Council by way of further information.

Votes received

82. Out of 25 members of the Governing Council, the Secretariat received express approval from 9 members. The remaining members either expressly stated they had no comment (12 members) or did not refer to the document in question at all in their responses (4 members). The Secretariat reminded Governing Council members that their express approval was not required as the item had been included merely for informational purposes.

Final decision

83. Given the differentiated responses as detailed above, the members of the Governing Council were deemed to have acknowledged the adjustments to the 2020 Budget as presented

APPENDIX I**LIST OF PARTICIPANTS /
LISTE DES PARTICIPANTS***(Remote session April/May 2020 / Session à distance avril/mai 2020)***MEMBERS OF THE GOVERNING COUNCIL
MEMBRES DU CONSEIL DE DIRECTION**

Ms Stefania BARIATTI	Professor of International Law School of Law Università degli Studi di Milano Milan (Italy)
Mr Hans-Georg BOLLWEG	Head of Division Federal Ministry of Justice Berlin (Germany)
Ms Baiba BROKA	Adviser to the Minister of Environmental Protection and Regional Development Riga (Latvia)
Mr Yusuf ÇALIŞKAN	Professor of Law İbn Haldun University School of Law İstanbul (Turkey)
Mr Alfonso-Luís CALVO CARAVACA	Professor of Private International Law Carlos III University of Madrid Madrid (Spain)
Ms Eugenia G. DACORONIA	Attorney - at - law Professor of Civil Law National and Kapodistrian University of Athens Law School Athens (Greece)
Ms Bénédicte FAUVARQUE-COSSON	Conseiller d'Etat Professeur de droit Université Panthéon-Assas Paris II Paris (France)
Mr Eesa Allie FREDERICKS	Academic Deputy Director Research Centre for PIL in Emerging Countries University of Johannesburg Johannesburg (South Africa)
Mr Henry D. GABRIEL	Professor of Law School of Law Elon University North Carolina (United States of America)

Mr Arthur Severijn HARTKAMP	former Procureur-Général at the Supreme Court of The Netherlands; Professor of European Private Law Radboud University, Nijmegen Den Haag (The Netherlands)
Mr Inho KIM	Professor of Law School of Law Ewha Womans University Seoul (Republic of Korea)
Mr Hideki KANDA	Professor Law School Gakushuin University Tokyo (Japan)
Mr Patrick KILGARRIFF	Legal Director Department for Business, Energy and Industrial Strategy London (United Kingdom)
Mr Alexander S. KOMAROV	Professor Head of International Private Law Chair Russian Academy of Foreign Trade Moscow (Russian Federation)
Mr Antti T. LEINONEN	Director General Law Drafting Department (Civil Law) Ministry of Justice Helsinki (Finland)
Mr Ricardo L. LORENZETTI	Chief Justice Supreme Court of Justice Presidente de la Corte Suprema de Justicia de la Nación Buenos Aires (Argentina) Excused
M. Niklaus D. MEIER	co-chef de l'Unité de droit international privé Office fédéral de la Justice Bern (Suisse)
Mr Attila MENYHÁRD	Professor of Civil Law Head of department (ELTE Law Faculty Civil Law Department) ELTE Állam- és Jogtudományi Kar Budapest (Hungary)
Mr José Antonio MORENO RODRÍGUEZ	Professor of Law Attorney Asunción (Paraguay)

Ms Monika PAUKNEROVÁ	Professor of Private International Law and International Department of Commercial Law Charles University, Faculty of Law Prague 1 (Czech Republic)
Ms Kathryn SABO	General Counsel Constitutional, Administrative and International Law Section Department of Justice Canada Ottawa, Ontario (Canada)
Mr Jorge SÁNCHEZ CORDERO	Director of the Mexican Center of Uniform Law Professor Notary public Mexico City (Mexico)
Mr Luc SCHUERMANS	Professor Emeritus Universiteit Antwerpen Law School Antwerpen (Belgium)
Ms SHI Jingxia	Professor of Law Dean, School of Law China University of International Business & Economics (UIBE) Director of UIBE International Law Institute (ILI) Beijing (People's Republic of China)
Ms Carmen Tamara UNGUREANU	Professor of Law Doctoral Supervisor - International Trade Law "Alexandru Ioan Cuza" University Iasi (Romania)

APPENDIX II**AGENDA**

1. Adoption of the annotated draft agenda (C.D. (99) A.1)
2. Matters concerning the 2020-2022 Work Programme:
 - (a) Consideration of the inclusion of a new item in the Work Programme: A Model Law on Warehouse Receipts (C.D. (99) A.2)
 - (b) Consideration of items already included in the Work Programme
 - i. Best Practices for Effective Enforcement (C.D. (99) A.3)
 - ii. Work on Artificial Intelligence, Smart Contracts and DLT (C.D. (99) A.4)
3. International Sales Law: Approval of the Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) (C.D. (99) A.5)
4. Administrative matters
 - (a) Preparation of the draft Budget for the 2021 financial year (C.D. (99) A.6)
 - (b) Readjustments to the Budget for the 2020 financial year (C.D. (99) A.7)