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**Item No. 4 on the agenda: Update and determination of scope of certain projects  
on the 2020-2022 Work Programme**

**(a) Best Practices for Effective Enforcement**

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on the Best Practices for Effective Enforcement project activities since the Governing Council remote meeting in April/May 2020 and refinement of the project scope</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to approve the proposed scope of the project, to confirm its priority status, and to authorise the establishment of a Working Group</i>
<i>Mandate</i>	<i>Implementation of the decision of the Governing Council in relation to the Work Programme 2020-2022</i>
<i>Priority</i>	<i>High - to be confirmed</i>
<i>Related documents</i>	<i>Work Programme for the 2020-2022 triennium (<a href="#">UNIDROIT 2019 – A.G. (78) 12</a>) and <a href="#">UNIDROIT 2019 – A.G. (78) 3</a>; <a href="#">UNIDROIT C.D. (99) A.3</a>; <a href="#">UNIDROIT C.D. (99) A.8</a></i>

**I. UPDATE ON THE STATUS OF THE PROJECT AND ON THE ACTIVITIES OF THE SECRETARIAT SINCE THE REMOTE MEETING OF THE GOVERNING COUNCIL IN APRIL/MAY 2020**

1. In December 2018, the Secretariat received a proposal for the 2020-2022 Work Programme by the World Bank regarding a project on the “Development of a Working Paper to Outline Best Practices on Debt Enforcement”, which the Secretariat presented in the context of the discussion of the 2020-2022 Work Programme at the 98<sup>th</sup> Session of the Governing Council. The proposal was discussed as a continuation, and a refinement, of the scope of the “Principles of Effective Enforcement” project, which was already part of the 2017-2019 Work Programme. The project was included in the new Work Programme by the General Assembly ([A.G. \(78\) 12](#), paras. 41 and 51, and [A.G. \(78\) 3](#)), confirming the recommendation of the Governing Council ([C.D. \(98\) 17](#), para. 245). While there was substantial agreement on the importance of the topic and on the legal, social and economic impact of the work to be conducted, the Secretariat was asked to produce a more refined scope of the project to be presented at the 99<sup>th</sup> session of the Governing Council in 2020.

2. During the remote session of the Governing Council held in April/May 2020, Council Members commented on the revised Secretariat's paper ([C.D. \(99\) A.3](#)), and authorised the setting up of an Exploratory Working Group to receive expert feedback on the questions raised ([C.D. \(99\) A.8](#), paras. 43-44).

3. In response to this mandate, the UNIDROIT Secretariat developed a Consultation Document containing, in its Part V, a set of questions based on the comments received during the Council remote session (attached hereto as Annexe I – please note that the document was circulated in English only). The document was designed to better define the most appropriate guidance for the future Working Group in determining the type of envisaged instrument and the scope of the project, and formed the basis for a first round of remote consultations with selected international experts and organisations.

4. The Secretariat received answers from: Neil Cohen (Jeffrey D. Forchelli Professor of Law, Brooklyn Law School, US); Fernando Gascón Inchausti (Professor of Civil Procedural Law, University Complutense of Madrid, Spain); Anselmo Reyes (Professor at the University of Hong Kong and Judge at SICC (Asia)); Teresa Rodriguez de las Heras Ballel (Associate Professor of Commercial Law, University Carlos III de Madrid, Spain); Kathryn Sabo (General Counsel, Constitutional, Administrative and International Law Section, Department of Justice (Canada), Member of the UNIDROIT Governing Council); Geneviève Saumier (Peter M. Laing Q.C. Professor of Law, McGill University, Quebec, Canada); Rolf Stürner (Professor of law, University of Freiburg, Germany). It also received feedback from Prof. Burkhard Hess (Executive Director) and Dr. Viebke Voss as representatives of the Max-Planck-Institute Luxembourg for International, European and Regulatory Procedural Law, and from the Union Internationale des Huissiers de Justice. Moreover, the consultation benefited from input from Jason Grant Allen (Senior Research Fellow, Humboldt University of Berlin – Australia/Germany) and Carla Reyes (Assistant Professor of Law, Southern Methodist University Dallas, US) on issues related to new technology and enforcement. The World Bank Group also participated in the consultations and reiterated its strong support and interest in collaborating with UNIDROIT. Comments on the Consultation Document were provided, in particular, by Mahesh Uttamchandani, Practice Manager (Finance Competitiveness & Innovation Global Practice); Nina Mocheva (Senior Financial Sector Specialist, Insolvency & Debt Resolution), Sergio Muro (Financial Sector Specialist, Insolvency & Debt Resolution), Andres Martinez (Senior Financial Sector Specialist, Insolvency & Debt Resolution), and Klaus Decker (Senior Public Sector Specialist, Governance Global Practice, WBG).

5. Part II of this document summarises the answers received during the remote consultation process and addresses, in particular, the issues to be considered in determining the overall scope of the project. An Internal Consultation Workshop with participation of the members of the UNIDROIT Governing Council will be held on 21 September 2020 to further discuss open issues (the draft agenda of the workshop is attached as Annexe II).

6. Part III contains a tentative project plan with some considerations on the type of expertise that would be needed to develop a meaningful and practically relevant best practice instrument in this area of the law.

## **II. OUTCOME OF THE CONSULTATION PROCESS AND ISSUES TO BE CONSIDERED IN DETERMINING THE SCOPE OF THE PROJECT**

### **General comments**

7. All participants in the consultation process recognised the fundamental importance of procedures and mechanisms for effective enforcement of creditors' claims, both in transnational situations as well as in domestic civil proceedings, taking the need to ensure an effective legal protection of contractual rights into account. They also agreed on the existence of numerous challenges for enforcement in most jurisdictions, and on the lack, at present, of a comprehensive

and sufficiently detailed international instrument providing for guidance for national legislators to overcome such challenges. Some experts expressly referred to the need of ensuring not only the right of creditors to effective enforcement but also a sufficient legal protection for debtors, which was also seen as a precondition of well-functioning lending and financial markets. Finally, experts generally supported the basic approach embodied in the Consultation Document presented by the Secretariat while providing very useful input in relation to the specific questions posed in its Part V.

**Question 1 (Consultation Document June 2020) – What type of international instrument would be more appropriate/useful in this context?**

8. For the Secretariat's introduction to this question please see Consultation Document June 2020, Annexe I to this document, paras 21-23.

9. There was general agreement among participants in the consultation process that it would not be appropriate or feasible to draft a binding international instrument (i.e. a Convention), a legislative instrument such as a model law, or detailed Principles or Rules structured as a comprehensive code. A guidance document containing best practices avoiding "one-size-fit-all" solutions was considered to be a better option. The following main reasons were cited for choosing this type of instrument: the close interconnection of enforcement with several areas of the law (e.g. property law, insolvency, constitutional law...) where there is a divergence of national legal concepts and approaches; divergent national cultural, social and economic situations; the dynamism of technological developments applied to enforcement. One commentator noted that a non-binding guidance instrument may, with time, pave the way for future international legislative activity.

10. A few commentators noted, however, that there should be a sufficient level of detail in suggesting potential regulations to national legislators (e.g. potential model rules for some specific issues). This would render the instrument more useful and attractive, and reach beyond the existing UIHJ Code of Enforcement. It was also noted that a decision on the specific format of the instrument would depend on the decision on the contours of the subject matters covered by the instrument. In this regard, it was proposed that the level of detail of the suggestions of best practices may be differentiated in relation to the various issues which will be addressed by the instrument.

11. One commentator highlighted that the best practices would need to be identified on the basis of a broad comparative law analysis.

**Question 2 – Should the instrument cover both extra-judicial and judicial enforcement? Would this dichotomy be an oversimplification of existing procedures and mechanisms?**

12. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 24-26.

*Meaning of "enforcement" for the purposes of the project*

13. A more general point was made in respect of Question 2: it was suggested that the future Working Group should preliminarily discuss and reach a common understanding of what is meant by "enforcement" for the purposes of the project, since this term may refer to different issues when used in an international or national context, which could lead to potential misunderstandings.

14. As already noted in the Consultation Document June 2020 (Part IV, para 13), the term "enforcement" is commonly used in treaties and regional legislation addressing the cross-border effectiveness of judicial decisions (e.g. *Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, N° 1215/2012 recast). Likewise, and irrespective of the existence of an international regime, the enforceability of a decision rendered in

one jurisdiction may be recognised by the international procedural rules of another jurisdiction. Those instruments or international procedural rules, however, stop short of regulating the domestic law procedures and mechanisms that are triggered upon recognition of the enforceability of such decisions. For example, if a court decision rendered in country X establishes the right of a party to a contract to obtain payment of a sum of money from the other party, this decision and its enforceability may be recognised in country Y as if it were a decision rendered by a court in country Y. This recognition, however, does not touch upon the subsequent phase, i.e. the procedure that has to be followed by the creditor to execute its right. The project on Best Practices of Effective Enforcement does not cover the first issue (i.e. recognition of the enforceability of a foreign decision) but will address the specific enforcement phase, irrespective of whether it derives from a cross-border or a purely domestic situation.

15. This “execution” phase has further to be distinguished from a potentially broader concept of enforcement of a creditor’s claim against the obligor. The broader category could encompass various situations, from the exercise of contractual remedies by the creditor in the case of non-performance by the obligor (e.g., claiming liquidated damages for non-performance on the basis of a contractual clause), to the process of obtaining a legal judgment against a defaulting obligor (e.g. initiating a law suit against the buyer to obtain payment of the outstanding monies and being granted by the court the right to payment). The focus of the Best Practices of Effective Enforcement project, however, as indicated in the Consultation Document June 2020 (Part II. para 6), is rather on the procedures and mechanisms to ensure the concrete execution of a creditor’s claim against the obligor.

16. In this regard, different types of processes were identified during the consultation. A typical situation would arise, for example, when a creditor has obtained a judicial decision against a non-performing obligor and this decision will trigger a procedure to allow the creditor to obtain satisfaction, usually by applying to assets of the obligor. Another may occur when a legal system recognises the right of a creditor to proceed to execution against the defaulting obligor without having to first obtain a judicial decision on the merit. Yet another more specific situation is that of a secured creditor who seeks to enforce its rights on the collateral, which may follow different procedures depending on the applicable law (see also below, under Question 4).

17. In all these situations, however, it was noted that consideration of the possible *relationship* with the process of determination of the merit (i.e. whether the creditor’s claim is founded, or whether the obligor can exercise a defense against the creditor’s claim) will have to be included. In other words, the experts should discuss the extent to which best practices on the interconnections of these different phases can be developed.

18. One commentator further noted that the instrument may have to address the relationship between the “declaratory” procedure (or procedure on the merits) and the enforcement procedure from two additional points of view: the provisional enforceability of judgments when an appeal is pending (i.e. what happens when the appeal is wholly or partly successful?), and what happens when there are extraordinary motions for review. In this respect, previous UNIDROIT work such as the one on civil procedure (e.g. the ELI- UNIDROIT Model European Rules in relation to “means of review – Part. IX) should be considered, among other, to ensure the use of consistent terminology.

19. Moreover, in answering Question 8 on the impact of technology on enforcement, one commentator was of the opinion that “smart contracts” should be referred to in the instrument, but not included as examples of enforcement proceedings, since they do not represent a veritable enforcement of a claim but consist in providing incentives for performance or rendering performance automatic upon the occurrence of specific events. Other participants in the consultation were more nuanced in respect to this qualification. For more details on this point see below, under Question 8.

20. The Secretariat would welcome a discussion on these general contours of the project at the Internal Exploratory Workshop, as well as in the first phases of the work of the Working Group. A suggestion to shape this discussion which emerged during the consultation process was to use a *functional notion of enforcement*, that does not necessarily coincide with the technical meaning of the term in any specific domestic law. This notion may embrace a number of different procedures and mechanisms through which a creditor can obtain satisfaction of its claim over assets of the obligor or collateral, be it by reaching and applying the value of the asset or by obtaining rights on, or control of, the assets. The usefulness of developing best practices in relation to each of those procedures should be assessed on the basis of the concrete obstacles and challenges they face at present in various jurisdictions.

#### *Coverage of both judicial and extrajudicial enforcement*

21. There was unanimous support for covering both judicial and extrajudicial enforcement, but most commentators were not in favour of using a strict dichotomy. It was noted that the distinction between judicial and extrajudicial enforcement is becoming difficult to establish in several legal systems (e.g. many jurisdiction have introduced hybrid proceedings with participation of private actors, or public/private actors, or with enhanced party autonomy); a dichotomy would hamper the development of hybrid enforcement models which are working well in some jurisdictions.

22. Another reason to cover the whole spectrum is that there are significant interconnections between judicial and extrajudicial enforcement. For example, extrajudicial enforcement mechanisms may provide for the possibility on the part of the debtor to resort to a court in order to solve issues related to the enforcement process. On the other hand, there is a clear need to find a proper balance between debtor's (and third parties') protection and the right to prompt and effective enforcement. The drafters of the instrument may wish to consider alternative ways to balance these competing interests, e.g. promoting the use of specific fast-track procedures to deal with oppositions.

23. In relation to *judicial enforcement*, it was noted that the document does not specify which issues would have to be addressed by the drafters. In determining the scope of the project, it should be clarified that it would address not only the mechanisms of judicial enforcement, but also the organs/actors and their organization. It should also cover the impact of technology on judicial enforcement (see below, Question 8).

24. Finally, in relation to *extrajudicial enforcement*, it was highlighted that the instrument would need to provide a better definition of what is meant by this term in various contexts.

### **Question 3 – Should the instrument be limited to secured and unsecured debt enforcement, or should the enforcement of other contractual claims be covered?**

25. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 27-28.

#### *Terminology*

26. One commentator criticised the terminology used in the consultation document (i.e. "debt enforcement") and recommended to substitute it with the expression "enforcement of monetary claims", considered to be less ambiguous.

*Different types of monetary claims*

27. One commentator suggested that even assuming that only monetary obligations are covered, there are different types of monetary obligations that should be considered separately, and the issue is whether all, or only some, would be covered by the project:

- Claims for repayment of loans (which would more properly be covered by the term “debt”);
- Claims for payment for goods or services provided on credit;
- Claims for money damages for breach of non-monetary promises (such as a claim that goods do not satisfy a warranty included in the contract of sale);
- Non-contractual monetary claims (such as claims by an injured party to recover money damages owed by the person whose tortious conduct caused the injuries).

*Inclusion of both secured and unsecured claims*

28. Commentators supported that the project cover both enforcement of secured claims (e.g. the procedure through which a creditor secured by collateral can exercise its rights on the collateral) and enforcement of non-secured claims. It was mentioned that secured debt plays a particularly important role in emerging economies and in developing credit markets, which present higher risks and fewer options.

29. The Secretariat’s proposal is that both secured and unsecured claims should be covered. The new instrument would fill an important gap in existing international instruments on secured transactions, which contain limited coverage of enforcement, while at the same time affirming the general principle of ensuring a swift, effective, and fair enforcement. Moreover, innovative and useful best practices of extrajudicial enforcement can be found in modern secured transactions laws (including use of technology). In addition, best practices would be particularly helpful for the enforcement of unsecured debt, which is often more difficult and burdensome.

*Inclusion of contractual claims other than monetary claims*

30. A majority of commentators supported the view that the instrument should not be limited to the enforcement of monetary claims. Rather, it was suggested to include contractual claims as a whole in the discussion and, if the study subsequently revealed that the formulation of best practices in relation to contractual claims exceeded the limits of a feasible outcome, the scope of the instrument might be narrowed. Moreover, in view of the non-binding nature of the instrument it could be envisaged that the detail of best practice suggestions may vary depending on the situation (as it may be more difficult to introduce a detailed unitary best practice for the enforcement of non-monetary claims).

31. Conversely, one expert argued that, as the project was already ambitious and complex, it should, at least initially, only cover enforcement of monetary obligations excluding other forms because of the outstanding practical importance of monetary claims for trade and the credit market. According to this expert, an extension of the scope could be considered at a later stage.

32. In support of the majority approach, it was noted that limiting the instrument to mechanisms of enforcement of money claims may simplify the initial research, but would be incomplete and less useful. While enforcement of monetary claims is the most common modality of execution in commercial relationships, other modalities are also important for daily commercial life and should therefore not be excluded:

- Enforcement of provisional measures may often concern orders for sequestration or injunctions not to dispose of assets or accounts (for the inclusion of the enforcement of provisional and protective measures see Question 6 below);
- In practice, enforcement may be hybrid (i.e. monetary claims coupled with injunctions);
- Specific performance is often transformed into monetary claims in the course of enforcement proceedings (e.g. *astreintes*, fines or *Zwangsgeld* are used to force specific performance; compensation for losses is the ultimate remedy when specific performance has become impossible)

At a more general level, including enforcement of contractual claims other than debt would improve fairness and protection of wider categories of creditors, including those who are more vulnerable than institutional lenders.

#### **Question 4 – Should consumer claims be excluded?**

33. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 29-32.

##### *Consumers as creditors*

34. A first issue raised by one commentator concerned the meaning of the term "consumer claims", specifically as to whether the instrument would cover consumers as debtors as well as consumers as creditors.

35. While the focus of the question put by the Secretariat was on enforcement of claims against consumers, one issue that should be discussed during the workshop is whether there is any reason to exclude consumer creditors from the analysis, especially if the debtor is a business entity, or not to develop special rules assisting consumer creditors when enforcing their claims. This would depend, partly, on whether consumer creditors are subject to special (mandatory) rules in relation to enforcement in national laws.

##### *Consumers as debtors*

36. A number of commentators supported the inclusion of enforcement against consumer debtors in the scope of the instrument, which could either consider whether additional protective measures for consumer debtors are appropriate, or it could develop general rules first and then modify them for commercial cases (usually to facilitate enforcement) and consumer cases (usually to strengthen protective measures), respectively. The main reason cited in support of including enforcement of consumer debts was that, in practice, enforcing claims against consumers played a vital role in an economy and excluding those claims would reduce the importance of the instrument. In terms of best practices, it was also noted that a sharp distinction between enforcement of consumer and non-consumer transactions may turn out to be artificial. For instance, in many cases traders will also be consumers and the difference will be harder to establish in practice.

37. One expert was more nuanced in his position and argued that including consumer debtors may distort the analysis, due to the impact of asymmetry and the existence of mandatory provisions. This would be especially problematic when dealing with extrajudicial enforcement and with proposals to increase the level of contractualisation in enforcement. In fact, in respect to certain instruments and situations, EU consumer law had rendered enforcement proceedings less effective (e.g., mortgage enforcement proceedings in Europe were now more burdensome due to the impact of the ECJ case law on unfair contract terms). On the other hand, in view of the non-binding nature of the future instrument, it could include specific provisions or suggestions and explain how, and to which extent, extrajudicial enforcement mechanisms would also be useful in "business to consumer" (B2C) situations, while abiding to requirements of consumer law.

38. Lastly, one expert was in favour of excluding consumer claims from the scope of the instrument, because consumer-specific remedies, proceedings and procedures could render the analysis too ample and less effective, and also because consumer protection regimes were generally domestic or regional.

#### **Question 5 – Should the instrument include enforcement of debts in insolvency?**

39. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 33-35.

40. Most commentators supported the inclusion of enforcement of claims in insolvency. The reasons indicated for including enforcement in insolvency were that coherence and consistency between insolvency-related and non-related mechanisms were instrumental to effective creditor protection, and that excluding insolvency proceedings from the scope would severely undermine the usefulness of the project. One commentator referred to two distinct issues that should be addressed: the impact of the opening of insolvency proceedings on pending enforcement, and the enforcement phase within insolvency proceedings itself.

41. Some concerns were however also expressed. According to two expert opinions, there would be no immediate need for an international best practice instrument with regard to enforcement in insolvency as this was already extensively addressed in two existing instruments: the UNCITRAL Legislative Guide on Insolvency Law,<sup>1</sup> which, within its scope, constituted a tool closely akin to the planned project on effective enforcement, and the World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes.<sup>2</sup> Adding more specific best practices to those incorporated in these instruments might overly complicate the project and touch upon sensitive issues of domestic law, due to the existence of diverging forms of insolvency in different legal orders, and because of the interplay between issues of debt enforcement and the substantive law of insolvency. As an example, it was noted that domestic insolvency systems have different approaches related to the stay (moratorium) on enforcement within insolvency proceedings. Another commentator, while being in favour of including insolvency-related enforcement, was doubtful that very specific best practices could be agreed upon at a global level.

42. In relation to this topic, the Secretariat agrees with the majority opinion that excluding insolvency from the scope of the project would send the wrong message, in view of the importance of the effectiveness of creditors' claims in insolvency. At the same time, it is aware of the difficulties that the project would encounter if it purported to introduce detailed best practices on matters specific to insolvency, especially regarding material-law type of rules (e.g., with particular relevance, the moratorium on enforcement following the opening of insolvency proceedings and considered best international practice by the ICR Principles in principle C.5). For this reason, the Secretariat would not recommend following this path and including rules that may modify substantive insolvency-based rules. There would be, however, a distinct added value in respect to the mentioned existing international guidance documents if the new instrument contained best practices on specific procedural mechanisms that would facilitate enforcement during insolvency proceedings (such as, for example, platforms for the liquidation of the value of the assets), and looked at how these mechanisms could work in different scenarios within insolvency proceedings. The project, thus, should be complementary to the existing best practices.

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<sup>1</sup> Available at [https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency\\_law](https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law).

<sup>2</sup> ICR Principles, revised 2015 (<http://pubdocs.worldbank.org/en/919511468425523509/ICR-Principles-Insolvency-Creditor-Debtor-Regimes-2016.pdf>).

**Question 6 – Should the instrument include consideration of provisional and protective measures?**

43. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, para 36.

44. The experts unanimously supported the proposal to include the consideration of provisional and protective measures in the instrument and the Secretariat's arguments for this inclusion, comprising also the great practical importance of interim relief and the close interconnections with enforcement proceedings. It was noted that incorporating enforcement of provisional and protective measures would be helpful if the instrument did not limit itself to express general principles but provided more detailed best practice guidance, so as to go beyond existing international instruments such as the ALI-UNIDROIT Principles and the ELI-UNIDROIT Rules.

**Question 7 – Should enforcement in specific categories of assets be excluded?**

45. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 37-39.

46. There was unanimous expression of the opinion that no categories of assets should be *a priori* excluded. All experts highlighted that digital assets could not be absent from the instrument, otherwise it would be *ab origine* outdated. It was argued that the instrument should place a special focus on those assets that are of the greatest practical relevance, including digital assets, intellectual property rights, and receivables in particular. Exclusion of specific assets might create gaps and added complexities in defining the scope and ensuring the consistency of the rules. Excluding recently developed assets would furthermore undermine the practical relevance of the instrument.

47. One expert suggested that the instrument could also discuss those categories of assets which should be exempted from enforcement proceedings, e.g. *comptes fiduciaires*, or assets required to carry on business activity, at least in the field of commercial relationships.

48. One expert argued that real estate enforcement may be a difficult issue to address, on account of the fundamental differences in land registry systems across jurisdictions, which would hamper the formulation of best practices in this area.

**Question 8 – Technology plays an increasingly relevant role in enforcement proceedings, both judicial and extrajudicial. What are concrete examples of mechanisms based on the use of technology which were particularly successful in rendering enforcement more effective? What are their limits and challenges?**

49. For the Secretariat's introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 40-44.

50. The experts unanimously supported the focus of the Secretariat's document and highlighted the importance of technological developments in the field of enforcement.

51. In addition to the examples of the application of technology to enforcement mentioned in the Consultation Document, it was proposed to include electronic asset tracing in general (not limited to the context of insolvency).

52. In respect to electronic asset tracing, the Secretariat notes that the Unique Rail Vehicle Identification System contained in the provisions of the Registry of the Luxembourg Rail Protocol to the Cape Town Convention constitutes, potentially, one such mechanisms for electronic asset tracing, which is now being discussed within a Working Group at the UNECE.

53. Electronic service in enforcement proceedings was proposed as another technological advancement on which the document should focus, as it could circumvent numerous obstacles and drawbacks of traditional service via traditional mail. In connection to this issue, the development of electronic national addresses or similar initiatives were also mentioned (as recommended in the World Bank Good Practices for Courts: Helpful Elements for Good Court Performance and the World Bank's Quality of Judicial Process Indicators).

54. One expert noted that "smart contracts", which were listed by the Secretariat as an example of the use of technology in enforcement proceedings, would not provide a solution for enforcement as such. Rather, they would merely change the burden of conducting litigation. The same seemed to hold true for the 'control provision' contained in the Space Protocol to the Cape Town Convention mentioned in the consultation document. These should be referred to, but not as examples of the use of technology that could facilitate enforcement.

55. On this point, another expert argued that the category of "smart contracts" encompasses different situations and while in some cases they are structured as a means to provide an incentive to perform, in some other cases they enable the creditor to actually enforce its claim.

56. It was further noted that the contours of the category of "digital assets" may be broader than their use in "smart contracts" and depending on the breadth of the definition of what constitutes a digital asset, there could be situations where a creditor seeks to enforce on debtor's "digital assets" even in the absence of automated performance.

57. With regard to the use of technology in enforcement more broadly, one expert proposed to devise a taxonomy of technological applications in enforcement proceedings and to map the main legal issues to be identified. To this end, it was suggested to base the analysis on four layers, which we include, partially, verbatim for your consideration:

1) *Digital architectures for enforcement proceedings*: This point refers to the use of platforms and DLT-based systems. "Platforms can be used as simple publicity-providing mechanisms and notification channels, or they can host systems to organize and execute public/judicial auctions or to enable digital enforcement proceedings in relation to certain conflicts". On the other hand, "DLT-based systems offer, in conjunction with smart contracts, a framework for enforcement on certain assets. Immutability and traceability features of these systems help to fortify the efficacy of restraining orders, asset freeze, or repossession either on 'pure' digital assets or on digital tokens representing control/access/possession over physical assets".

2) *Technology reshapes processes and procedures*: "Automation is one of the most promising benefits of the application of technologies in the enforcement realm", but at the same time "it raises a number of legal concerns. Another example is designing 'dynamic processes': A combination of IoT (i.e. Internet of Things), data-collecting devices, data analytics, and algorithms enables the use of procedures to accommodate changes of circumstances. E.g., digital tracing of assets in the context of secured transactions, or registrations that are systematically updated on the basis of data input collected by the system on the location of the asset, the value, its use, etc."

3) *New assets*: "Digital assets raise two-fold enforcement-related issues, namely the development of specific formulae and mechanisms to assist effective performance, such as escrow; and digital assets (e.g. tokens) being used within the enforcement proceedings, e.g. transfer of tokens as symbolic repossession. Conventional enforcement proceedings must be adapted to the distinctive features of digital assets in all their variants".

4) *Protection of involved interests in a digital-technology environment*: “The immediacy and the potential irreversibility of certain remedies enforced with the assistance of technology might jeopardize rights or interests deserving protection or evade the need of court supervision. An all-embracing framework for ‘technological enforcement’ might require further steps outside the perimeter of classical principles of equivalence and neutrality”.

58. In view of the numerous issues related to technology to be considered by the future Working Group in more precisely determining the scope of the project and in suggesting best practices, as well as the need to consult experts in this specific area, the Secretariat decided to focus the second part of the Internal Consultation Workshop on September 21 on the relationship between technology and enforcement (see Annexe II).

59. Finally, it should be highlighted that in relation to technology and enforcement there are potential synergies between the project on “Best Practices of Effective Enforcement” and the project on “Digital Assets” which was included in the 2020-2022 Work Programme of the Institute (see C.D.(99) B.4). It is important to ensure adequate coordination both in relation to the covered scope of the projects and as regards appropriate terminology. As a first step in this direction, two of the experts participating in the restricted Exploratory Working Group on Digital Assets were involved in the consultations and were invited to contribute to the Internal Consultation Workshop.

**Question 9 – Should the project specifically consider factors which are outside of the institutional framework of the administration of justice but may indirectly influence the operation of enforcement proceedings, such as, for example, the existence of debtors’ registries? Are there other factors that may more directly influence the success of enforcement?**

60. For the Secretariat’s introduction to this question please see Consultation Document June 2020, in Annexe I to this document, paras 45-48.

61. There was unanimous support that the project should generally consider the impact of factors beyond the institutional framework of the administration of justice, including debtors’ registries. Yet, it was argued that the focus should be on the effective disclosure of the debtor’s financial circumstances. It would be useful to explain the utility and success of those factors within the broader context, e.g. the relevant provisions on data protection in relation to the existence and usability of debtors’ registries. Moreover, issues related to privacy and data provision would need to be included in this broader perspective.

62. As to other factors that might have a more direct influence on the success of enforcement, experts mentioned the so-called “black-lists” of defaulting debtors as an additional helpful tool.

63. In combination with technologies, it was further recommended to include creditworthiness assessments and reputational systems in platforms and other digital systems that are contract-based.

64. It was noted, however, that these factors or mechanisms were usually influenced by country-specific institutional aspects and therefore the specificities of each legal system could hamper harmonisation efforts in this respect.

65. One expert suggested to refer to smart contracts and related instruments in the context of factors outside the institutional framework of the administration of justice.

### **III. PROJECT PLAN AND FUTURE STEPS**

#### *Tentative project plan*

66. The Secretariat is envisaging, at this stage, that the preparation of a first draft of the proposed guidance document be conducted over four sessions of the Working Group (one in late 2020, two in-2021 and one in 2022, possibly in connection with a wider consultation event). Working Group sessions should preferably be in person. Given the present extraordinary international circumstances, one or more of the planned in-person meetings may be replaced by remote webinars or conducted as hybrid meetings. It is envisaged that, in between sessions, remote meetings/consultations may be conducted when deemed necessary. This tentative calendar may be revised in view of different factors, including the evolution of the current extraordinary international context and the extent of research needed to develop a practically useful instrument in this complex area of law.

#### *Expertise needed*

67. In view of the diversified areas of the law that are covered by the project, the Secretariat deems it is necessary to involve academic experts in international and domestic civil procedure and secured transactions, preferably selected among those with a comparative law background. Expertise in the intersection between technology and law is also needed. The Secretariat will strive to achieve a diversified representation of legal systems relevant to the subject matter. In addition, observers from intergovernmental and international organisations working in the field, as well as professional global (or regional) organisations will be invited to provide input on the challenges faced by operators in practice and examples of already adopted solutions. In addition to the organisations involved in the first round of consultations, the Secretariat plans to reach out to OHADA, the EBRD, the ELI, and international associations of notaries.

### **IV. ACTION TO BE TAKEN**

68. *The UNIDROIT Secretariat would invite the Governing Council to approve the guidelines provided in this document on the proposed scope of the project and to confirm the high priority status assigned to the project, authorising the Secretariat to establish a Working Group.*



## ANNEXE I

EN

UNIDROIT 2020  
Study LXXVI B - Doc. 2  
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### BEST PRACTICES OF EFFECTIVE ENFORCEMENT

(Document for first round of consultations prepared by the UNIDROIT Secretariat)

#### I. INTRODUCTION TO THE FIRST ROUND OF CONSULTATIONS ON THE PROJECT

1. This document is a discussion paper developed by the UNIDROIT Secretariat in relation to the project on "Best Practices of Effective Enforcement", as a basis for a first round of **consultations with selected international experts**. It responds to the mandate received by the UNIDROIT Governing Council at its latest remote session ([C.D. \(99\) A.8](#), paras. 43-44) to set up an exploratory Working Group in order to better refine the scope of the project. In view of the current pandemic, this first leg of the consultations will be held through an email exchange. **The Secretariat would be grateful if experts could send their comments on any part of the document, and specifically their feedback on the list of questions, by 14 July 2020.** If needed, the Secretariat would be happy to additionally set up a conference call with any of the experts involved. It is envisaged that the outcome of the consultation be discussed during an **Exploratory Workshop with the participation of experts and Governing Council members**, which is now tentatively planned for **21 September 2020**.

2. The following three sections of this document provide a brief overview on: (II) the history of the project; (III) common challenges to enforcement against the backdrop of the economic importance of effective enforcement of contractual claims; and (IV) existing and planned global and regional international instruments dealing with enforcement, concluding that there is a need for an international instrument that sets global standards in a comprehensive and practice-oriented manner, and is capable of offering guidance to national legislators.

3. Section V contains a list of questions to be considered by the exploratory Working Group members in relation to the project, which are the core of the consultation, and focus in particular on the type of instrument, its goals, and its appropriate scope. The questions reflect the comments received during the remote session of the UNIDROIT Governing Council and are accompanied by the Secretariat's preliminary answers presented for discussion. Finally, the last two questions go back to some of the substantive issues referred to in Sections III and IV, which may be suitable topics for discussion at the Exploratory Workshop.

#### II. BACKGROUND AND HISTORY OF THE PROJECT

4. In 2016, the Secretariat included a proposal to undertake a project on "Principles of Effective Enforcement" in the draft Work Programme 2017-2019. The proposal was initially designed to fill a gap in existing UNIDROIT instruments, particularly the ALI/UNIDROIT Principles of Transnational Civil

Procedure, prepared by a joint American Law Institute / UNIDROIT Study Group and adopted in 2004. It was accompanied by a **preliminary Feasibility Study** 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 ([UNIDROIT 2016 – C.D. \(95\) 13 Add. 2](#)). The preliminary Study provided an overview of some of the obstacles created by the lack of general principles on enforcement mechanisms in transnational civil procedure and highlighted the insufficiency of existing national and international legal frameworks in this respect. It underscored that the right to effective enforcement represents an integral part of a fair and effective procedure. Moreover, it pointed to the economic significance of effective enforcement mechanisms, both in decision-making and in contractual execution. International financial institutions, as well as national governments, increasingly consider them as a fundamental criterion for the assessment and evaluation of national economies and for credit rating purposes. A general guidance document at an international level would address the most relevant issues and provide a detailed set of principles embodying best practices. It would provide helpful guidance for legislators wishing to improve their domestic law, while contributing to the emergence of common minimum standards for domestic procedures as a necessary basis for improvement of international cooperation in this area.

5. The topic was included in the UNIDROIT Work Programme for the 2017-2019 triennium with low priority, pending the completion of the European Law Institute (ELI)/UNIDROIT Rules on Civil Procedure. In December 2018, the Secretariat received a proposal for the 2020-2022 Work Programme by the **World Bank** regarding a joint project on the “**Development of a Working Paper to Outline Best Practices on Debt Enforcement**”, which the Secretariat presented in the context of the discussion of the 2020-2022 Work Programme at the 98<sup>th</sup> Session of the Governing Council. The proposal was discussed as a continuation, and a refinement, of the scope of the “Principles of Effective Enforcement” project. The project was included in the new Work Programme by the General Assembly ([A.G. \(78\) 12](#), paras. 41 and 51, and [A.G. \(78\) 3](#)), confirming the recommendation of the Governing Council ([C.D. \(98\) 17](#), para. 245). While there was substantial agreement on the importance of the topic and on the legal, social and economic impact of the work to be conducted, the Secretariat was asked to produce a more refined scope of the project to be presented at the 99<sup>th</sup> session of the Governing Council in 2020. During the remote session of the Governing Council held in April/May 2020, Council Members commented on the revised paper and authorised the setting up of an exploratory Working Group to receive expert feedback on the questions raised.

### **III. CURRENT CHALLENGES FOR ENFORCEMENT**

6. It goes without saying that effective enforcement of commercial claims is of high economic importance for any State. It is recognised as vital for a developed credit market and improved access to credit, for an increase in trade and investment and for overall economic development and sustained growth.<sup>1</sup> Market participants are more willing to invest where they are confident that, if their debtors fail to perform, there will be reliable mechanisms to obtain satisfaction of their claims with predictable outcomes. A significant step towards achieving this goal is represented by an improvement of the effectiveness of commercial dispute resolution by the judicial system. For example, studies show that firms are larger and more competitive, have greater access to credit, and feel more secure in investing in countries with efficient court systems.<sup>2</sup> Moreover, particularly

<sup>1</sup> The crucial importance of well-functioning enforcement procedures and remedies in domestic laws to foster availability of credit and boost investments is recognised by international financial organisations generally, and in relation to specific regions or countries. See among others: World Bank, *Doing Business, Enforcing Contracts – Why it matters?*, at <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts/why-matters>; World Bank, *Doing Business 2020*, at <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf>; European Bank for Reconstruction and Development (EBRD), *Discussion paper, Building an Effective Debt-Enforcement Framework* (2019), available at <https://www.ebrd.com/news/events/debt-enforcement-in-europe-and-beyond.html>.

<sup>2</sup> See e.g. OECD (2013), *What makes civil justice effective?*, OECD Economics Department Policy Notes, No. 18 June 2013.

with regard to credit markets, the introduction of a modern legal framework for secured transactions is also viewed as fundamental to increasing credit availability and investment, especially if well-coordinated with insolvency legislation.<sup>3</sup> While there is certainly a need for reform in these areas, it must be accompanied by a timely, predictable and affordable enforcement phase, which concretely ensures unsecured and secured creditor satisfaction. Many jurisdictions in the world, however, face a number of challenges in this phase specifically; and it is these challenges that the project seeks to overcome.

7. A traditional challenge at the national level is that, as a rule, several legal systems rely on judicial enforcement proceedings. The formalities that such proceedings entail usually derive from the need to introduce sufficient safeguards for debtors and third parties, but often result in insurmountable obstacles to effective enforcement. In many instances, creditors must obtain a court decision before commencing the enforcement phase, which means that two procedural phases are needed. However, even where legal systems allow for certain deeds to be enforceable *per se*, the proceedings triggered by the deed may still be excessively formalised and time-consuming. For example, recourse to public auctions for the realisation of the value of all or some types of assets, as well as stringent requirements for, or unavailability of, alternative means to realise such value, not only lead to delays in creditor satisfaction, but often result in depreciation and a loss of potential value. While this may be, at least in part, connected to other factors, e.g. the lack of reliable secondary markets for certain assets, procedural bottlenecks do play a determinant role. Another problem connected with judicial enforcement proceedings is their cost, which is amplified in systems involving a plethora of different actors (courts, notaries, expert valuers, enforcement agents...). Depending on the value in dispute, such costs and delays may even act as a deterrent for creditors to embark on a procedure to obtain satisfaction. Thus, there is a need to find an appropriate balance between providing protection for debtors and third parties, and avoiding inefficiencies due to excessive delays and costs of the proceedings which result in detriment not only to creditors but to the entire debtor-creditor relationship.

8. Further obstacles at a more general level are posed by weak court infrastructure and a lack of commercial specialisation, which in turn impact on the effectiveness of proceedings, including those for the valuation of debtors' assets. In some legal systems, lengthy proceedings with participation of a plurality of actors may also engender limited transparency and accountability.

9. In order to avoid lengthy and costly judicial procedures and rely on the commercial expertise of the parties themselves to maximise realisation value, some legal systems already provide varying degrees of extrajudicial enforcement, particularly for monetary claims secured by collateral. Such mechanisms are considered an integral part of any modern secured transaction regime and are especially important for countries with less efficient judicial enforcement procedures to attract investment. On the other hand, the interests of debtors and third parties should be protected from possible abuses by creditors. The main challenge is indeed how to reach the proper balance between achieving prompt and effective enforcement of creditors' claims, while at the same time safeguarding debtors' and third parties' basic rights. A common problem arises when, in an effort to balance the interests of all parties involved, the normative framework allows 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, thereby forcing creditors to follow the ordinary judicial route. Moreover, commencement of insolvency proceedings may, depending on the applicable legal regime, severely limit or impede the exercise of out-of-court enforcement by secured creditors. Thus, there is a clear need to consider the limits posed by legal systems to creditors' enforcement (and which may derive from the constitutional legal framework in a specific jurisdiction) and consider the suitability of alternative mechanisms in order to reach an appropriate balance between effectiveness and fairness (see also below, Question 2).

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<sup>3</sup> See e.g. World Bank, *Secured Transactions, Collateral Registries and Movable Asset-Based Financing Knowledge Guide* (2019), at <https://openknowledge.worldbank.org/handle/10986/32551>.

10. More recently, new challenges to effective enforcement of commercial claims derive from the changed asset structure of firms and companies. The legal framework for civil enforcement in numerous countries still mirrors an economic and social reality where most debtor assets consisted of tangible property. Today, however, other assets often represent the most substantial value on which a creditor can rely. While many States have enacted special provisions to facilitate enforcement against specific assets (e.g. legislation on collateral arrangements in financial markets), there are still obstacles and uncertainties in relation to other values (e.g. receivables) (see also below, Question 7).

11. Finally, the rapid spread of digitalisation and the use of technological innovations have introduced new scenarios. Most notably, legislators are faced with the question of how to conduct enforcement procedures against new types of assets (e.g. digital assets). Moreover, emerging mechanisms allow for the automatic – partial or total - performance of agreements, including enforcement of obligations, such as payment obligations (often referred to under the label of “smart contracts”).<sup>4</sup> Thus, technology poses additional issues facing national legislators that, in view of the global reach of commercial transactions in this field, may benefit from the development of international best practices. On the other hand, technology would appear to be a promising tool to tackle traditional challenges to effective enforcement, in particular those linked to excessive delays and costs as well as lack of transparency (see Question 8 below).

12. The above-mentioned challenges have motivated many countries around the globe to modernise their enforcement laws. Many States have introduced some important reforms (e.g. China, France, Germany, England, Spain, Ukraine...) and reforms are still ongoing in numerous States. Yet, as will be seen in the next section, there is little guidance at global and regional levels for national legislators regarding options to address these challenges.

#### **IV. EXISTING GLOBAL AND REGIONAL INSTRUMENTS ON ENFORCEMENT AND CURRENT PROJECTS**

13. Preliminarily, it should be noted that the term “enforcement” is commonly used in treaties and regional legislation addressing the cross-border effectiveness of judicial decisions,<sup>5</sup> arbitral awards,<sup>6</sup> and more recently settlements deriving from mediation,<sup>7</sup> or the cross-border recognition and enforceability of other documents.<sup>8</sup> Those instruments, however, stop short of regulating the domestic law procedures and mechanisms that are triggered upon recognition of the enforceability of such decisions or documents, and are therefore outside of the scope of our analysis. Thus, this study will focus on existing international instruments dealing with the specific enforcement phase, irrespective of whether it derives from a cross-border or a purely domestic situation.

##### **Existing international instruments on enforcement**

14. The importance of ensuring effective and adequate enforcement of claims is recognised in general terms in a number of existing international instruments, dealing with either procedural law

<sup>4</sup> The expression “smart contract” is however increasingly criticised for being misleading and not technology neutral, see most recently UNCITRAL, *Legal issues related to the digital economy – artificial intelligence*, A/CN.9/1012/Add.1, para.24 and also below, Question 8.

<sup>5</sup> E.g. at regional level the *Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (N° 1215/2012 recast) as well as the 2007 *Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*; see also the conventions of the Inter-American Specialized Conferences on Private International Law of the Organization of American States, and at global level, the most recent 2019 *HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (not yet in force).

<sup>6</sup> E.g. the 1958 *New York UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

<sup>7</sup> See the most recent 2019 *UN Convention on International Settlement Agreements Resulting from Mediation* (“Singapore Convention”, not yet in force).

<sup>8</sup> See e.g. the Regulation (EC) N° 1896/2006 creating a European order for payment procedure (OJ L 399, 30.12.2006).

or secured transactions. Only a few existing global and regional instruments, however, do specifically address mechanisms and procedures for enforcement.

15. An example of the first scenario is represented by the *ALI/UNIDROIT Principles of Transnational Civil Procedure*, adopted in 2004 with the goal to reduce the impact of differences between legal systems in lawsuits involving transnational commercial transactions through a model of universal procedure in line with the essential elements of due process of law.<sup>9</sup> In relation to enforcement, Principle 29 merely states that procedures should be available for “speedy and effective enforcement of judgments”, without, however, providing further guidance on such procedures. The comment to that provision makes it clear that the topic as such was beyond the scope of the Principles. Likewise, the draft *ELI-UNIDROIT Rules on European Civil Procedure*,<sup>10</sup> which represent the first regional project adapting the ALI/UNIDROIT Principles to a specific regional legal culture, do not address enforcement issues in detail. These Rules are more comprehensive and detailed than the ALI/UNIDROIT Principles and cover additional issues such as means of review including appeals. The most interesting part of the Rules in regard to enforcement is the section on “Provisional and Protective Measures” (Part X). The section’s goal is, inter alia, to “ensure or promote effective enforcement of final decisions concerning the substance of the proceedings (...) including securing assets” and “preserve the existence and value of goods or other assets” (cf Rule 184). The ELI/UNIDROIT Rules, however, also stop short of covering procedures and mechanisms for enforcement.

16. International instruments providing for general guidance on domestic secured transactions law reforms also contain references to enforcement procedures, in light of the recognition of the importance of ensuring proper satisfaction of secured creditor rights. For instance, the 2010 *UNCITRAL Legislative Guide on Secured Transactions* sets down general principles, discusses various issues related to enforcement of security rights and contains some recommendations.<sup>11</sup> The most recent *UNCITRAL Model Law on Secured Transactions* (2019)<sup>12</sup> also dedicates a whole part (Chapter VII) to the “enforcement of a security right” which sets out post-default rights of the secured creditor, balancing effectiveness with the protection of all parties involved.<sup>13</sup> In relation to general collateral, such rights, ranging from the right to obtain possession of the encumbered asset to sell or otherwise dispose of, lease, or license it, or to propose its acquisition, can be exercised either by applying to a national court or other national authority, or not. In the first case, the Model Law suggests the introduction of expedited procedures, however without further specifications; in the second case, it provides 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 objection.

17. In relation to UNIDROIT’s specialised instruments on secured credit, the *Cape Town Convention and its Protocols* contain detailed provisions on creditor remedies upon debtor default.<sup>14</sup> The

<sup>9</sup> ALI/UNIDROIT Principles of Transnational Civil Procedure, 2004, at <https://www.unidroit.org/instruments/transnational-civil-procedure>.

<sup>10</sup> On this project see UNIDROIT, Study LXXVIA - Transnational Civil Procedure - Formulation of Regional Rules, at <https://www.unidroit.org/work-in-progress-eli-unidroit-european-rules>.

<sup>11</sup> UNCITRAL *Legislative Guide on Secured Transactions* (2010), at [https://www.uncitral.org/pdf/english/texts/security-lg/e/09-82670\\_Ebook-Guide\\_09-04-10English.pdf](https://www.uncitral.org/pdf/english/texts/security-lg/e/09-82670_Ebook-Guide_09-04-10English.pdf)

<sup>12</sup> UNCITRAL, *Model Law on Secured Transactions* (2016), at [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf).

<sup>13</sup> See also UNCITRAL, *Model Law on Secured Transactions - Guide to Enactment* (2017), paras 76 et seq.; 421 et seq.

<sup>14</sup> *Convention on International Interests on Mobile Equipment* (CTC), at <https://www.unidroit.org/instruments/security-interests/cape-town-convention>; *Protocol to the Convention on International Interests on Mobile Equipment on Matters Specific to Aircraft Equipment* (AP), at <http://www.unidroit.org/instruments/security-interests/aircraft-protocol>; *Luxembourg (Rail) Protocol to the Convention on International Interests on Mobile Equipment on Matters Specific to Railway Rolling Stock* (RP), at <https://www.unidroit.org/instruments/security-interests/rail-protocol>; *Protocol to the Convention on International Interests on Mobile Equipment on Matters Specific to Space Assets* (SP) at <http://www.unidroit.org/instruments/security-interests/space-protocol>; *(Pretoria) Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agriculture and Construction Equipment* (MAC Prot.), at <https://www.unidroit.org/instruments/security-interests/mac-protocol-2019>.

conventional regime does not generally address issues of enforcement of such remedies. Contracting States can however make use of declarations to strengthen creditor rights, which impact on their enforcement, e.g. allowing for out-of-court creditor's action; imposing strict timeframes to obtain relief within debtor's insolvency, including repossession of the asset; excluding discretion by the relevant authority in granting the remedy; limiting or excluding oppositions or counter-actions.<sup>15</sup> In addition to these provisions, there is an interesting ad hoc mechanism in the Space Protocol, which takes into account the physical impossibility of repossession in the case of satellites and other space assets, and recognizes the importance of revenue streams in relation to the asset for the creditor.<sup>16</sup> Through the "ITT&C" enforcement mechanism (Tracking, Telemetry and Control), the Protocol allows the parties to specifically agree to the placement of command codes and related data and materials with a third party so that the creditor may establish control over, or operate the space asset (subject to certain safeguards imposed by Contracting States). This provision, irrespective of the specific context of asset-based space financing, may offer an interesting model for enforcement against assets for which traditional repossession mechanisms would not work.

19. As noted above, a limited number of international instruments specifically address the national legal framework for enforcement.<sup>17</sup> In particular, a comprehensive general guideline at a global level is represented by the *Global Code of Enforcement*, developed within the International Union of Judicial Officers (*Union internationale des huissiers de justice*, UIHJ).<sup>18</sup> Its 34 articles lay down general principles that should govern enforcement procedures and their institutions and actors. Thus, the Code's aim is to set global fundamental standards of enforcement that could be implemented at the national level, rather than providing a concrete and detailed guidance to legislators for designing enforcement legislation.

### **New proposals at regional and global level**

18. *Proposal of an EU Directive on Accelerated Extrajudicial Collateral Enforcement Mechanism.* While the law of enforcement is, in principle, within the competence of each Member State in the EU, it has enacted legislation facilitating cross-border debt recovery and, in the framework of its strategy to address the issue of non-performing loans (NPLs) to ensure market stability, focused on the operation of secondary markets and the recovery of debts in Member States. Following an EU Commission proposal for a Directive on *Credit servicers, credit purchasers and the recovery of collateral*,<sup>19</sup> a proposed text for a *Directive on Accelerated Extrajudicial Collateral Enforcement Mechanism* was agreed upon at the Council level and is currently pending negotiation in Parliament.<sup>20</sup> The most interesting aspect of the proposed directive is that it would set out a minimum common framework and a set of requirements for an accelerated extrajudicial collateral enforcement mechanism in respect of secured credit agreements, in order to help prevent further accumulation of non-performing loans in the banking system. The directive should apply to credit agreements concluded between credit institutions and business borrowers that are secured by identifiable immovable or movable assets (excluding, inter alia, enforcement in relation to financial instruments and insolvency proceedings). The enforcement mechanism should be based on an agreement

<sup>15</sup> See Roy Goode, *Convention on International Interests in Mobile Equipment and Protocol Thereto on Matters Specific to Aircraft Objects*, Official Commentary, 4<sup>th</sup> ed. (UNIDROIT 2019).

<sup>16</sup> Article XIX SP.

<sup>17</sup> At the regional level, an example of an instrument which aims at introducing streamlined and simplified effective enforcement procedures within Member States of an organisation is the 2008 OHADA Uniform Act Organizing Simplified Recovery Procedures and Measures of Execution (*Acte uniforme portant organisation des procédures simplifiées de recouvrement et des voies d'exécution*), available at <https://www.droit-afrique.com/uploads/OHADA-Uniform-Act-1998-simplified-recovery-procedures.pdf>.

<sup>18</sup> UIHJ, *Global Code of Enforcement*, 2015, available at [http://uihj.com/archive-uihj/en/global-code-of-enforcement\\_2165010.html](http://uihj.com/archive-uihj/en/global-code-of-enforcement_2165010.html). The organs of the Council of Europe have also issued general recommendations on enforcement, see e.g. the Recommendation Rec(2003)17 and the most recent *Good practice guide on enforcement of judicial decisions* adopted by the European Commission on Efficiency of Justice (CEPEJ) in 2015.

<sup>19</sup> 14.3.2018 COM (2018) 135 final.

<sup>20</sup> ST 14261 2019 REV 1 COR 1.

between the credit institution and the business borrower, with transparency requirements, and the procedure should be triggered without the need to obtain an enforceable title from a court. On the other hand, Member States would be allowed great flexibility, particularly in deciding upon the participation of a public official or other professional in the procedure, the method of enforcement and debtor's right to challenge any aspect of the enforcement mechanism.

19. *Proposal to undertake work in the area of civil asset tracing and recovery (UNCITRAL)*. At its 52<sup>nd</sup> session in 2019, the UN Commission on International Trade Law (UNCITRAL) discussed proposals to explore the possibility to undertake legislative work on civil asset-tracing and recovery particularly in the context of cross-border insolvency.<sup>21</sup> The Commission mandated the UNCITRAL Secretariat to organize a Colloquium which was held in Vienna on 6 December 2019,<sup>22</sup> the conclusions of which will be transmitted to the Commission in a report for its 53<sup>rd</sup> session (to be held in 2020). While no decision has been taken as yet by the Commission, the Colloquium discussed existing legal tools to identify, locate and return assets to their legitimate claimants in various contexts, and the challenges and opportunities connected to the use of modern technology, with a view to better define the scope of possible future work of the organisation.

### **Conclusions on the need to develop global standards**

20. The brief review of existing international instruments and proposals presented above confirms that there is a growing interest, at global and regional levels, in undertaking work in the area of enforcement. The importance of providing a sound domestic legal framework, particularly in relation to enforcement of commercial claims, is recognised in a number of instruments addressing civil procedure as well as secured transactions, and single instruments may contain specific mechanisms or procedures. The most encompassing instruments to date, however, provide general guidance in the form of key principles to be considered in domestic legislation. Thus, it appears that there is a lack of an instrument setting out global standards in a comprehensive, detailed, and practice-oriented manner, which would provide national legislators with guidance on how to design national rules for efficient, cost-effective, timely and fair judicial and extra-judicial enforcement of commercial claims. The emergence of common minimum standards and best practices for domestic procedures would offer such options, as well as introducing a higher level of predictability and certainty in cross-border transactions as a necessary basis to improve cooperation and boost investments. The "Best Practices of Effective Enforcement" project aims at filling in this gap.

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<sup>21</sup> Report of the United Nations Commission on International Trade Law at its 52<sup>nd</sup> session, A/74/17, para. 200 *et seq.* The discussion was a follow up on proposals received from the United States of America: A/CN.9/996 and A/CN.9/WG.V/WP.154.

<sup>22</sup> Concept Note, Colloquium on Asset Tracing and Recovery 6 December 2019, available at [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/concept\\_note\\_20191127.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/concept_note_20191127.pdf).

## **V. QUESTIONS TO BE DISCUSSED**

### **A. *TYPE OF INSTRUMENT TO BE DEVELOPED***

#### **Q. 1 – WHAT TYPE OF INTERNATIONAL INSTRUMENT WOULD BE MORE APPROPRIATE/USEFUL IN THIS CONTEXT?**

21. The general aim of the project is to develop a legal tool to address the current challenges to a well-functioning domestic law system for enforcement. The envisaged instrument is intended to offer guidance at a global level, in line with UNIDROIT's worldwide mandate, particularly to domestic lawmakers wishing to modernise, in whole or in part, their legal system. This would include enforcement deriving from a purely domestic situation, but also from a cross-border scenario (bearing in mind that, as already noted, existing instruments addressing cross-border decisions stop short of regulating the domestic law procedures and mechanisms that are triggered upon recognition of the enforceability of such decisions) When designing and implementing such a framework, there is no "one-size-fits-all" approach as enforcement is strongly influenced not only by the broader legal context and by the interconnection with other areas of the law (such as constitutional law, procedural law including alternative dispute resolution, secured transactions, insolvency, ...), but also by the specific socio-economic realities in each jurisdiction. A mechanism used in one jurisdiction may well fail or not perform adequately in another one because of the interplay with this broader landscape (one example being the use of private enforcement agencies which may have a different impact on the level of fairness, transparency and efficiency of the procedure depending on the national context).

22. In light of the above, the Secretariat, following the proposal of the World Bank, suggests that the Working Group develop a document akin to a legal guide, which would: highlight examples of present obstacles to effective enforcement; point to relevant potential issues to be considered in reforming or further developing this area of the law; suggest examples of best practices drawn from existing models; and also consider recent developments linked to the use of technology as possible mechanisms to make enforcement more efficient using innovative tools. This type of instrument appears to be better suited to provide useful guidance where there are – and partly where there should continue to be – 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.

23. The Secretariat would be favourable to continue to refer to "best practices" in the title of the instrument. The expression "best practices" should be understood as referring to procedures and mechanisms that facilitate enforcement and improve its effectiveness, while at the same time ensuring appropriate ways of balancing the different competing interests. The instrument should provide examples of how such interests could be concretely taken into account, without undermining the goal of effectiveness.

### **B. *ISSUES RELATED TO THE SCOPE OF THE PROJECT***

#### **Q. 2 – SHOULD THE INSTRUMENT COVER BOTH EXTRA-JUDICIAL AND JUDICIAL ENFORCEMENT? WOULD THIS DICHOTOMY BE AN OVERSIMPLIFICATION OF EXISTING PROCEDURES AND MECHANISMS?**

24. In line with the proposal of the World Bank, the envisaged instrument should cover both judicial enforcement and extrajudicial enforcement. In the Secretariat's view, limiting the scope of the instrument to either of them would not serve the purpose of developing best practices in this area of the law.

25. Legal systems should provide for a degree of party autonomy in designing enforcement mechanisms in their contracts and allow prompt and efficient action by the creditor. This is particularly the case for secured debt. Out-of-court enforcement, if appropriately designed, can reduce the length and cost of the procedure, ease the burden on the courts and maximise creditor satisfaction in the interest of all parties involved, including third parties holding claims against the debtor.

26. As noted above, the main challenge faced by legal systems in relation to extra-judicial enforcement lies, in fact, in how to reach the proper balance between prompt and effective realisation, on the one hand, and protection of debtor and third party interests on the other. Mechanisms such as transparency requirements (notice and information duties) and the introduction of standards of conduct subject to an ex-post evaluation are among the best practices that can offer possible solutions. On the other hand, granting ample and unfettered opportunities to debtors to introduce opposition claims and resort to ordinary judicial proceedings, both on the merits of the dispute and on procedural issues, may defeat the goal of effective enforcement. Best practices may include, for example, the use of specific fast-track procedures to deal with oppositions. This latter point emphasises the fact that there is an inextricable link between the judicial and the extrajudicial route.

**Q. 3 – SHOULD THE INSTRUMENT BE LIMITED TO SECURED AND UNSECURED DEBT ENFORCEMENT, OR SHOULD THE ENFORCEMENT OF OTHER CONTRACTUAL CLAIMS BE COVERED?**

27. The proposal received from the World Bank in 2018 specifically focused on debt enforcement, both secured and unsecured. In line with the World Bank's proposal, the Secretariat suggests that the project should devote particular attention to enforcement of commercial unsecured and secured debts, which is indicated as the main focus of the instrument. This limitation would work well particularly when we look at secured credit, where the main concern in relation to enforcement is to ensure satisfaction of creditors' claims while taking into account the interests of debtors and relevant third parties. At the same time, the Secretariat preferred not to exclude *a priori* a more ample consideration of contractual claims. For example, in the case of a contract of sale, if the project only focused on the enforcement of the claim of the party owed a monetary obligation, this may introduce an imbalance in the respective positions of the parties. It is true, however, that consideration of contractual claims other than monetary obligations may 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.

28. Taking these arguments into account, the Secretariat would see merit in limiting the *initial* scope of the future instrument more explicitly to debt enforcement, but would welcome the views of the experts on the pros and cons of this choice.

**Q. 4 – SHOULD CONSUMER CLAIMS BE EXCLUDED?**

29. Another possible issue of scope concerns coverage of the enforcement of consumers' debts.<sup>23</sup>

30. Should such debts be expressly excluded from the scope of the project on the basis of a substantial difference in the policy that is applied, or should be applied, to these situations in domestic law when it comes to enforcement proceedings?

31. The Secretariat's proposal would be to focus on issues deriving from the enforcement of commercial debts, though best practices developed in this area may be considered to be useful also in the case of consumer claims.

32. In this respect, it is worth mentioning that the Proposal of an EU Directive on Accelerated Extrajudicial Collateral Enforcement Mechanism mentioned above (para. 18) limits its scope of application to credit agreements concluded between credit institutions and business borrowers (which are secured by identifiable immovable or movable assets). This is linked to the stated aims of the proposed Directive, though it is envisaged that Member States should be free to apply the same or similar extrajudicial enforcement mechanisms also in the case of agreements concluded by creditors other than credit institutions, as well as agreements concluded by debtors who are not business borrowers.

**Q. 5 – SHOULD THE INSTRUMENT INCLUDE ENFORCEMENT OF DEBTS IN INSOLVENCY?**

33. During the remote session of the Governing Council, some members questioned whether insolvency-related enforcement should be included within the scope of the project. For this reason, the Secretariat seeks advice from the experts on whether excluding such situations would result in a detrimental impact on the potential usefulness of the instrument.

34. Though aware of the special status and nature of insolvency legislation in domestic laws, the Secretariat had suggested that enforcement in insolvency be included in the scope of the project in view of its fundamental importance to ensure creditor satisfaction, particularly of secured creditor claims. Security rights – and, a fortiori, their realisation via enforcement – are often worth only as much as their value in insolvency. As suggested in the World Bank's proposal, mechanisms outside of insolvency should be designed to work in harmony with the insolvency. Thus, excluding insolvency enforcement altogether from the scope of the analysis may limit the usefulness of any enforcement procedure and mechanism that is not insolvency specific.

35. Moreover, the Secretariat believes that there would be no problem in coordinating and avoiding duplication of efforts should the UNCITRAL Commission adopt the proposal to work in the area of asset tracing and recovery. The latter project would have a more specific and limited scope; in any case, UNCITRAL would be invited to participate to the meetings of the Working Group as observer.

<sup>23</sup> We refer here to the definition of "consumer" as "a party who enters into the contract otherwise than in the course of its trade or profession" (2016 UNIDROIT Principles of International Commercial Contracts, Preamble, comment 2).

**Q. 6 – SHOULD THE INSTRUMENT INCLUDE CONSIDERATION OF PROVISIONAL AND PROTECTIVE MEASURES?**

36. Provisional and protective measures, as forms of interim relief used to secure effective enforcement of judicial decisions, or to otherwise preserve rights and prevent (additional) detrimental consequences to creditors prior to the commencement of proceedings or pending final judgment, are relevant to a project on effective enforcement for a number of reasons. First of all, one of the purposes of such measures is to facilitate enforcement of final judgments (e.g. by freezing assets or allowing other asset-preservation actions). Secondly, they themselves need mechanisms to ensure effectiveness of the relief. Moreover, exceptionally they may take the form of “advance relief” which effectively guarantees creditors’ satisfaction.<sup>24</sup> On the other hand, approaches to types, scope, requirements, and consequences of provisional and protective measures differ significantly across jurisdictions, while there are a number of supranational and international sources offering further models. Thus, the Secretariat would see merit in the project considering the impact of provisional and protective measures on debt enforcement.

**Q. 7 – SHOULD ENFORCEMENT IN SPECIFIC CATEGORIES OF ASSETS BE EXCLUDED?**

37. As noted above (para. 10), assets other than tangible property often represent the most substantial value on which a creditor can rely to enforce its claims (and which is used by secured creditors as collateral when permitted under the applicable law). Thus, the instrument should address enforcement against a variety of assets including receivables and other intangibles.

38. In specific areas specialised legislation has been enacted at the domestic level covering also enforcement matters, such as for example legislation regulating financial collateral arrangements. It is suggested that enforcement related to financial assets, while not constituting the focus of the analysis, may offer useful inputs in developing common minimum standards and best practices for enforcement.

39. Greater challenges may be encountered when dealing with enforcement against digital assets (be they in the form of cryptocurrencies or asset-backed tokens). This issue, presented here in the context of the determination of the scope of the project, is connected to the more general Question 8 below.

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<sup>24</sup> An example is offered by the Cape Town Convention system of relief pending final determination of the dispute, see Roy Goode, *Official Commentary* (above fn 14), 343 *et seq.*, 508 *et seq.*

**C. OTHER ISSUES**

**Q. 8 – TECHNOLOGY PLAYS AN INCREASINGLY RELEVANT ROLE IN ENFORCEMENT PROCEEDINGS, BOTH JUDICIAL AND EXTRAJUDICIAL. WHAT ARE CONCRETE EXAMPLES OF MECHANISMS BASED ON THE USE OF TECHNOLOGY WHICH WERE PARTICULARLY SUCCESSFUL IN RENDERING ENFORCEMENT MORE EFFECTIVE? WHAT ARE THEIR LIMITS AND CHALLENGES?**

40. A more innovative approach to solving enforcement issues at the national level may come from the developments of technology. We refer here to some examples among those that can be found in national laws and international instruments.

41. Recently, the possibility to hold electronic public auctions to realise the value of debtors' assets has been tested in a number of jurisdictions. Digital public auction platforms are considered a useful tool to respond to various challenges of judicial sales, in particular lack of transparency, limited competition and loss of value. On the other hand, issues arise in respect to the appropriate legal design of such platforms and their practical operation.

42. Regarding enforcement mechanisms, as mentioned above (paragraph 17) the "control" provision contained in the Space Protocol to allow creditors to repossess the revenue stream deriving from collateral, with appropriate adaptations, may be applied in other contexts, where traditional "repossession" of an asset would not work.

43. Another mechanism is represented by programs which may be used, among other things, when written on the distributed ledger system, to perform a contract in an automated manner (so called "smart contracts", see also above, paragraph 11). While automated systems to perform a contract are not new and predate recent developments in technology, their widespread use in commercial activity represents a new phenomenon. Key legal issues include the fact that when the system is applied to a distributed ledger system, the performance cannot be stopped once deployed.

44. Are there any other concrete examples of the use of technology to facilitate enforcement? What are the advantages and drawbacks of such mechanisms? What could be the most appropriate conditions and requirements for their application?

***Q. 9 – SHOULD THE PROJECT SPECIFICALLY CONSIDER FACTORS WHICH ARE OUTSIDE OF THE INSTITUTIONAL FRAMEWORK OF THE ADMINISTRATION OF JUSTICE BUT MAY INDIRECTLY INFLUENCE THE OPERATION OF ENFORCEMENT PROCEEDINGS, SUCH AS, FOR EXAMPLE, THE EXISTENCE OF DEBTORS’ REGISTRIES? ARE THERE OTHER FACTORS THAT MAY MORE DIRECTLY INFLUENCE THE SUCCESS OF ENFORCEMENT?***

45. As noted above (paragraphs 21-22) , the operation of enforcement procedures in a specific jurisdiction can be strongly influenced by the broader legal context and by the interconnection with other areas of the law. While the envisaged instrument cannot address the specificities of each legal system, it should at least point to those factors that may play a significant role.

46. Many jurisdictions have introduced mechanisms that may serve as an incentive not to default on obligations, thereby limiting the need to resort to enforcement proceedings, such as, for example, debtor registries (either kept by the State or by private companies). These mechanisms could also serve to facilitate compliance with enforcement orders, though they would not be part of the procedure as such.

47. Recent reforms of enforcement laws have however introduced more specific tools that could be used by bailiffs to be able to successfully enforce claims. For example, bailiffs may be authorised to obtain information about the debtor's financial circumstances, and a defaulting debtor can be obliged to disclose his or her income and financial situation at the beginning of the enforcement proceedings.

48. Would these mechanisms be generally recommendable in order to facilitate enforcement?



## ANNEXE II

### *Draft Agenda*

### **Internal Consultation Workshop Best Practices of Effective Enforcement**

**Monday 21 September 2020  
13:15-17:00 CEST**

The consultation workshop is aimed at discussing and specifying the scope of the future instrument on Best Practices of Effective Enforcement. Effective enforcement of commercial claims is of high economic importance for any State. New options and challenges for effective enforcement, deriving among other from technological innovations and changed asset structures of debtors, have motivated many countries around the globe to modernise their enforcement laws. Yet, there is little guidance at the international level for national legislators on options to address these issues and increase the effectiveness of enforcement. The planned instrument will address the most relevant issues and provide a set of best practices. It aims at providing helpful guidance for legislators wishing to improve their domestic law, while at the same time contributing to the emergence of common minimum standards for domestic procedures as a necessary basis for improvement of international cooperation in this area.

This internal exploratory workshop will seek input from experts with different backgrounds, international organisations working in the field and members of the UNIDROIT Governing Council, particularly on the determination of the most useful and appropriate scope for the project and on the impact of technology on enforcement.

#### **DRAFT AGENDA\***

<b>Opening of the workshop</b>	
<b>13:15 – 13:30</b>	<b>The project on Best Practices of Effective Enforcement</b> <i>Ignacio Tirado (Secretary-General, UNIDROIT)</i> <i>World Bank Group (TBC)</i>
<b>Session 1: Scope of the project</b>	
<b>13:30 – 15:00</b>	<i>Chair: Kathryn Sabo (General Counsel, Constitutional, Administrative and International Law Section, Department of Justice Canada, member of UNIDROIT Governing Council)</i>

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\* Please note that the exact time allocated to each session is tentative and may be adjusted in the final version of the agenda.

	<p><b>Presentation and discussion of the issues connected with the definition of the scope of the project</b> (on the basis of a background document provided by the Secretariat)</p> <p><i>Introduction: Anna Veneziano (Deputy Secretary-General, UNIDROIT)</i></p> <p><i>Roundtable discussion with experts participants (for the list see below)</i></p>
15:00– 15:15	Coffee Break
<b>Session 2: The impact of new technologies on enforcement: challenges and opportunities</b>	
15:15 – 15:30	<p><i>Chair: Geneviève Saumier, Peter M. Laing Q.C. Professor of Law, McGill University (Quebec, Canada)</i></p> <p><b>Taxonomy of technological applications in enforcement proceedings</b></p> <p><i>Teresa Rodriguez de Las Heras Ballell (Associate Professor of Commercial Law, University Carlos III de Madrid)</i></p>
15:30 – 15:40	<p><b>Smart contracts and enforcement</b></p> <p><i>Carla Reyes (Assistant Professor of Law, Southern Methodist University Dallas)</i></p>
15:40 – 15:50	<p><b>Enforcement on digital assets</b></p> <p><i>Jason Grant Allen (Senior Research Fellow, Humboldt University of Berlin)</i></p>
15:50– 16:45	<p><b>Roundtable discussion with participants</b></p>
<b>Summary of the workshop and closing remarks</b>	
16:45 – 17:00	<p><i>Kathryn Sabo (General Counsel, Constitutional, Administrative and International Law Section, Department of Justice Canada, member of UNIDROIT Governing Council)</i></p> <p><i>Ignacio Tirado (Secretary-General, UNIDROIT)</i></p> <p><i>Anna Veneziano (Deputy Secretary-General, UNIDROIT)</i></p>

## LIST OF PARTICIPANTS

(NB: in addition to the participants listed here, all members of the UNIDROIT Governing Council are invited to participate in the workshop)

Mr Jason GRANT ALLEN	Senior Research Fellow, Humboldt University of Berlin (Australia) (speaker)
Mr Neil COHEN	Jeffrey D. Forchelli Professor of Law, Brooklyn Law School (US)
Mr Fernando GASCON INCHAUSTI	Professor of Law, University Complutense de Madrid (Spain)
Mr Burkhardt HESS	Executive Director / Professor of Law, Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law (Germany)
Ms Carla REYES	Assistant Professor of Law, Southern Methodist University Dallas (US)
Ms Teresa RODRIGUEZ De Las HERAS BALLELL	Associate Professor of Commercial Law, University Carlos III de Madrid (Spain)
Ms Kathryn SABO	General Counsel, Constitutional, Administrative and International Law Section, Department of Justice (Canada), Member of the UNIDROIT Governing Council ( <i>Chair of the workshop</i> )
Ms Geneviève SAUMIER	Peter M. Laing Q.C. Professor of Law, McGill University (Quebec, Canada) ( <i>Chair of the workshop</i> )
Mr Rolf STÜRNER	Emeritus Professor of Law, University of Freiburg (Germany)

### *Organisations*

Mr Jos UITDEHAAG	First Secretary, Union internationale des huissiers de justice (UIHJ) (The Netherlands)
representatives TBC	World Bank Group
EBRD: TBC	
UNCITRAL: representative from Working Group II (Dispute Settlement) TBC	

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