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Item No. 6 on the Agenda: Draft Amendments to the UNIDROIT Regulations on financial matters: Proposal by Germany

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

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

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

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

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

The content of those proposals is set out in the Annex to this memorandum.

ANNEX***FINANCIAL REGULATIONS
(draft proposal by Germany)******Article 1 The objectives of the Financial regulations***

1.1 The financial regulations shall regulate the financial management of the International Institute for the Unification of private Law (UNIDROIT). In case of conflict between the financial regulations and the statute of UNIDROIT the latter prevails.

1.2 The financial year shall run from 1 January to the 31 December.

Article 2 Budget

2.1 Every year by 15 March the Secretary-General shall submit a proposal for a draft budget for the following financial year to the Finance Committee, for preliminary opinion. This draft budget, amended as necessary to reflect the Finance Committee's opinion, shall then be submitted to the Governing Council for consideration and, subsequently, communicated to member Governments for comment. Any such comments shall reach the Secretary-General by 30 September at the latest. The draft budget shall then be submitted, with any such comments, to the Finance Committee, for final opinion, and, with any amendments recommended by the Finance Committee, laid before the General Assembly for approval.

2.2 The budget shall be divided into chapters and articles. It shall present an introduction, a table of the expected receipts, including the estimated balance of the previous year and the special contribution of the host country, with explanatory notes, as well as a table of the expected expenditures with explanatory notes. The budget shall include forecast expenditure and revenue which balance out. It shall include a statement on the main changes in comparison with the budget of the previous financial year and such further annexes or statements as the Secretary-General or the General Assembly deems necessary.

Forecast expenditure and revenue shall be expressed in the currency which is legal tender in Italy.

2.3 The Secretary-General shall make all necessary arrangements in order that the members of the Finance Committee may have at their disposal all elements necessary to form an opinion one month before the date of the meeting during which the Finance Committee is to express an opinion on the draft budget of the Secretary-General and the consequent amount of the members' financial contributions and, if necessary, shall modify that amount before submission to the General Assembly.

2.4 The Secretary-General shall make all necessary arrangements in order that member States at the General Assembly may have at their disposal all elements necessary to form an opinion at least two weeks before the General Assembly at which the budget is to be adopted and the amount of the members' financial contributions is to be set.

2.5 The General Assembly shall, by consensus, adopt the budget and set the amount of the members' financial contributions based on the draft submitted by the Secretary-General.

2.6 The Secretary-General shall notify, at the end of the General Assembly, each of the members of the amount of their financial contribution as set by the General Assembly for each financial year.

The compulsory financial contributions shall be calculated in the currency which is legal tender in Italy and shall be paid in that currency or in another currency accepted by the Secretary-General.

The entire contribution is due at the beginning of each year. As of the 1st of January of the following calendar year, the unpaid financial contribution or its debit balance shall be considered as in arrears for one year.

New members must pay a contribution for the year during which they become members; it shall be calculated pro rata temporis, based on the actual date of membership.

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

2.7 On an exceptional basis, the Secretary-General may present supplementary budget proposals to the Finance Committee, which shall subsequently be submitted to the General Assembly. The provisions of these rules shall also apply to any supplementary budget.

2.8 At the close of the financial year, any residual balance made up of the difference between revenue on the one hand, and expenditure and liabilities on the other hand, shall be posted as a cash balance.

The Secretary-General may propose to the Finance Committee:

a) to record the surplus as revenue in the next financial year, thus reducing assessed contributions of members;

b) to use the surplus for any other purpose.

On the basis of these proposals, the Finance Committee shall make a recommendation to the General Assembly.

Article 3 Financial management

3.1 In adopting the budget for the financial year, the General Assembly authorises the Secretary-General to incur expenses and make payments within the approved limits.

3.2 The Secretary-General may authorise transfers within a same budget chapter, or, with the approval of the Finance Committee, from one chapter to another.

3.3 The management accounts for each financial year shall specify all revenue and expenditure.

3.4 The Secretary-General may set up specific accounts within the budget framework which shall be subject to audits of the UNIDROIT. He/she must, in such cases, inform the Finance Committee and precisely define the objectives and the conditions for the establishment of each specific account. He/she shall report on any such accounts to the Finance Committee.

3.5 The Secretary-General shall choose the bank(s) where the funds of the UNIDROIT are to be deposited. He/she shall be authorised to invest such funds as are not necessary for the immediate running needs of the UNIDROIT, on the condition that he/she take due care in making investments and in selecting establishments in which he/she has no vested interest. The Secretary-General shall account for the results of any such investments.

3.6 The Secretary-General shall establish any rules and methods he/she deems necessary to ensure the discipline and efficiency of management. He/she shall, in particular:

a) set rules for the incurring of expenses;

b) prescribe that all payments be made upon the presentation of supporting documentation and proof that the services or products have actually been provided and have not previously been paid for;

c) authorise members of staff, responsible to the Secretary-General, to receive funds, incur expenses and carry out payments in the name of the UNIDROIT;

d) execute the internal controls as provided for in articles 33 – 36 of the UNIDROIT Regulations.

3.7 The Secretary-General shall set rules for the acquisition of equipment, goods, facilities and supplies as well as for the implementation of works or external services. A tender process shall be instituted each time that it appears necessary to the Secretary-General to do so in order to guarantee transparency and the best possible use of resources.

Article 4 General accounting

4.1 The Secretary-General shall manage the general accounting for each financial year, monitoring:

- a) revenue and expenditure;
- b) the use of voted appropriations;
- c) the financial situation, in the form of a balance sheet, including:
 - assets: fixed assets, securities, disposable assets and funds to be collected;
 - liabilities: the amount of the statutory reserve funds, provision accounts, outstanding debts and accrual liability accounts.

4.2 The accounting system shall be expressed in the currency which is legal tender in Italy.

Article 5 Auditing of accounts

5.1 The General Assembly, by a weighted qualified majority vote, shall appoint a financial auditor, upon the nomination of the President. The auditor shall be appointed for a term of five successive financial years (renewable). The auditor may be removed from office under the same conditions as those of appointment.

5.2 The auditor must have all titles and qualifications required for the carrying out of necessary duties, which shall consist of the annual auditing of the accounts and ensuring that the provisions of the Financial Regulations are abided by.

5.3 The auditing of accounts shall include the implementation of controls deemed useful by the financial auditor, over the course of year and then at the end of the year, both on and off site, such as checking the balance of the accounts for the general accounting, the consistency between the accounting entries and the bank statements, the reconciliation of entries and revenue and expenditure supporting documents.

5.4 The financial auditor shall present a report on each financial year certifying as a minimum that:

- the management accounts submitted are correct and consistent with the books and accounting records;
- the financial operations recorded in these documents were done in compliance with the provisions of the Financial Regulations and the budgetary appropriations were thus respected;
- the financial standing submitted correctly shows non current assets and cash in hand or deposited in the bank(s), which must correspond to the amounts mentioned on statements received from the depositaries;

- the value taken into account in the financial statement of materials, furniture and other equipment is consistent with the inventories.

The report shall also register all observations and comments deemed necessary to be brought to the attention of the Secretary-General, the Governing Council, the Finance Committee or the General Assembly on the establishment and presentation of accounts.

5.5 The financial auditor's report shall be delivered to the Secretary-General at the latest three months after the close of the corresponding budget year. To this end, the management accounts, the financial position, and the general accounts shall be submitted to the auditor, at the latest, by the 15th of March following the end of the corresponding financial year.

Article 6 Approval of the accounts

6.1 The members of the Finance Committee shall have available to them the financial auditor's report, explanatory documents and any further background information, insofar as possible, one month before the date of the meeting at which the Finance Committee considers the first estimates for the budget of the following year.

6.2 Based on the report of the financial auditor and any additional information supplied by the Secretary-General, the Finance Committee shall make a determination, at the close of each financial year, on the management accounts, the balance sheet, the Working Capital Fund, the assignment of any surplus and the final discharge of the Secretary-General for the management of the said financial year.

6.3 Member States shall be provided with the financial auditor's report, explanatory documents and any further background information, one month before the General Assembly at which the management accounts of the previous financial year and the budget for the following financial year are to be submitted for approval.

6.4 Based on the report of the financial auditor and any additional information, instructions or recommendations from the Finance Committee, the General Assembly shall decide whether to approve the management accounts, the balance sheet, the Working Capital Fund, the proposals for the appropriation of any surplus and whether to discharge (give quietus to) the Secretary-General, before voting on the budget for the following financial year.

Article 7 Special provisions

7.1 The Secretary-General may delegate in his/her discretion, all or part of his/her duties, to UNIDROIT staff members if he/she considers this necessary for the implementation of the Financial Regulations. However, such staff members cannot sub-delegate the duties entrusted to them by the Secretary-General. The Finance Committee must be informed of any delegation of duties.

7.2 In the event of appointment of a new Secretary-General, and to ensure continuity of the financial management of the UNIDROIT, the transfer of related instructions between the exiting Secretary-General and the new Secretary-General shall be carried out. A provisional status of the management accounts and balance sheet shall be established from the date at which the Secretary-General assumes his/her duties when this does not take place at the end of the financial year. This statement shall be co-signed by each party and is addressed for information purposes to the Steering Committee of the UNIDROIT and kept in the accounting files of the UNIDROIT.