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Item No. 4 on the Agenda: Draft amendments to the UNIDROIT Regulations on financial matters

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Proposals for amendments to chapter of the UNIDROIT Regulations dealing with the financial management of the Institute</i>
<i>Action to be taken</i>	<i>Opinion to be transmitted to the General Assembly at its 71st session.</i>
<i>Related documents</i>	<i>UNIDROIT 2010 - F.C. (67) 4; UNIDROIT 2010 - F.C. (67) 5; UNIDROIT 2011 - F.C. (71) 4</i>

1. 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."

2. Those proposals, which were set out in document (UNIDROIT 2010 - F.C. (67) 4), were considered by the Finance Committee at its 76th session (Rome, 25 March 2010). At that session, the Committee was reminded that, in an intervention made at the 65th session of the General Assembly (Rome, 2 December 2009), Canada had proposed a functional and financial review of UNIDROIT, covering not only the Institute's financial or budgetary situation, but also its strategic planning. The Committee agreed that the scope of such a review went beyond its competence, and that the matter could be taken up by the Governing Council, if it so chose (UNIDROIT 2010 - F.C. (67) 5 – Report of the session, para. 40). The Committee then held a brief exchange of views on the proposals by Germany for amendments to the provisions of the UNIDROIT Regulations dealing with financial administration of the Institute. The Committee accepted a suggestion that those proposals, too, could be taken into account by the Governing Council at the occasion of the discussion on the review suggested by Canada. The Committee, therefore, agreed that the matter should be reported to the Governing Council, and invited the Secretary-General to formulate his opinion on the proposal (UNIDROIT 2010 - F.C. (67) 5 – Report of the session, para. 46).

3. The Governing Council completed an in-depth substantive review of the Strategic Plan of the Organisation at its 90th session (Rome, 9-11 May 2011), and approved the final document at its 91st session (Rome, 7-9 May 2012). It should be noted, however, that the Governing Council chose to focus on broad strategic objectives, rather than on financial management issues and preferred to leave it for the Finance Committee to undertake an initial review of the provisions of the UNIDROIT Regulations dealing with financial administration of the Institute.

4. In the light of the above, the Finance Committee agreed, at its 71st session (Rome, 15 March 2012) to resume its consideration of the proposals originally submitted by Germany in 2010, which were set out in the Annex I to document F.C. (71) 4. The Finance Committee set up a small open-ended informal working group which met on 7 June 2012 and agreed on a revised text later submitted to the review of its plenary in writing.

5. The Secretary-General submitted the draft amendments in writing to the Governing Council, for its review and approval, on 10 August 2012, with a request for comments by 17 September 2012. At the date of writing (4 September 2012), no comments had been received by the Secretariat. Subject to receiving comments by the requested date, they will be submitted to the Finance Committee for its final review prior to submission to the General Assembly for adoption at its 71st session, to be held in Rome on 29 November 2012.

6. *In the light of the above, the Finance Committee may wish to recommend to the General Assembly the adoption of the amendments to the UNIDROIT Regulations set out in the Annex I to this memorandum. For ease of reference, the proposed new texts are shown in tabular form, together with the corresponding provisions in the existing Regulations, if any, followed by comments by the Secretariat.*

Annex

Proposed amendments to Part Two- Financial administration - of the UNIDROIT Regulations	Origin of the proposed text	Comments by the Secretariat
<p>Article 23</p> <p>These Regulations govern the financial management of the Institute UNIDROIT, pursuant to article 17 of the Statute. In case of conflict between the Regulations and the Statute the latter prevails.</p>	German Proposal (UNIDROIT 2012 FC (71)4), Article 1	<i>New article</i> <i>Minor editorial changes inserted in the text, as it appears in FC (71)4.</i>
<p>Article 24</p> <p>The financial year shall run from 1 January to 31 December.</p>	UNIDROIT Regulations, Article 23 German Proposal (UNIDROIT 2012 FC (71)4), Article 1.2	<i>No changes.</i>
<p>Article 25</p> <p>The Institute's revenue shall be composed of:</p> <ul style="list-style-type: none"> (a) the contribution of the Italian Government; (b) the contributions of other member Governments; (c) any other contributions, donations or legacies accepted by the Secretary-General, in accordance with these Regulations (d) income derived from the Institute's activities; (e) income from the Institute's property. 	UNIDROIT Regulations, Article 24	<i>Paragraph (c) has been amended to reflect the fact, while the Governing Council oversees the implementation of the Work Programme, it is the Secretary-General who accepts contributions under the conditions set forth in the Regulations.</i>

<i>Article 26</i>		
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.	UNIDROIT Regulations, Article 31 German Proposal (UNIDROIT 2012 FC (71)4), Article 2	<i>No changes.</i>
2. – The budget shall be divided into chapters and articles. It shall present an introduction, a table of the expected receipts, including 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.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.2	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT. The Finance Committee has however requested to delete the reference to an estimated balance, which the Committee agreed should not be an element of the budget planning process (see draft article 48(4), for treatment of surplus in the accounting process).</i>
3. – The Secretary-General shall make all necessary arrangements in order that member Governments may have at their disposal all elements necessary to form an opinion at least two weeks before the session of the General Assembly at which the budget is to be adopted and the amount of the member Governments' financial contributions is to be set.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.4	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT .</i>

4. – The General Assembly shall, by consensus, adopt the budget and set the amount of the member Governments' financial contributions based on the draft submitted by the Secretary-General.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.5	<i>The proposed new text—, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT.</i>
<i>Article 27</i> 1. – The Secretary-General shall notify each of the member Governments of the amount of their financial contribution as set by the General Assembly for each financial year.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.6	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT.</i>
2. – The ordinary annual contributions of member Governments shall be set 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.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.6	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT. The changes to the text of the German proposal are merely intended to ensure consistency with the terminology used in the Statute and other parts of the Regulations.</i>
3. – New member Governments must pay a contribution for the year during which they become members; it shall be calculated <i>pro rata temporis</i> , based on the actual date of membership.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.6	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT.</i>
4. – The Secretary-General shall regularly present the status of collection of the ordinary annual contributions of member Governments to the Finance Committee and to the General Assembly.	German Proposal (UNIDROIT 2012 FC (71)4), Article 2.6	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT.</i>

<p><i>Article 28</i></p> <p>1. – The Secretary-General may accept voluntary contributions, whether or not in cash, and set up specific accounts which shall be subject to verification by the auditor, provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the Institute and provided that the acceptance of such contributions that directly or indirectly involve additional financial liability for the Institute shall require the consent of the Finance Committee.</p> <p>2. – The Secretary-General shall inform the Finance Committee of the receipt of such contributions and precisely define the objectives and the conditions for the establishment of each specific account. He shall report on any such accounts to the Finance Committee.</p>	<p>German Proposal (UNIDROIT 2012 FC (71)4), Article 3.4</p>	<p><i>The text of the German proposal, as it appears in FC (71)4, has been amended at the request of the Finance Committee to clarify that the Secretary-General is only authorised to accept those contributions that are compatible with the aims of UNIDROIT.</i></p>
<p><i>Article 29</i></p> <p>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.</p>	<p>German Proposal (UNIDROIT 2012 FC (71)4), Article 3.1</p>	<p><i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, reflects the existing practice in UNIDROIT.</i></p>
<p>2. – Should changes in the budget become necessary, the Secretary-General shall submit them to the Governing Council or to the Permanent Committee, then to the Finance Committee for opinion and to the General Assembly for ratification.</p>	<p>UNIDROIT Regulations, Article 32(1)</p>	<p><i>No changes</i></p>
<p>3. – Any transfer from one chapter of the budget to another that exceeds ten per cent of the expenditure under the transferring chapter, or two per cent of the total ordinary expenditure authorised for the financial year, whichever is higher, shall be authorised by the Finance Committee. Transfers from one article to another of the same chapter shall be authorised by the Secretary-General.</p>	<p>UNIDROIT Regulations, Article 32 (2) German Proposal (UNIDROIT 2012 FC (71)4), Article 3.2</p>	<p><i>The text of Article 32(2) of the Regulations, as amended by the German proposal, as it appears in FC (71)4, has been re-drafted at the request of the Finance Committee to introduce a ceiling for the Secretary-General's authority to transfer funds among chapters of the budget.</i></p>

<p><i>Article 30</i></p> <p>The President shall have the power to sign on behalf of the Institute and shall issue a receipt for monies received. He may however delegate these powers to the Secretary-General and the Treasurer. If necessary, the Secretary-General may be replaced by the Deputy Secretary-General, and the Treasurer by an official authorised by the President, for the purpose of exercising the power thus delegated.</p>	<p>UNIDROIT Regulations, Articles 25 and 30</p>	<p><i>Articles 25 and 30 of the UNIDROIT Regulations have been combined for ease of reading.</i> <i>It should be noted that UNIDROIT does not have a full-time external "Treasurer", and that this function has for many years been carried out by a staff member who accumulates treasury functions with those of an administrative officer. With that in mind, the Secretary-General does not see a need for changing the title used in the Regulations.</i></p>
<p><i>Article 31</i></p> <p>The Secretary-General shall choose the bank(s) where the funds of UNIDROIT are to be deposited. He shall be authorised to invest such funds as are not necessary for the immediate running needs of UNIDROIT, on the condition that he take due care in making investments and in selecting establishments in which he has no vested interest. The Secretary-General shall account for the results of any such investments.</p>	<p>German Proposal (UNIDROIT 2012 FC (71)4), Article 3.5.</p>	<p><i>The practice at UNIDROIT has long departed from Article 26 of the UNIDROIT Regulations, which still provides that the Institute's funds "shall be deposited in banks selected by the Finance Committee" and that the Institute "may also possess a post office current account".</i></p>
<p><i>Article 32</i></p> <p>The Secretary-General shall establish any rules and methods he deems necessary to ensure the discipline and efficiency of financial management. He shall, in particular:</p> <p>a) set rules for the incurring of expenses;</p>	<p>UNIDROIT Regulations, Articles 27 and 33</p> <p>German proposal (UNIDROIT 2012 FC (71)4, Article 3.6).</p>	<p><i>The proposed new provision combines in one provision the text of the draft article 3.6, of the German Proposal, as it appears in FC (71)4, with the current article 33 of the UNIDROIT Regulations, and may usefully replace both the existing article 33 as well as article 27, which contemplates a responsibility which the Finance</i></p>

<p>b) prescribe that all payments be made upon the presentation a special form, accompanied by supporting documents where necessary, indicating the name and address of the proposed recipient of payment , the amount payable, the object of the expenditure, the relevant item of the budget, and proof that the services or products have actually been provided and have not previously been paid for;</p> <p>c) authorise members of staff, responsible to the Secretary-General, to receive funds, incur expenses and carry out payments in the name of UNIDROIT.</p>		<i>Committee never exercised.</i>
<p><i>Article 33</i></p> <p>1. – The Secretary-General, on the advice of the Treasurer, shall approve all proposals for expenditure where appropriate and sign an order for payment.</p> <p>2. – The Treasurer shall execute orders for payment signed by the Secretary-General and obtain receipts for payment.</p>	UNIDROIT Regulations, Articles 34 and 35	<i>No changes.</i>
<p><i>Article 28</i></p> <p>Provision shall be made in the budget for representation allowances payable to the President and Secretary General and to any other official, as authorised by them.</p>	UNIDROIT Regulations, Article 28	<i>UNIDROIT does not pay representation allowances to any official.</i>
<p><i>Article 34</i></p> <p>The scales of travel and subsistence allowances of the members of the Governing Council, of the auditors, of members of the study groups and of members of staff travelling on official business shall be calculated in accordance with the conditions laid down in ANNEX II to these Regulations, on the basis of the scales for official journeys applicable to the Coordinated Organisations as published by the OECD.</p>	UNIDROIT Regulations, Article 29.	<i>No changes.</i>

<i>Article 35</i>		
1. – The Treasurer, acting as head of supplies, shall provide each member of staff with the office articles he needs. He shall keep an inventory of such articles and, whenever the Secretary-General so requests, prepare a statement showing how they have been used.	UNIDROIT Regulations, Article 36	<i>No changes.</i>
2. – The Secretary-General shall set rules for the procurement 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.	German proposal (UNIDROIT 2012 FC (71)4, Article 3.7)	<i>The proposed new rule, which is identical with the German proposal, as it appears in FC (71)4, could usefully supplement current articles 34-36 of the Regulations. The low value of most procurements done by UNIDROIT does not require more elaborate provisions.</i>
<i>Article 36</i> The Secretary-General shall manage the general accounting for each financial year, monitoring: (a) revenue and expenditure, ensuring, in particular the conformity between actual expenditure and budgetary allocations; (b) the financial situation, including disposable assets, funds to be collected, working capital fund, outstanding debts and accrual liability.	German proposal (UNIDROIT 2012 FC (71)4, Article 4.1)	<i>The text of the German proposal, as it appears in FC (71)4, and for which there was no parallel in the existing Regulations, has been amended and simplified at the request of the Finance Committee to reflect the fact that the accounts provided by UNIDROIT are exclusively financial accounts and not an economic balance sheet.</i>
<i>Article 37</i>		
1. – The General Assembly shall appoint a financial auditor, upon the nomination of the President, in accordance with Article 17 of the Statute. The auditor shall be appointed for a term of five successive financial years (renewable	German proposal (UNIDROIT 2012 FC (71)4, Article 5.1)	<i>The proposed new text, which is identical with the German proposal, as it appears in FC (71)4, has been amended to reflect the practice of the General Assembly to take decisions</i>

once). The auditor may be removed from office under the same conditions as those of appointment.		<i>by consensus, and to introduce a ceiling to the mandate of the auditor.</i>
2. – The auditor must have all necessary titles and qualifications required for the carrying out of his duties, which shall consist of the annual auditing of the accounts and ensuring that the provisions of the Regulations are abided by.	German proposal (UNIDROIT 2012 FC (71)4, Article 5.2	
3. – The auditor shall submit directly his report to the General Assembly. He may attend all meetings of the General Assembly, of the Governing Council, of the Permanent Committee and of the Finance Committee, having the right to take the floor but not to vote. He may also submit to the said bodies, at any time, a report on matters which in his opinion call for action on his part.	UNIDROIT Regulations, Article 38	<i>Slight amendments to reflect the fact that UNIDROIT usually appoints only one auditor.</i>
<i>Article 38</i>		
1. – The accounts shall be closed as at 28 February and, after preparation for examination, communicated to the auditor by 15 March. Together with the auditor's report, explanatory documents and any further background information, the accounts shall be made available to the Finance Committee at the meeting at which the Finance Committee considers the first estimates for the budget of the following year.	UNIDROIT Regulations, Article 37 German proposal (UNIDROIT 2012 FC (71) 4, Article 6.1	<i>Article 37 of the Regulations has been broken down into three paragraphs for ease of reading and incorporates the substance of draft article 6.1. of the German Proposal, as it appears in FC (71)4.</i>
2. – The accounts and the auditor's report shall then be submitted to the member Governments whose observations thereon shall be communicated to the Secretary-General by 15 September.		
3. – They shall subsequently be submitted with the observations, if any, of member Governments, to the Finance Committee for opinion and to the General Assembly for approval.		
4. – If the accounts show, at the close of the financial year, any residual balance made up of the difference between revenue on the one hand, and	German proposal (UNIDROIT 2012 FC (71) 4); Article 2.8	<i>The text of the German proposal, as it appears in FC (71)4, and for which</i>

<p>expenditure and liabilities on the other hand, the Secretary-General may propose to the Finance Committee:</p> <p>(a) to use the surplus for any purpose other than the original allocation, in particular when the surplus results from the recovery of arrears owed to the Institute by member Governments, or from savings made or other economy gains achieved by the Secretariat;</p> <p>(b) to record the surplus as revenue in the next financial year, thus reducing assessed contributions of member Governments, in particular when the surplus resulted from an overestimation of expenditure.</p>		<p><i>there was no parallel in the existing Regulations, has been amended, as requested by the Finance Committee by reversing the order of the two alternatives, and providing some guidance for the treatment of revenue surplus.</i></p>
<p>5. – Based on the opinion of the Finance Committee, the report of the auditor and any additional information supplied by the Secretary-General, the General Assembly shall decide on the approval of the accounts, the Working Capital Fund, the assignment of any surplus in accordance with paragraph 4 of this Article, and the final discharge of the Secretary-General for the management of the relevant financial year.</p>	<p>German proposal (UNIDROIT 2012 FC (71) 4); Article 6.4</p>	<p><i>The text of the German proposal, as it appears in FC (71)4, and for which there was no parallel in the existing Regulations, has been amended, as requested by the Finance Committee</i></p>
<p>6. – In the event of appointment of a new Secretary-General prior to the approval of the accounts of the previous financial year, provisional accounts shall be established from the date at which the Secretary-General assumes his or her duties when this does not take place at the end of the financial year. This statement shall be signed by both the exiting Secretary-General and the new Secretary-General and is addressed for information purposes to the Finance Committee and kept in the accounting files of UNIDROIT.</p>	<p>German proposal (UNIDROIT 2012 FC (71) 4); Article 7.2</p>	<p><i>The text of the German proposal, as it appears in FC (71)4, and for which there was no parallel in the existing Regulations, has been simplified, as requested by the Finance Committee</i></p>

Proposed amendments to Part three – Staff – of the UNIDROIT Regulations	Origin of the proposed text	Comments by the Secretariat
<p style="text-align: center;"><i>Article 50</i></p> <p>1. – The Institute may avail itself, for a given period of time, of the collaboration of persons not belonging to its staff.</p> <p>2. – The document of appointment of such persons shall set forth their conditions of service and remuneration.</p> <p>3. – A Treasurer, to be appointed by the Governing Council, may be chosen from among such persons.</p>	Secretary-General	<i>The Secretary-General proposes the deletion of paragraph 3 of this Article in order to align the Regulations with the practice of UNIDROIT since 1995, when the functions of Administrative Officer ("Economo") and Treasurer were unified and assigned to a staff member.</i>

Proposed amendments to the Rules Governing the Working Capital Fund	Origin of the proposed text	Comments by the Secretariat
<p style="text-align: center;"><i>Article 2</i></p> <p>The total amount of the Fund shall be fixed at, and shall not exceed, a sum equivalent to two month's ordinary expenditure.</p>	Secretary-General	<i>The Secretary-General proposes this amendment to align the Regulations with the practice of UNIDROIT, which for more than 20 years has maintained the working capital fund at a level equal to two month's ordinary expenditure.</i>

<i>Proposed amendments to Annex II to the UNIDROIT Regulations</i>	<i>Origin of the proposed text</i>	<i>Comments by the Secretariat</i>
<p style="text-align: center;">Article 4</p> <p style="text-align: center;">...</p> <p>4. – The Secretary-General may authorise a higher standard of travel accommodation if:</p> <ul style="list-style-type: none"> (a) the origin and/or destination of the travel are outside Europe; (b) the scheduled flight time, including stopovers and change of planes, is in excess of 14 hours; (c) the person travelling is required to report to duty the following day or sooner; and (d) the use of a higher standard of travel accommodation results in an overall cost savings to the Institute by avoiding additional subsistence costs, overtime, or lost productive time. 	Secretary-General Federal Travel Regulation Chapter 300—General U.S. Code §301-10.123	<p><i>Additional paragraph</i></p> <p><i>The current system of travel allowances of UNIDROIT authorises "tourist class airline tickets for Category A officials" regardless of the length of journey. In its current form, this rule exists since at least 1971, a time when most official travel took place within Europe and UNIDROIT had only a few most of the non-European member states.</i></p> <p><i>Nearly all international organisations and most national governments have rules similar to the proposed new text, which is inspired by the strictest rule in force among OECD countries. Where no higher standard of accommodation is authorised, official travellers have a right to a rest stop en route or a rest period upon arrival at the duty site. This is a common practice that has also been followed by UNIDROIT.</i></p> <p><i>The average daily cost (full time equivalent) of senior staff at UNIDROIT is higher than €500, and rest stop en route</i></p>

<p>Article 6</p> <p>All travel shall be authorised by the Institute's President with respect to persons mentioned under Article 2 of the present ANNEX and Category A officials, and by the Secretary-General with respect to other officials.</p>	<p>Annex II to the UNIDROIT Regulations, Article 6</p> <p>Secretary-General</p>	<p><i>or rest period upon arrival entails payment of at least one full day residence allowance (€305 for Tokyo, €296 for Canberra or € 259 for Seoul, for example). Thus, where the officer is required to report to duty the following day or sooner, payment of higher than coach class accommodation is likely to be more economical for the Institute that granting one rest day for each leg of the travel and paying the corresponding residence allowance.</i></p> <p><i>The Secretary-General proposes this amendment to align the Regulations with the practice of UNIDROIT.</i></p>
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