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**GOVERNING COUNCIL
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Item No. 6 on the agenda: Update on other projects on the 2023-2025 Work Programme

(a) Development of a guidance document on Corporate Sustainability Due Diligence in Global Value Chains

(prepared by the Secretariat)

<i>Summary</i>	<i>Update on the project on Corporate Sustainability Due Diligence in Global Value Chains</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the developments in the project described.</i>
<i>Mandate</i>	<i>Work Programme 2023-2025</i>
<i>Priority level</i>	<i>Medium</i>
<i>Related documents</i>	<u>UNIDROIT 2022 – C.D. (101) 4 rev.</u> ; <u>UNIDROIT 2022 – C.D. (101) 21</u> ; <u>UNIDROIT 2022 – A.G. (81) 9</u>

1. The purpose of this document is to update the Members of the Governing Council on the progress made on the project to develop a guidance document on Corporate Sustainability Due Diligence in Global Value Chains since the 102nd session of the Governing Council in May 2023.

I. BACKGROUND OF THE PROJECT

2. In 2022, UNIDROIT was called upon by both the European Bank for Reconstruction and Development (EBRD) and the International Development Law Organization (IDLO) to consider undertaking work on Corporate Sustainability Due Diligence (CSDD) in Global Value Chains in light of its expertise in contract law, seen as a key catalyst for the implementation of sustainability measures.

3. Accordingly, the “Development of a guidance document on Corporate Sustainability Due Diligence in Global Value Chains” has been included in the UNIDROIT Work Programme by the General Assembly at its 81st session in December 2022 (see document [UNIDROIT 2022 – A.G. \(81\) 9](#)), upon recommendation by its Governing Council (see document [UNIDROIT 2022 – C.D. \(101\) 21](#), paras. 115-131). The project has been assigned medium priority pending the completion of exploratory work to define the scope of the project, upon which it would be assigned high priority status, allowing for the establishment of a Working Group dedicated to the project.

4. The project is to be contextualised in the growing concern for sustainability, including the protection of environmental standards and human rights along global value chains. Commercial contracts have become an essential vehicle to comply with CSDD in global value chains, and changes to contract law have raised many legal questions, which may benefit from UNIDROIT's expertise in legal harmonisation in particular, in the fields of contract and commercial law.

5. Subsequently, the European Law Institute (ELI) sent UNIDROIT a letter, dated July 2023, including a proposal to consider including an assessment of the impact of technology and the use of platforms in the context of global value chains. Like in other areas of the law, technology has an important impact on CSDD. Technologies impact the design, structure and functioning of global value chains, as well as the possibilities for monitoring sustainability performances. Technology may also trigger new risks, potentially causing adverse impacts in value chains that may need to be prevented and mitigated. The various implications of technology for CSDD need to be considered throughout the project.

6. The project can draw on UNIDROIT's expertise in the area of commercial contracts and in particular its experience with the UNIDROIT Principles of International Commercial Contracts (UPICC). It has synergies with other contract law-based instruments in the area of agriculture, namely the 2015 UNIDROIT/FAO/IFAD [Legal Guide on Contract Farming](#) and the 2021 UNIDROIT/IFAD [Legal Guide on Agricultural Land Investment Contracts](#). Moreover, the CSDD project also aligns with other ongoing projects of the Institute, in particular the joint project with the ICC Institute on [International Investment Contracts](#), which seeks to address recent developments in the area of international investment law, notably the increasing focus on corporate social responsibility and sustainability.

7. UNIDROIT could contribute to harmonisation in this field through the development of different instruments. The first option is for UNIDROIT to issue commentary showing how the UPICC and the UPICC model clauses relate to value chain due diligence. The second possible instrument to consider is a compliance guide and set of model clauses. The third option is to develop legislative guidance, possibly in the form of a model law or model clauses. Lastly, a combination of any of the above options could be considered. The type of instrument to be developed will be defined following the result of the exploratory work.

II. EXPLORATORY WORK

8. As requested by the Governing Council, the Secretariat carried out exploratory work in preparation of the commencement of the project. It undertook comprehensive research mapping the main corporate due diligence legal instruments and initiatives at the international and domestic levels. It also reviewed the existing model clause collections, which are devoted to developing standard sustainability contract clauses with the view to offer a model of clear and enforceable contractual provisions. Based on the comprehensive review, the Secretariat analysed what might differentiate the potential UNIDROIT guidance document from the other existing instruments and initiatives, to best fill the remaining gaps relying on the UNIDROIT mandate and expertise.

9. Drawing from the outcome of the above research, the Secretariat is organising a first Exploratory Workshop to be held at UNIDROIT's seat in Rome on 27-28 May 2024. A total of 13 experts and institutional representatives have been invited to the workshop to further delineate the scope of the project. The Secretariat has prepared a discussion paper that captures the research on the topic and aims to suggest a starting point and structure for the deliberations during the Workshop.

10. The Workshop seeks to explore, among other matters, the following issues:

- (a) Corporate sustainability issues related to global value chains: Key concepts
- (b) Overview of corporate due diligence legal instruments and initiatives

- (i) International and supranational instruments
 - (ii) Domestic legislation
 - (iii) Model clause collections
- (c) Content of the future instrument: issues for discussion
 - (i) Definitions
 - (ii) The UPICC and CSDD
 - (iii) Contractual clauses not covered by the UPICC
 - (iv) CSDD and enforcement
- (d) Additional issues that could be included in a legislative guidance instrument
 - (i) Scope of control
 - (ii) Obligations
 - (iii) Extent of harm
 - (iv) Liability
 - (v) Enforcement
 - (vi) Choice of law
- (e) Possible form of the future instrument
 - (i) Compliance guide, with model clauses and UPICC commentary
 - (ii) Legislative guidance
 - (iii) Guidance document, including both model clauses and legislative guidance

11. Technology, as a pervasive element along the global value chain, will be a factor included in the analysis of the different parts of the programme.

12. The Annotated Draft Agenda for the Workshop and the List of Participants are enclosed in Annexes I and II of this document, respectively.

III. NEXT STEPS

13. It is expected that the Workshop will help define the scope of the project as well as laying the foundation for the establishment of a Working Group to develop the future document, as consistent with UNIDROIT's established working method.

14. The Governing Council will be duly informed of the result of the workshop and, should the Secretariat be convinced of the need to form a Working Group, a proposal will be put before the Governing Council to upgrade the project's priority and commence the normative work. In order to maximise efficiency and avoid having to postpone work until the next ordinary Governing Council session, this request may be made in writing.

IV. ACTION TO BE TAKEN

15. *The Governing Council is invited to take note of the developments in the Project to develop a guidance document on Corporate Sustainability Due Diligence in Global Value Chains.*

ANNEXE I**Exploratory Workshop on
Corporate Sustainability Due Diligence in
Global Value Chains****Rome, 27-28 May 2024**UNIDROIT 2024
Study 87 – E.W.1 – Doc. 1
English only
April 2024**ANNOTATED DRAFT AGENDA**

1. Opening of the Workshop
2. Introduction to UNIDROIT and the new legislative project on corporate sustainability due diligence (CSDD) in global value chains
3. Purpose of the Exploratory Workshop and consideration of matters identified in the Discussion Paper (Study 87 – E.W. – Doc. 3):
 - (f) Corporate sustainability issues related to global value chains: Key concepts
 - (g) Overview of corporate due diligence legal instruments and initiatives
 - (i) International and supranational instruments
 - (ii) Domestic legislation
 - (iii) Model clause collections
 - (h) Content of the future instrument: issues for discussion
 - (i) Definitions
 - (ii) The UNIDROIT Principles of International Commercial Contracts (UPICC) and CSDD
 - (iii) Contractual clauses not covered by the UPICC
 - (iv) CSDD and enforcement
 - (i) Additional issues that could be included in a legislative guidance instrument
 - (i) Scope of control
 - (ii) Obligations
 - (iii) Extent of harm
 - (iv) Liability
 - (v) Enforcement
 - (vi) Choice of law
 - (j) Possible form of the future instrument
 - (i) Compliance guide, with model clauses and UPICC commentary
 - (ii) Legislative guidance
 - (iii) Guidance document, including both model clauses and legislative guidance
4. Any other matters
5. Closing of the Workshop

ANNOTATIONS

Item No. 1 Opening of the Workshop

1. The Exploratory Workshop will be held in person, in Rome, at the seat of UNIDROIT, Via Panisperna 28, 00184 Rome. It will be opened on **Monday 27 May 2024 at 14:00 CEST**.
2. It is proposed that discussions be held as per the below tentative timetable.

Monday 27 May

Opening and 1 st Discussion	14:00 – 16:00	120 minutes
Coffee break	16:00 – 16:15	15 minutes
2 nd Discussion	16:15 – 18:00	105 minutes

Tuesday 28 May

1 st Discussion	09:00 – 10:30	90 minutes
1 st Coffee break	10:30 – 10:45	15 minutes
2 nd Discussion	10:45 – 12:45	120 minutes
Lunch break	12:45 – 14:00	75 minutes
3 rd Discussion	14:00 – 16:00	120 minutes
2 nd Coffee break	16:00 – 16:15	15 minutes
4 th Discussion	16:15 – 18:00	105 minutes

Item No. 3 Purpose of the Exploratory Workshop and consideration of matters identified in the Discussion Paper (Study 87 – E.W. – Doc. 3)

3. The purpose of the Exploratory Workshop is primarily to further delineate the scope of the Project. A Discussion Paper will be circulated which offers a non-exhaustive list of issues and questions for discussion on, among other things, the following topics:
 - (a) Corporate sustainability issues related to global value chains: Key concepts. Participants will be invited to discuss key concepts for the purpose of the Project, including “global value chains”; “chain leader”; “value chain contract”; and “corporate social responsibility”.
 - (b) Overview of corporate due diligence legal instruments and initiatives. Participants will be invited to consider (i) (existing and draft) international and supranational legal instruments, (ii) domestic legislation on CSDD, and (iii) model clause collections, and to discuss their relevance for the Project.
 - (c) Content of the future instrument: issues for discussion. Participants will be invited to discuss relevant substantive issues, including the following: (i) definitions; (ii) the UPICC and CSDD; (iii) model contractual clauses not covered by the UPICC; and (iv) CSDD and enforcement, including third-party rights, as well as remedies, dispute resolution and grievance mechanisms.
 - (d) Additional issues that could be included in a legislative guidance instrument. Participants will be invited to discuss the following additional issues that could be included in a legislative guidance document, or in a “hybrid” document containing both model clauses and legislative guidance: (i) scope of control; (ii) obligations; (iii) extent of harm; (iv) liability; (v) enforcement; and (vi) choice of law.
 - (e) Possible form of the future instrument. Participants will be invited to discuss the potential form of the future guidance instrument, including (i) a compliance guide, with model clauses and a commentary to the UPICC; (ii) legislative guidance, or (iii) a guidance document that would combine both model clauses and legislative guidance.

ANNEXE II**EN****Exploratory Workshop on
Corporate Sustainability Due Diligence in
Global Value Chains****Rome, 27-28 May 2024**UNIDROIT 2024
Study 87 – E.W.1
– Doc. 2
English only
April 2024**LIST OF PARTICIPANTS****EXPERTS**

Ms Claire BRIGHT <i>in-person</i>	Associate Professor, NOVA Law School, Lisbon (Portugal) Founder & Director of the NOVA Centre on Business, Human Rights and the Environment
Mr Fabrizio CAFAGGI <i>in-person</i>	Professor, University of Trento and LUISS University (Italy) Judge at the Council of State of Italy
Mr Damiano CANAPA <i>in-person</i>	Professor, University of Lausanne (Switzerland) Director of the Center for Business Law
Ms Sarah DADUSH <i>in-person</i>	Professor, Rutgers Law School, Newark (United States) Founding Director, Business & Human Rights Law Program and the Responsible Contracting Project
Mr Martijn SCHELTEMA <i>in-person</i>	Professor, Erasmus University (the Netherlands) Attorney-at-law & Partner, Pels Rijcken
Ms Suzanne SPEARS <i>in-person</i>	Founder & Principal, PAXUS LLP, Lawyers for Business and Human Rights (United Kingdom)
Mr Ji WENHUA <i>remotely</i>	Professor, University of International Business and Economics, Beijing (China)

INSTITUTIONAL REPRESENTATIVES

European Bank for Reconstruction and Development (EBRD) <i>in-person</i>	Ms Divya CHAWLA Principal Counsel
European Law Institute (ELI) <i>in-person</i>	Mr Ulrich SCHROETER Professor, University of Basel
	Ms Teresa RODRIGUEZ DE LAS HERAS BALLELL Professor, University of Madrid
Food and Agriculture Organization of the United Nations (FAO) <i>remotely</i>	Mr Tomislav IVANČIĆ Lead Advisor, Responsible Sourcing and Agricultural Supply Chains
International Development Law Organization (IDLO) <i>in-person</i>	Mr Romualdo MAVEDZENGE Deputy Director of Programmes
Organisation for Economic Co-operation and Development (OECD) <i>in-person</i>	Ms Barbara BIJELIC Deputy Head of Due Diligence, Centre for Responsible Business Conduct

UNIDROIT SECRETARIAT

Mr Ignacio TIRADO	Secretary-General
Ms Anna VENEZIANO	Deputy Secretary-General
Mr Rocco PALMA	Senior Legal Officer
Ms Philine WEHLING	Legal Officer
Ms Priscila PEREIRA DE ANDRADE	Legal Officer