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**Item No. 6 on the agenda: Update on other projects and exploratory work
concerning the 2023-2025 Work Programme**

**(b) European Law Institute project proposal in the area of technology and global
value chains**

(prepared by the Secretariat)

<i>Summary</i>	<i>European Law Institute (ELI) project proposal in the area of technology and global value chains</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the proposal received from the ELI and to consider the proposal presented by the Secretariat to conduct joint exploratory work at Secretariat level</i>
<i>Related documents</i>	<u>UNIDROIT 2022 – C.D. (101) 4 rev.</u> ; <u>UNIDROIT 2022 – C.D. (101) 21</u>

I. INTRODUCTION

1. This document informs the Governing Council of a proposal to undertake common work in the area of technology and global value chains received by the Secretariat from the European Law Institute (ELI) after the 102nd session of the Governing Council. Furthermore, this document provides a brief analysis of the proposal, valued positively, and suggests a way forward. No request is made, at this stage, to change the Work Programme 2023-2025 to include a new item.

II. THE PROPOSAL BY THE EUROPEAN LAW INSTITUTE (ELI)

2. In July 2023, UNIDROIT received a letter from the President of the ELI, Professor Pascal Pichonnaz, proposing a potential joint ELI-UNIDROIT sub-project with a specific focus on the impact of technology on corporate sustainability in global value chains for the purposes of due diligence, all within the greater scope of the project on “Corporate Sustainability Due Diligence in Global Value Chains” (hereinafter “the CSDD project”), which had been proposed by the International Development Law Organisation (IDLO) and the European Bank for Reconstruction and Development (EBRD), and approved by the Governing Council for inclusion in the 2023-2025 Work Programme.

3. The sub-project would include an analysis of the subject matter from three perspectives, namely (1) the impact of technology on the design, structure, and functioning of global value chains (“technology-driven value chains”); (2) the fundamental role of technology in enabling human rights

and environmental due diligence compliance (“technology as an enabler”); and (3) preventing and mitigating technology’s risk of severe adverse impacts in value chains (“technology-related risks”).

4. Firstly, recognising that global value chains have developed into diverse and often convoluted network-based or “ecosystem” models, as opposed to earlier “pipeline” models, the sub-project would aim to study and define the various new possibilities for due diligence policies and enforcement. For example, in lieu of “contractual cascading”, contemporary global value chains may operate as platforms, multi-party agreements, networks, or decentralised models – with diverse governance models and in any case driven by technology. Those diverse models will inform how due diligence obligations are complied with (and enforced) throughout the network.

5. Secondly, the sub-project could seek to understand technology’s potential to enable the compliance with and enforcement of corporate sustainability due diligence, as well as its wider implications, with the aim of improving the design of those obligations. The impact of various emerging technologies on all stages of due diligence could be considered, from identifying to mitigating or minimising potential adverse impacts and from establishing complaints procedures to monitoring the effectiveness thereof, as well as public communication and contractual assurance.

6. Thirdly, the sub-project would not neglect to consider the risks that technology bears in terms of adverse impacts on human rights, labour conditions, environmental damage, and various other ethical considerations. Beyond the clear cybersecurity risks that companies face, there are also concerns stemming from massive surveillance, algorithmic management, and invasion of privacy, to name but a few.

7. In short, the sub-project would seek to channel these three perspectives into a multifaceted consideration of the complicated practical role that contemporary and emerging technologies are already playing across corporate sustainability due diligence in global value chains, and their impact on contractual design and enforcement.

III. THE PROPOSAL AND THE CURRENT WORK PROGRAMME

8. The proposal received from the ELI is both timely and aligned with the Institute’s current widespread work on sustainability and technology. Having a focus on technology, on how technology operates and can affect the global value chain, and on the relationship between technology and sustainability, the proposal meshes well with several UNIDROIT projects currently underway.

9. On the one hand, the presence of the technological component is pervasive in the analysis to be undertaken on corporate sustainability due diligence. This is, as proposed, the main project where the ELI seeks to frame the joint analysis. We are, at this stage, unable to determine to what extent technology will determine the different elements considered in the project, and therefore if it merits a separate consideration within the instrument or, rather, should be a partial, complementary element of analysis in the different parts analysed in the project. The exploratory workshop planned for 27-28 May 2024 in the framework of the CSDD project, which will include participation of ELI experts, should shed more light on this (see [UNIDROIT 2024 – C.D. \(103\) 12](#)). What would seem already beyond a doubt is that incorporating the consideration of technology component as a potential enabler of due diligence effectiveness, but also as an additional risk, seems warranted.

10. The specific reference of the proposal to the impact of technology on the design, structure, and functioning of global value chains links it directly with another of the current projects: the joint UNIDROIT/FAO/IFAD project on [Collaborative Legal Structures for Agricultural Enterprises](#) (hereinafter “the LSAE project”), which has a special line of work devoted to the technological element in platforms and generally on the horizontal and vertical collaborative structures in the sector of agriculture. The proposal of the ELI will therefore in part fall squarely on one of the lines of analysis of this other ongoing project.

11. Nevertheless, the proposal seems to go beyond the two existing projects, from an objective perspective (i.e., the analysis would go beyond the consideration of sustainability due diligence observed with a contract law focus) as well as from a subjective one (i.e., the analysis would go beyond the consideration of the agricultural sector, to cover potentially all global value chains). In light of this and based on the importance of technology on the global value chain and its relationship with sustainable development, the Secretariat appreciates the proposal and considers it a solid base for a stable collaboration. At this stage, it is proposed that both Secretariats, resorting to experts where necessary, implement the proposal as follows:

- (i) experts designated by the ELI will be involved, from the initial exploratory workshop onwards, in the CSDD project;
- (ii) experts designated by the ELI will also participate in the ongoing work on the LSAE project; and
- (iii) both Secretariats will conduct joint exploratory work on the impact of technology on the design, structure, and functioning of global value chains, the outcome of which may result in a proposal to the governance bodies of both organisations to introduce a new normative project in their work programmes, or, more modestly, in a joint analytical Secretariats' paper, of a non-normative nature, which constitutes by itself a useful deliverable while also providing feedback to the other projects underway in the area of value chains and sustainability.

IV. ACTION TO BE TAKEN

12. *The Governing Council is invited to take note of the proposal received from the ELI and to consider the proposal presented by the Secretariat to conduct joint exploratory work at the Secretariat level.*