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**Item No. 4 on the agenda: Ongoing legislative activities carried over from 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 status and connected activities</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress of the project</i>
<i>Mandate</i>	<i>Implementation of the decision of the Governing Council in relation to the Work Programme 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<a href="#">UNIDROIT 2019 – A.G. (78) 12</a> and <a href="#">UNIDROIT 2022 – A.G. (81) 9</a>

**I. BACKGROUND**

**A. History of the project**

1. The project on Best Practices for Effective Enforcement, based on a proposal of the World Bank, was included in the 2020-2022 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). At the first meeting of the 99<sup>th</sup> session of the Governing Council, Council Members 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). Following remote consultations with selected international experts and organisations and an internal Workshop, the Governing Council, at its 99<sup>th</sup> session (second meeting), held on 23-25 September 2020, approved the proposed guidelines regarding the scope of the project, confirmed the high-priority status assigned thereto, and authorised the establishment of a Working Group ([C.D. \(99\) B.3](#) and [C.D. \(99\) B.21](#), paras. 57-58). At its 81<sup>st</sup> session ([A.G. \(81\) 9](#), paras. 55 and 67), the General Assembly endorsed the recommendation of the Governing Council at its 101<sup>st</sup> session ([C.D. \(101\) 21](#), para. 187) to keep the project in the 2023-2025 Work Programme, in order to ensure its completion within the next Triennium.

## B. Working Group

2. The Best Practices for Effective Enforcement Working Group was invited to consider current challenges for effective enforcement and the most suitable solutions (procedures, mechanisms) to overcome them. It was agreed that the goal of the project would be to draft best practices designed to improve the effectiveness of enforcement, combating excessive length, complexity, costs, and lack of transparency, while at the same time ensuring adequate protection of the rights of all parties involved. Such best practices should consider the impact of modern technology on enforcement, both as an enabler of suitable solutions and as a potential source of additional challenges to be addressed.

3. The Working Group is currently composed of the following experts: Ms Kathryn Sabo (Chair) – Deputy Director General & General Counsel, Constitutional, Administrative and International Law Section, Department of Justice (Canada) and Member of the UNIDROIT Governing Council; Ms Geneviève Saumier (Coordinating Expert) – Peter M. Laing Q.C. Professor of Law, McGill University (Canada); Ms Valeria Confortini – Assistant Professor, Orientale University, Naples (Italy); Mr Neil Cohen – Jeffrey D. Forchelli Professor, Brooklyn Law School (USA); Mr Fernando Gascón Inchausti – Professor, Universidad Complutense de Madrid (Spain); Ms Carla L. Reyes - Assistant Professor, SMU Dedman School of Law, Dallas (USA); Mr LIU Junbo – Associate Professor, China University of Political Science and Law (China); Mr Fábio Rocha Pinto e Silva – Pinheiro Neto Advogados, São Paulo (Brazil); Ms Teresa Rodríguez de las Heras Ballell – Associate Professor, Universidad Carlos III Madrid (Spain); Mr John Sorabji – Associate Professor, University College London (UK); Mr Felix Steffek – Professor, University of Cambridge, and Co-Director of the Centre for Corporate and Commercial Law (German National); and Mr Rolf Stürner – Emeritus Professor, Albert-Ludwigs-Universität Freiburg (Germany). For previous members, see the project's [dedicated page](#).

4. The following organisations are also currently part of the Working Group as observers: the European Bank for Reconstruction and Development (EBRD); the European Law Institute (ELI); the Hague Conference on Private International Law (HCCH); the International Association of Legal Science (IALS); the Secured Finance Network (Mr Richard Kohn, Goldberg Kohn Ltd.); the Supreme Court of China (Ms ZHU Ke, Judge); the *Union Internationale des Huissiers de Justice* (UIHJ) (Mr Jos Uitdehaag, First Vice President); the United Nations Commission on International Trade Law (UNCITRAL); and the World Bank Group (WBG). The Working Group gratefully recognises input received in previous sessions by the Kozolchuk National Law Center (NatLaw); the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law; the Organisation of American States (OAS); and the Zemgale Regional Court - Latvia. The European Collection and Enforcement Network (CONNEX) is represented by Mr Massimiliano Blasone, Italian Partner. The Confecámeras (Colombia) is represented by Mr Carlos Riaño. The *Comité de Implementación de Garantías Mobiliarias* (Colombia) is represented by Ms Diana Lucia Talero, *Secretaria Técnica*. Ms Anna Skrjabina (Consultant, Justice Administration and Research, Latvia) joined the eighth session of the Working Group as an individual observer.

## C. Summary of the activities of the Working Group from the first session (30 November-2 December 2020) to the sixth session (14-16 March 2023)

5. Between its establishment at the end of 2020 and the 2023 Governing Council session, the Working Group had met in plenary six times. At its first session (30 November and 1-2 December 2020), the Working Group mostly focused on precisely defining the project's scope, methodology and organisational issues, and discussed a document prepared by a Working Group member on the impact of technology in enforcement. For more information, see the [Report](#) of the first Working Group session. The second session was held remotely (20-22 April 2021), focusing on detailed reports by three subgroups formed to make progress on the project. These included Subgroup 1 on "Enforcement by way of authority," led by Profs. Fernando Gascón Inchausti and Rolf Stürner, covering the main enforcement issues; Subgroup 2 on "Enforcement of security rights," led by Prof.

Neil Cohen, with initial recommendations on collateral; and Subgroup 3 on “Impact of technology on enforcement,” led by Prof. Teresa Rodríguez de las Heras Ballell. For more information, see the [Report](#) of the second Working Group session.

6. At its third session (29-30 November and 1 December 2021), the Working Group focused on enforcement over receivables, starting with suggested best practices for enforcement by way of authority, including automation, in third-party debt orders (monetary claims), as well as best practices on enforcement of security rights over receivables and automation. It further considered a first draft of recommendations on charging orders on land and the handling of complex assets in enforcement. The session also revised best practices on collateral disposition and party autonomy in the enforcement of security rights. For more information, see the [Report](#) of the third Working Group session.

7. At its fourth session (26-28 April 2022), the Working Group discussed draft recommendations for the setting up of registers for enforcement orders, the orders relating to the disclosure of the debtor’s assets, and documenting enforcement measures and outcomes. It further considered best practices on access to information and rights and obligations for the disclosure of the debtor’s assets. The Working Group also discussed a position paper on enforcement on digital assets and a document regarding online auctions. Furthermore, it addressed strategic directions for the Working Group, in particular establishing a Drafting Committee. For more information, see the [Report](#) of the fourth Working Group session. Regarding the intersessional work after the fourth session in particular, the Chairs of the Digital Assets and Private Law and the Best Practices for Effective Enforcement Working Groups took the initiative of a joint Workshop, which shed light on various issues linked to enforcement on digital assets.

8. At its fifth session (12-14 December 2022), the Working Group continued to focus on several key areas related to the part on enforcement by way of authority, to the enforcement of security rights over movables (specifically, revised best practices and commentary on non-judicial repossession of tangible movable collateral, updated best practices and commentary on non-judicial collateral disposition, and a first position paper addressing expedited judicial procedures within non-judicial enforcement contexts). It further reviewed initial best practices for enforcement on digital assets and an enhanced paper on online auctions. The session was further enriched by Ms Nina Mocheva, representing the World Bank Group, who shared insights on employing alternative dispute resolution for the enforcement of security rights. For more information, see the [Report](#) of the fifth Working Group session.

9. Finally, at its sixth session on 15-17 March 2023, the Working Group reviewed several advanced drafts, notably achieving ample consensus on the parts concerning best practices and commentaries on the enforcement of the secured creditor’s rights after default. It also discussed the revision of sections on enforceable instruments and electronic registers and revised drafts on digital assets’ enforcement. A new draft on expedited dispute resolution procedures was also reviewed. Furthermore, the session benefited from Mr Massimiliano Blasone’s expertise on online auctions. The Working Group considered the outline of the future instrument’s structure. For more information, see the [Report](#) of the sixth Working Group session.

## **II. WORKING GROUP ACTIVITIES SINCE THE 102<sup>ND</sup> SESSION OF THE GOVERNING COUNCIL**

### **A. Intersessional work after the sixth session of the Working Group**

10. After the sixth session of Working Group, the Secretariat continued to support the Working Group’s development of the project.

11. The Drafting Committee, which had met in person around the sixth and seventh sessions of the Working Group, continued its efforts through email exchanges and *ad-hoc* virtual meetings.

12. The following activities were carried out by the Secretariat to promote the development of the project:

- (i) Organising several virtual meetings to advance the work on the project, in particular regarding the work of Subgroup 2 on enforcement of security rights, as well as *ad-hoc* coordination meetings on specific topics, including enforcement on digital assets and guidelines on an expedited procedure to resolve disputes arising during extra-judicial enforcement of security rights;
- (ii) Preparing support research and documentation on online auctions, enforcement on digital assets, and the organisational aspects of enforcement; and
- (iii) Communicating with the EBRD team to gain and exchange information on the organisation of enforcement proceedings in various countries of operation of the EBRD and more generally on the project, particularly at the workshop organised by the EBRD in London on 25 September 2023 and through additional virtual meetings.

13. Furthermore, the project was presented on several occasions in the intersessional period:

- (i) In a workshop for government officials co-organised with the Government of India (3-4 July 2023);
- (ii) At the Asia-Pacific Economic Cooperation (APEC) Online Dispute Resolution (ODR) Workshop (14-15 June 2023); and
- (iii) In an event in the context of the Secretariat's institutional visit to Ulaanbaatar (Mongolia) on 23-24 November 2023.

14. The project was also the object of conferences and lectures, including in the context of the International Law and Development Programme (IPLD) sponsored by the Italian Ministry of Foreign Affairs and Cooperation, as well as a presentation to a group of Georgian lawyers of independent profession on the occasion of their official visit to UNIDROIT in June 2023.

## **B. Seventh session of the Working Group (29 November-1 December 2023)**

15. The seventh session of the Working Group was held in a hybrid format from 29 November through 1 December 2023, and its deliberations focused on the following topics:

- (i) Revised draft best practices regarding enforcement by way of authority, with particular focus on finalising best practices and commentary for sections III through V;
- (ii) Revised best practices and commentary regarding enforcement of security rights, i.e., secured creditor's right to repossession of tangible movables and to realise on collateral after default, enforcement of security rights over rights to receive payment and credit instruments, variation of the rules governing the realisation of collateral, and enforcement of security rights over immovables;
- (iii) Revised draft best practices regarding enforcement on digital assets; and
- (iv) The Secretariat's document on online auctions.

16. The Working Group further benefited from a presentation on the work of the EBRD on enforcement law reforms by Ms Veronica Bradautanu, Principal Counsel of the EBRD's Legal Transition Team.

17. For more details on the specific issues discussed, see the [Report](#) of the seventh session of the Working Group.

### **C. Intersessional work after the seventh session of the Working Group**

18. After the seventh session of the Working Group, the Secretariat continued to support Working Group participants in the advancement of the project and produce research materials on specific topics. In particular, the following activities were carried out:

- (i) Meetings to discuss guidelines for an expedited procedure in the context of extra-judicial enforcement of security rights; and
- (ii) Drafting Committee work through email exchanges and *ad-hoc* virtual meetings.

19. During the intersessional period, the project was presented or discussed in public on various occasions:

- (i) The annual International Coordination Conference on Secured Transaction Reform in Washington, D.C. (16-17 January 2024);
- (ii) Within the framework of cooperation with the World Bank Group, when a delegation from UNIDROIT visited the headquarters of the WBG in Washington, D.C., especially on the practical challenges of enforcement by way of authority in various jurisdictions where the WBG operates (18-19 January 2024); and
- (iii) The dissemination conference on the ELI-UNIDROIT Model Rules of European Civil Procedure in Vienna, where, *inter alia*, the challenges and opportunities provided by digitalisation and new technology related to enforcement issues were discussed (5-6 February 2024).

### **D. Eighth session of the Working Group (15-17 April 2024)**

20. From 15 to 17 April 2024, the Working Group met for its eighth session at the seat of UNIDROIT in Rome and online. The Working Group continued its consideration of the advanced revised draft on best practices on enforcement by way of authority, enforcement of security rights, and enforcement on digital assets. As the conclusion of this project draws nearer, the overall structure of the final instrument was discussed and agreed upon by Working Group members, along with the organisation of future work for the project, including the selection of the draft best practices and commentary to be confidentially submitted to the Governing Council, and the organisation of a consultation phase. The next session of the Working Group is scheduled for 2-4 December 2024.

### **E. Drafting Committee**

21. At its fifth session, the Working Group agreed to set up a Drafting Committee to review the draft best practices on which an agreement on policy was attained. The Drafting Committee started to work remotely and met in its full composition, including the Chair and the Secretariat, on 31 January 2023, and then several times over 2023 and 2024, both virtually and in-person around the Working Group sessions, in particular, on 30 November and 1 December 2023, and 15, 17 and 18 April 2024. The current composition of the Drafting Committee is as follows: Chair Kathryn Sabo, Coordinating Expert Geneviève Saumier, Neil Cohen, Fernando Gascón Inchausti, Teresa Rodríguez de las Heras Ballell, John Sorabji, and Rolf Stürner.

### III. PRESENT STATUS OF THE PROJECT

#### A. Aim of the instrument

22. 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, improved access to credit, increase in trade and investment, and overall economic development and sustained growth. It is also recognised, however, that most legal systems are seeking to improve the effectiveness of enforcement, combating excessive length, complexity, costs, and lack of transparency of such procedures. As noted above (Section II(B)), the general aim of the instrument is to develop a legal tool to address the current challenges to a well-functioning domestic law system for enforcement. The instrument would offer to national legislators a set of global standards and best practices designed to improve the domestic normative framework applicable to enforcement of creditors' claims, both secured and unsecured. While it is noted that enforcement is strongly influenced not only by the broader legal context and interconnection with other areas of the law, but also by the specific social and economic realities in each jurisdiction, many legal systems face common challenges, such as adapting traditional enforcement laws to the needs of modern economies, considering how to incorporate best practices on extra-judicial enforcement, and make the best of the opportunities offered by technological developments. Thus, the envisaged instrument is intended to provide helpful guidance for legislators wishing to improve their domestic law, while contributing to the emergence of common minimum standards and best practices for domestic procedures as a necessary basis for improvement of international cooperation in this area.

23. The importance of ensuring effective and adequate enforcement of claims is currently recognised in general terms in several existing international instruments, dealing with either procedural law or secured transactions. The future instrument is therefore building upon existing guidance already contained in various other UNIDROIT instruments (including the ALI/UNIDROIT Principles of Transnational Civil Procedure and the ELI-UNIDROIT Model European Rules of Civil Procedure, and the Cape Town Convention and its Protocols), in international instruments developed by UNCITRAL on secured transactions (the UNCITRAL Legislative Guide on Secured Transactions, the UNCITRAL Model Law on Secured Transactions, and related documents), as well as in other instruments offering global practical guidance (in particular, the Global Codes of Enforcement adopted by the International Union of Judicial Officers (*Union internationale des huissiers de justice*, UIHJ)). Only a few existing global and regional instruments, however, do specifically address mechanisms and procedures for enforcement, and there is a lack of an instrument setting out global standards in a comprehensive, detailed, and practice-oriented manner, to achieve efficient, cost-effective, timely and fair (judicial and extra-judicial) enforcement of contractual claims. The Best Practices for Effective Enforcement aim at filling this gap.

#### B. Format

24. Following the guidance provided by the Governing Council, the Working Group confirmed that it would be neither appropriate nor 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-fits-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 (property law, insolvency, constitutional law, etc.) where there is a divergence of national legal concepts and approaches; various national cultural, social and economic situations; and the dynamism of technological developments applied to enforcement.

25. The future instrument is therefore being developed in the form of recommendations of best practices with commentary and illustrations of particular case scenarios, 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, and/or suggest examples of best practices drawn from existing models. They would also consider recent developments linked to the use of technology as possible innovative mechanisms to render enforcement more efficient. The comments would explain the background and provide the reasons why one particular best practice had been followed.

### **C. Scope and general structure of the instrument**

26. In line with the original proposal of the World Bank Group, the instrument covers the enforcement of both unsecured and secured claims. In relation to the latter, the instrument focuses in particular on facilitating the effectiveness of extra-judicial enforcement mechanisms. In this regard, it was noted that many jurisdictions have introduced hybrid proceedings with participation of private actors, or public/private actors, or with enhanced party autonomy. It was also noted that there are significant interconnections between judicial and extra-judicial enforcement. This is why the Working Group is working towards offering guidance on alternative ways to balance the competing interests in the latter, e.g., by promoting the use of specific fast-track procedures to deal with opposition.

27. In line with the mandate received by the Governing Council to proceed with caution in certain matters, the Working Group agreed to limit the number of best practices specifically addressing consumer claims, and not to address insolvency-related issues specifically but to focus on developing guidance on general enforcement procedures and measures.

28. This document contains, as Annexe, an outline of the structure of the instrument as agreed upon at the latest session of the Working Group, which will be comprised of two main parts: Part I – Enforcement by way of authority, and Part II – Enforcement of security rights. The instrument will also contain two additional Parts, respectively on enforcement on digital assets and specific consideration of the impact of technology on enforcement.

### **D. Overview of the Draft Best Practices (and Commentary) submitted to the Governing Council at the present session**

#### ***General***

29. The Chair and the Working Group authorised the Secretariat to submit to the Governing Council, on a confidential basis, together with the draft outline of the entire instrument, several sections of Best Practices and related Commentary that have already been discussed and agreed upon by the Working Group. This is intended to provide updated information on the progress of the project as well as information on the status of development of the other parts of the future instrument not yet submitted at this stage. The Working Group is expecting to produce a complete set of draft Best Practices and Commentary by the next Working Group session, planned for the beginning of December 2024. The Secretariat is planning to submit the final draft, once completed, to consultations with relevant stakeholders and Member States before final submission to the Governing Council for approval.

30. The Secretariat notes that the portions of the draft submitted to the Governing Council are not final and may be subject to adaptation to ensure greater consistency throughout the instrument in terms of content, style, and terminology, as well as adequate cross-references.

***Enforcement by way of authority***

31. Part I is intended to provide guidance on general enforcement procedures which are carried out by public authorities. The current draft on enforcement by way of authority, based on the general principles of party disposition, cooperation, and proportionality, encompasses completed Section III on enforceable instruments, Section IV on information regarding the debtor's assets, and Section V on digital registration of enforceable instruments and enforcement measures and their outcome. Sections III and V give guidance to legislators on the advisable threshold of the requirements of form, content, and authenticity of the documents that can be used to open an enforcement procedure and present as good practice that they be digitised and managed via individual registers or systems of registers that facilitate automated processing. Section IV addresses the obligations of the debtor and third parties concerning disclosure and measures in case of non-compliance.

32. In addition, the Working Group has already agreed on an advanced version of draft best practices and commentary of Section VI on modes of enforcement (tailored to different types of assets) and is considering draft best practices of the remaining sections VII to XII that were submitted to the Working Group at its last session.

***Enforcement of security rights***

33. Part II covers extra-judicial enforcement of security rights over movables, including tangibles and receivables. It also provides recommendations regarding enforcement of security rights over immovables. The Working Group recognised that it was not writing on a "clean slate" in terms of setting international best practice standards for enforcement of security rights over movables, and that existing international instruments approved at a multilateral level, such as those developed by UNCITRAL, should be treated as presumptively valid. At the same time, the future instrument would be addressed not only to states that have enacted substantive secured transactions law in line with international recommendations (or of which the law was already aligned with those recommendations) but also to those states with substantive secured transactions law not (yet) aligned with emerging international standards. Those states may consider reforming enforcement practices so that they better match the economic and social policies of secured transactions. To this end, the future instrument, when appropriate, goes beyond those precedents to add detail or to address issues that those instruments did not address.

34. The best practices and commentary submitted in the Annex to this document include an introduction containing two best practices applying generally to enforcement of security rights over movables, and following sections on the secured creditor's right to obtain possession of collateral after default, on the secured creditor's right to realise on collateral after default, and on the variation of the rules governing the realisation of collateral. The Working Group is completing consideration of best practices and commentary on enforcement of security rights over rights to receive payment and credit instruments, and on enforcement of security rights over immovables, which have already been discussed at various sessions. Finally, this part will be enriched by a best practice giving concrete guidance on an expedited procedure to address disputes arising in the context of extra-judicial enforcement, which the Working Group deemed a necessary and useful additional element.

***Enforcement of digital assets and the impact of technology on enforcement procedures***

35. The Working Group has agreed on the importance of including a separate part on the enforcement of digital assets. As clarified in the introduction to this part, while general enforcement measures will apply to these assets, there is a need to provide concrete additional guidance to legislators or enforcement officers on the obstacles that the application of the general enforcement regime faces when confronted with digital assets, and on possible solutions. Thus, for this part of the instrument, the commentary plays a greater role than the best practices themselves.



36. In relation to the impact of technology on enforcement procedures, the Working Group is envisaging to provide guidance in a specific part of the instrument. This part will refer to the various roles played by technology at different stages of the procedure, and to the best practices referring to the impact of technology which are already embedded in the previous parts of the instrument. Additionally, this part would contain best practices and commentary on online auctions for enforcement purposes that have already been thoroughly discussed by the Working Group.

#### **IV. FUTURE STEPS**

37. As the time for completion and adoption of the instrument is approaching, the Working Group is aiming to produce a complete set of best practices and accompanying commentary by the next session, which will be held on 2-4 December 2024 in Rome and remotely.

38. In order to support the Working Group in achieving this goal, the Secretariat has received the mandate to plan the following activities:

- (i) To convene an extraordinary (virtual only) Working Group session by the end of summer, possibly organised over two days (considering the time zone differences of members and observers, the Secretariat may combine the session with an email consultation procedure for those members who would not be able to attend the virtual session, while any formal decisions on adoption of the draft instrument by the Working Group would be postponed to the December session); and
- (ii) To continue to organise informal virtual meetings of Subgroups, the Drafting Committee, and other Working Group participants throughout the period before the extraordinary session, to advance the discussion on the remaining sections of the future instrument.

39. The Secretariat would seek the authorisation of the Governing Council to proceed with consultations on the finalised draft. The outcome of the consultations would be considered at the last session of the Working Group, to be convened in spring 2025.

#### **V. ACTION TO BE TAKEN**

40. *The Governing Council is invited to take note of the status and development of the project. The Governing Council is invited to authorise the Secretariat to proceed with consultations with relevant stakeholders once the draft instrument will be finalised. To this end, the Secretariat would avail itself of the possibility, if granted, to submit an advanced draft document to the Governing Council via remote procedure in autumn 2024.*