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WHITE PAPER

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TABLE OF CONTENTS

PREFACE **6**

INTRODUCTION **6**

PART ONE — ADOPTED INSTRUMENTS: IMPLEMENTATION AND RECOMMENDATIONS FOR FUTURE WORK **8**

I. THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (UNIDROIT PRINCIPLES), THE MODEL CLAUSES, AND THE TRIPARTITE LEGAL GUIDE **8**

A. Development and adoption; purpose and key content 8

B. Implementation and engagement concerning the UNIDROIT Principles and related instruments 10

1. Implementation 10

2. Engagement 13

C. Recommendations for the future in relation to implementation and engagement 15

D. Recommendations for the future in relation to new legislative action 15

1. Good Faith and Fair Dealing 15

(a) Lack of uniformity in the understanding of the concept of good faith 15

(b) Recommendations for further work to clarify the scope of good faith in the UNIDROIT Principles 17

(c) The interaction of the U**NIDROIT** Principles with agreed contract terms 17

(d) The lack of a uniform understanding 19

(e) Recommendations 20

(f) Relationship with other UNIDROIT instruments 21

2. New Rules for Network Contracts 22

(a) Background 22

(b) Normative Implications 23

(c) Recommendations for the future 23

3. New Rules for the Control of Standard Terms 24

4. Integrating Sustainability Considerations into UNIDROIT Principles 26

5. Digitalisation and UNIDROIT Principles 28

6. Recommendations regarding a general review of UNIDROIT Principles 28

II. THE PRINCIPLES OF REINSURANCE CONTRACT LAW (PRICL) **29**

A. Development and adoption 29

B. Purpose and Key Content 30

C. Implementation and Engagement 30

1. Practical usefulness and implementation challenges 30

2. Institutional cooperation models: The Zurich Agreement 30
D. Recommendations for the future: Recommendations for implementation, dissemination and capacity-building 31
1. Promotion and dissemination 31
(a) Past experiences and academic initiatives 31
(b) Industry partnerships and professional associations 31
(c) Arbitration and institutional cooperation 31
(d) Case Law dissemination and databases 32
2. Integrate the international community 32
3. Translations and Linguistic Accessibility 33
E. Recommendations for the future: Recommendations for new legislative action 33
1. Development of Model Clauses 33
2. A Legal Guide 34
3. Towards a Model Law on Reinsurance Contracts 35
III. UNIDROIT'S WORK ON FRANCHISING CONTRACTS (GUIDE TO INTERNATIONAL MASTER FRANCHISE ARRANGEMENTS & MODEL FRANCHISE DISCLOSURE LAW) 36
A. Development and Adoption 36
B. Purpose and Key Content 37
C. Implementation and Recent Developments 38
D. Recommendations for the future: future legislative activity 39
1. The Case for Revisiting Franchising Contracts 39
(a) The Need to Counter Structural Imbalances 39
(b) The Need for Harmonisation 40
(c) The Need to Incorporate Sustainability-related Obligations 40
(d) Recommendations 40
2. Relation to Other UNIDROIT Instruments 41
PART TWO — ONGOING AND ADOPTED PROJECTS 43
I. PRINCIPLES AND MODEL CLAUSES ON INTERNATIONAL INVESTMENT CONTRACTS AND THE UNIDROIT PRINCIPLES (ONGOING PROJECT) 43
A. Background and Development 43
B. Purpose and Key Content 44
C. Implementation and Engagement 46
1. Implementation 46
2. Consistency with domestic laws 46
3. Engagement in arbitral practice 46
4. Relationship with other international instruments 47
5. Geographical distribution and promotion 47

D. Recommendations for implementation, dissemination and capacity- building 47
1. Translation and linguistic accessibility 47
2. Establish a monitoring and advisory group 48
3. Develop official commentary updates and case digests 48
4. Integrate the instrument into model contracts and PPP toolkits 48
5. Judicial and arbitral training programmes 48
6. Enhanced digital dissemination 48
E. Recommendation for further normative development 48
II. CORPORATE SUSTAINABILITY DUE DILIGENCE IN GLOBAL VALUE CHAINS (ADOPTED PROJECT) 49
A. Background and Development 49
B. Purpose and Key Content 50
C. Evaluation of the Approach Proposed by the Governing Council and the Exploratory Workshop 51
1. In General 51
2. The Legal Guide 52
3. Guidance for a More Relational Contract Drafting 53
4. Model Clauses 54
D. Recommendations for the future 54
1. Beyond a Legal Guide 54
(a) Model Law on Sustainability Governance in International Contracts 55
(b) Expanding the Tripartite Guide 55
(c) Integrating Sustainability Considerations into Unidroit Principles 55
2. Challenges of Incorporating Sustainability Considerations into Harmonisation Instruments 56
III. CONSTRUCTION AND ENGINEERING CONTRACTS (ADOPTED PROJECT) 57
A. Background and Development 57
B. Purpose and Key Content 57
C. Implementation and Engagement 58
D. Recommendations for the Future 59
PART THREE — EMERGING CROSS CUTTING AREAS FOR FUTURE WORK 64
I. DIGITALISATION AND NEW TECHNOLOGIES 64
A. General Considerations 64
1. Addressing the challenges of digitalisation 64
2. Existing work 65
3. Digital communication methods in contracting 66

4. New Digital Products 66
5. Data as a counter-performance 67
6. New Business Models and Digital Ecosystems 67
(a) Contracts as governance architecture 68
(b) Connected contracts and liability allocation 69
7. New digital contracting practices (automation) 70
B. Summary of recommendations for action by UNIDROIT 72
PART FOUR — THE WAY FORWARD 73
I. PROMOTION, DISSEMINATION AND CAPACITY-BUILDING IN RELATION TO THE UNIDROIT PRINCIPLES 73
II. FUTURE DEVELOPMENT OF THE UNIDROIT PRINCIPLES 74
A. Good faith and fair dealing 74
B. Contractual networks and increasingly complex contractual structures 74
C. Standard terms and contractual imbalance in B2B relationships 75
D. Sustainability and contract law 75
E. Digitalisation and new contracting practices 75
III. IMPLEMENTATION AND FURTHER DEVELOPMENT OF SECTOR-SPECIFIC INSTRUMENTS 76
A. Principles of Reinsurance Contract Law 76
B. Franchising 76
C. International Investment Contracts 76
IV. PREPARATION OF INSTRUMENTS UNDER CURRENT PROJECTS 77
A. Construction and Engineering Contracts 77
B. Corporate Sustainability Due Diligence in Global Value Chains 77
V. DIGITALISATION AND NEW TECHNOLOGIES 77
VI. COORDINATION AND PRIORITISATION OF FUTURE WORK 78

PREFACE

1. One of the key objectives of the activities undertaken by UNIDROIT in relation to the celebration of its Centenary in 2026 is to conduct a comprehensive analysis of the Institute's work so far, critically looking at past achievements and suggesting recommendations for the future. To this end, UNIDROIT established seven thematic Workstreams tasked with preparing White Papers in their respective areas. Each White Paper is expected to include: (i) an analysis and a critical assessment of the work conducted by UNIDROIT so far; (ii) a consideration of the current state of play; and (iii) a strategy for future work, including recommendations.

2. The Committee for the Workstream on Contract Law (the CL Committee) is asked to consider and assess UNIDROIT's past, current, and future work in relation to contract law. The Committee is asked to conduct an assessment of the impact of UNIDROIT's existing contract law instruments on international commercial practice and domestic laws and of how they are currently disseminated and promoted. It is also asked to consider the usefulness and feasibility of potential future work in this area.

INTRODUCTION

3. UNIDROIT's work has always focused mainly on commercial relationships, including contract law. However, it has never been restricted to contract law. From the early years of the Institute, its work included, among other topics, arbitration law, negotiable instruments, and even the law of alimony, and presently it includes, among other areas, property and secured transactions, cultural property, civil procedure and enforcement, capital markets, technology and the law, and sustainability issues. As this White Paper is concerned with contract law, a brief survey of that part of UNIDROIT's activities and accomplishments will follow.

4. Contract law is not only a traditional area of work for UNIDROIT dating back to the very beginning of the Institute's activity,[2] but it also produced one of the most successful uniform law instruments ever developed by an intergovernmental organisation, namely the UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles). Originally, however, UNIDROIT's ambitions were directed towards creating international conventions. In this area UNIDROIT's contribution is significant, as witnessed by renowned Conventions that fall outside of the scope of this White Paper.[3] Interestingly, however, the project with which UNIDROIT's name has for a long time been associated in relation to contract law, that is the international sale of goods, which started as early as 1929 and continued through many decades of intensive preparatory work based on drafts of the German scholar Ernst Rabel, was not finally approved as an UNIDROIT Convention. It did come to fruition in the two Hague Conventions of 1964, concluded under the auspices of the Government of the Netherlands, but their content was later reworked in the framework of the United Nations Commission on International Trade Law (UNCITRAL), created in 1966, and became the Convention on the International Sale of Goods (CISG), adopted in 1980 in Vienna. Other Conventions elaborated by UNIDROIT that also deal with contract law matters are the UNIDROIT Convention on Agency in the International Sale of

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[2] Apart from the seminal work on international sales, UNIDROIT pioneering studies include the 1937 Preliminary Draft Uniform Law on the Formation of International Contracts by Correspondence as well as comparative studies on insurance and reinsurance contracts, including a 1936 study on reinsurance.

[3] In particular the 1995 Convention on Stolen or Illegally Exported Cultural Objects (with 56 contracting States) and the 2001 Cape Town Convention on International Interests in Mobile Equipment (with 90 contracting States to date and in addition the European Union), embedded in a system of protocols relating to specific equipment such as aircraft, railway rolling stock, space objects, and mining, agricultural and construction equipment.

Goods (Geneva, 1983); the UNIDROIT Convention on International Financial Leasing (Ottawa, 1988); the UNIDROIT Convention on International Factoring (Ottawa, 1988); and the UNIDROIT Convention on Substantive Rules for Intermediated Securities (Geneva, 2009).

5. Outside the domain of international conventions, UNIDROIT has been increasingly active in creating instruments of a non-binding nature. As mentioned, a pioneering instrument is the UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles, 1994, 2004, 2010, 2016). Originally, this project was conceived as a codification, but it was restructured into a set of non-binding principles and rules of law illustrated by comments and practical examples. These principles can be inserted in commercial contracts, applied by arbitrators in commercial litigation, e.g., if chosen by the parties as the law applicable to the contract or in the absence of any chosen law, or even used as a source of reference in State courts. Moreover, the experience of the UNIDROIT Principles shows that soft law can effectively evolve into hard law. The principles have served as a direct or indirect model for national civil and commercial codes. They have also served as a basis or a point of reference for other UNIDROIT projects in the field of contract law, in projects as diverse as the Principles of Reinsurance Contract Law, Principles on Digital Assets and Private Law, and Principles of International Investment Contracts.

6. Other types of instruments of a non-binding nature that cover contractual matters include Model Laws,[4] contractual guidance documents,[5] and Legislative and Legal Guides.[6]

7. These instruments may be free-standing texts, or they may be combined with or serve as support for other instruments, explaining for instance the best ways and means to transpose a model law into a formal legislative document or using model clauses to explain how to put a legal guide on contractual arrangements into practical effect. Often, they are prepared in cooperation with other international (governmental or non-governmental) organisations in order to combine UNIDROIT's legal expertise with practical experience or support from specialised organisations working in the field to which the instrument is directed.[7]

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[4] E.g., the Model Franchise Disclosure Law ("Franchising Model Law", 2002). Contractual issues are also addressed in the UNIDROIT Model Law on Factoring (2023) and its Guide to Enactment (2025) and in the UNCITRAL-UNIDROIT Model Law on Warehouse Receipts and Guide to Enactment (2024), which fall outside of the scope of this paper.

[5] E.g., the Guide to International Master Franchise Arrangements ("Franchising Guide", first edition published in 1998, second edition in 2007).

[6] E.g., the Legal Guide on Contract Farming (2015) and Legal Guide on Agricultural Land Investment Contracts (2021), which are the result of the successful tripartite partnership between UNIDROIT, the Food and Agriculture Organisation of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD). These instruments are addressed in other White Papers, in particular the White Paper on Agriculture and Private Law.

[7] Mention can be made here, e.g., of the World Bank, the Food and Agriculture Organisation (FAO) and of course UNCITRAL, all members of the UN family. But also non-intergovernmental organisations, including organisations of a private law nature such as the International Chamber of Commerce and the International Federation of Consulting Engineers (FIDIC), to mention only a few examples, are included in these common endeavours.

PART ONE — ADOPTED INSTRUMENTS: IMPLEMENTATION AND RECOMMENDATIONS FOR FUTURE WORK

I. THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS (UNIDROIT PRINCIPLES), THE MODEL CLAUSES, AND THE TRIPARTITE LEGAL GUIDE

A. Development and adoption; purpose and key content

UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles)

8. The UNIDROIT Principles of International Commercial Contracts, first published in 1994, with a second expanded edition in 2004, a third in 2010 and now in their fourth (2016) edition (hereinafter "UNIDROIT Principles"), represent a non-binding codification or "restatement" of general contract law, as applied to international commercial contracts. Over the years they have been well received not only by academics and national legislators undertaking reforms of contract and obligation laws, but also in practice, as demonstrated by court decisions and arbitral awards rendered worldwide that refer to them in various ways.

9. The UNIDROIT Principles were prepared by Working Groups chaired by Professor Michael Joachim Bonell and composed of independent legal experts representing all major legal systems of the world, supported by observers from intergovernmental and international organisations. The drafting process was marked by broad consultations with academics, practitioners, and professional bodies, and involved rapporteurs drafting successive chapters which were then circulated for feedback among a wide network of correspondents. The final text was refined in plenary sessions held in Rome and elsewhere and ultimately adopted by the Governing Council.

10. The UNIDROIT Principles aim to establish a balanced and neutral set of non-binding principles and rules for international commercial contracts, accompanied by comments and illustrations. According to their Preamble, they are intended to be used in many different ways. They can be selected by the parties as the governing law or incorporated into their contract. They may be applied by adjudicators when parties have referred to "general principles of law", "*lex mercatoria*", or the like, or when the parties have not chosen any domestic law; they may be used as a means of interpreting and supplementing existing international instruments and domestic law. They can also be used as a model for national and international legislators. In practice, because of their nature as non-binding principles and rules, the UNIDROIT Principles have been used for various additional purposes, ranging from serving as guidelines in negotiations and to reach settlement agreements, or as material for academic teaching.

11. The latest edition of the UNIDROIT Principles, published in 2016 consists of 211 Articles in 11 Chapters, covering not only the life cycle of a contract from its negotiation to restitution, but also relevant areas that many legal systems classify as part of the general law of obligations. The content includes General Provisions (notably general principles such as freedom of contract; freedom of form; binding character of contract; good faith and fair dealing; relationship with mandatory rules); Formation and Authority of Agents; Validity (including mistake, fraud, threat, gross disparity, illegality); Interpretation; Content; Third Party Rights and Conditions; Performance (including hardship); Non-performance (including force majeure); Assignment of Rights, Transfer of Obligations, Assignment of Contracts; Limitation Periods; and Plurality of Obligors and of Obligees. Notably, the 2016 edition introduced several entirely new provisions on long-term contracts, as well as several new comments and illustrations.

Model Clauses

12. At its 91st session in May 2012 the UNIDROIT Governing Council, following a proposal submitted by Don Wallace Jr., set up a restricted Working Group to prepare Model Clauses for use by parties intending to indicate in their contracts more precisely how they wanted to see the UNIDROIT Principles of International Commercial Contracts used during the performance of a contract or when a dispute arose. The Working Group was composed of internationally renowned experts and observers. The Model Clauses accompanied by Comments were adopted by the UNIDROIT Governing Council at its 92nd session in 2013.

13. The Model Clauses originated from the recognition that the potential of the UNIDROIT Principles for use in transnational contract and dispute resolution practice had not yet been fully realised. One of the greatest challenges was the fact that the UNIDROIT Principles were not sufficiently well known among the international business and legal communities. While this is true of all international uniform law instruments, the soft law nature of the UNIDROIT Principles offers a greater range of possibilities of which parties were not always fully aware. Hence the idea of preparing Model Clauses that parties may wish to adopt in order to indicate more precisely how the UNIDROIT Principles should be used during the performance of a contract or when a dispute arises.

14. The Model Clauses are primarily based on the use of the UNIDROIT Principles in transnational contract and dispute resolution practice, i.e., they reflect the different ways in which the UNIDROIT Principles are actually being referred to by parties or applied by judges and arbitrators. They are divided into four categories according to whether their purpose is: a) to choose the UNIDROIT Principles as the rules of law governing the contract; b) to incorporate the UNIDROIT Principles as terms of the contract; c) to refer to the UNIDROIT Principles to interpret and supplement the CISG when the latter is chosen by the parties; or d) to refer to the UNIDROIT Principles to interpret and supplement the applicable domestic law, including any international uniform law instrument incorporated into that law. In deciding which of the four categories of Model Clauses to choose, parties are invited to consider the advantages and disadvantages of each. Where appropriate, two versions of each Model Clause are proposed, one for inclusion in the contract ("pre-dispute use") and one for use after a dispute has arisen ("post-dispute use"). The Model Clauses are deliberately drafted in a concise manner, while the Comments indicate possible modifications or additions that parties may wish to make.

Tripartite Legal Guide

15. The Tripartite Legal Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales) is a document developed following an initiative by UNCITRAL, and through cooperation among the three Secretariats of UNCITRAL, the Hague Conference on Private International Law (HCCH) and UNIDROIT. It aims at creating a roadmap to the existing uniform law texts in the area of international sales law prepared by each organisation, primarily though not exclusively, the CISG, the UNIDROIT Principles of International Commercial Contracts, and the HCCH Principles on the choice-of-law in international contracts. It seeks to clarify the relationship among them, promoting uniformity, certainty, and clarity in this area of the law. At the same time, it seeks to foster a better understanding of the usefulness and benefits of uniform laws in this field and to promote their uptake and use by different addressees. The three Secretariats devised an outline of the Guide and, in the interest of representing different legal traditions and geographic regions, identified a small joint panel of experts of international commercial contract law and/or private

international law to prepare it. The publication of the Legal Guide was authorised by all three organisations in 2020.[8]

16. The Guide provides guidance to the reader on a range of legal issues relating to international commercial contract law, from choice of law to a description of legislative, contractual and guidance instruments that may assist in a commercial transaction. The Guide is not intended to favour any particular interpretation, nor to offer any new interpretation of uniform texts.

17. As to its content, the Guide first discusses private international law issues, focusing on the HCCH Principles and their relation to the CISG and the UNIDROIT Principles, with a view to explaining the extent to which the contracting parties may choose the law applicable and the consequences of not making such a choice. The Guide then provides an overview of the content of the CISG and the Limitation Convention, before turning to the nature, use and content of the UNIDROIT Principles, highlighting similarities and differences between the CISG and other uniform texts with which the UNIDROIT Principles may interact. Finally, the Guide addresses a number of recurrent legal issues related to sales contracts, including the use of electronic means, distribution, agency and intellectual property issues relating to software and data.

B. Implementation and engagement concerning the UNIDROIT Principles and related instruments

1. Implementation

18. Since their first adoption over three decades ago, the UNIDROIT Principles have exerted a broad and enduring influence in many areas, including contract negotiations, dispute adjudication, reform of domestic legislation, and legal education.

19. The Principles have been frequently used as a guide for the negotiation and drafting of international commercial contracts.[9] They present material advantages in this respect, especially in light of the following three aspects: (a) available in 16 languages, the UNIDROIT Principles provide an international common language that helps parties to overcome language barriers and facilitating mutual understanding in cross-border transactions;[10] (b) Using neutral terminology, the UNIDROIT Principles can serve as a fair baseline for negotiations and as a model

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[8] See: https://www.UNIDROIT.org/english/governments/councildocuments/2020session/cd-99-a-08-e.pdf.

[9] See, for example, Lake, S., 'An Empirical Study of the UNIDROIT Principles - International and British Responses' (2011) 16 (3) Unif L Rev 669-703, 676 (finding that 98% of the surveyed international legal practitioners opined UNIDROIT useful as a guide for drafting contracts). For empirical studies, see Whited, C. M., 'The UNIDROIT Principles of International Commercial Contracts: An Overview of Their Utility and The Role They Have Played in Reforming Domestic Contract Law Around the World' (2011) 18 (1) ILSA Journal of International & Comparative Law 167-191, 179 (citing surveys conducted among business and legal professionals, which found more than half of them had used UNIDROIT Principles as guidelines in contract negotiations), Brödermann, Eckart, The Impact of the UNIDROIT Principles on International Contract and Arbitration Practice – the Experience of a German Lawyer, Uniform Law Review (2011), pp. 589–612; Brödermann, Eckart, Simplified Global Contracting under the UNIDROIT Principles – Reflections of a German Lawyer working Globally and Regularly with the UNIDROIT Principles, in: UNIDROIT, Past, Present and Future Relevance, Acts of the Conference to celebrate the 30th Anniversary of the adoption of the UNIDROIT Principles (Rome, 6-7 May 2024) (UNIDROIT 2025), p. 111-153.

[10] Bonell, M. J., 'Unification of Law by Non-Legislative Means: The UNIDROIT Draft Principles for International Commercial Contracts' (1992) 40 (3) The American Journal of Comparative Law 617-633, 629; Whited, C. M., 'The UNIDROIT Principles of International Commercial Contracts: An Overview of Their Utility and The Role They Have Played in Reforming Domestic Contract Law Around the World' (2011) 18 (1) ILSA Journal of International & Comparative Law 167-191, 179.

for contract provisions;[11] (c) being comprehensive and pedagogical, the UNIDROIT Principles provide a thorough and insightful checklist for commercial parties.[12]

20. Moreover, the UNIDROIT Principles have played an important role in the adjudication of international disputes. Although they are rarely designated as the governing law of the contract,[13] they are relied upon by arbitrators in contractual disputes.[14] According to available case law and anecdotal evidence, a frequent situation is the use of the UNIDROIT Principles to reach a settlement agreement or an adaptation or modification of the original contract. Another common scenario in arbitral practice involves the application of the UNIDROIT Principles during an arbitral dispute when the parties have not chosen the applicable law, do not reach an agreement on the application of any domestic laws, and the arbitrator presents the UNIDROIT Principles as a neutral and broadly accepted body of international general principles of law (or *lex mercatoria*) appropriately applicable in such circumstances.[15] Those widely recognised advantages have even made it possible for arbitrators to refer to the UNIDROIT Principles *motu proprio*.[16]

21. There are, however, some challenges in the application of the UNIDROIT Principles by arbitrators when the parties have not chosen them, either at the outset or during the proceedings.[17] As already mentioned, statistics indicate that an explicit choice of the UNIDROIT Principles is still rare if compared to a choice of national law, while arbitrators, though theoretically free to apply the UNIDROIT Principles, in practice tend to rely on national laws, largely due to party preferences and familiarity. For instance, an analysis of ICC awards in 1999–2000[18] found that out of roughly 600 awards, only 14 awards applied the UNIDROIT Principles (either as governing law or to supplement the applicable law). This low uptake reflects that most parties (and arbitrators) continue to favour well-known national laws. Reasons often cited include: (a) Unfamiliarity – many lawyers are hesitant to rely on a soft law instrument they do not know as well as domestic law; (b) Trust and prestige of national laws – for example, many practitioners often believe English contract law is more sophisticated than a set of "harmonised" principles, viewing the UNIDROIT Principles as academically interesting

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11 Bonell (n 10); Faria, J. A. E., 'The Influence of the UNIDROIT Principles of International Commercial Contracts on National Laws' (2016) 21:2-3 Unif L Rev 238-270, 240; Michaels, R., 'Preamble I: Purposes, Legal Nature, and Scope of the PICC; Applicability by Courts; Use of the PICC for the Purpose of Interpretation and Supplementation and as a Model' in Vogenauer, S. (ed), Commentary on the UNIDROIT Principles of International Commercial Contracts, 2010 (2nd edn, Edward Elgar 2015) 21-80, 79.

12 Lake, S., 'An Empirical Study of the UNIDROIT Principles - International and British Responses' (2011) 16 (3) Unif L Rev 669-703, 676 (finding that 98% of the surveyed international legal practitioners opined UNIDROIT useful as a guide for drafting contracts); Michaels (n 11); Bonell (n 10), 629; Brödermann, Eckart, UNIDROIT Principles of International Commercial Contracts. An article-by-article Commentary, 2d ed. 2023, Annex to Section 5.1 – UNIDROIT Principles for Specific Kinds of Contracts (Sales, Services, Construction).

13 See generally, International Bar Association, Perspectives in Practice of the UNIDROIT Principles 2016: View of the IBA Working Group on the practice of the UNIDROIT Principles 2016 (2019). For empirical studies, see International Chamber of Commerce, ICC Dispute Resolution 2024 Statistics, 14 ('In 2024, 2% of all contracts relied upon included reference to rules or instruments other than national laws, such as … the UNIDROIT Principles of International Commercial contracts'.).

14 Michaels, R., 'The UNIDROIT Principles as global background law', (2014) 19:4 Unif L Rev 643-668, 647; Alejandro Garro, José Antonio Moreno Rodríguez (eds), Use of the UNIDROIT Principles to Interpret and Supplement Domestic Contract Law, 2021.

15 For example, ICC, Case No 19127, Final Award, 2013 (as the parties made no submissions regarding the law governing the validity of the arbitration clause, the arbitral tribunal seated in Switzerland decided to apply Swiss law and the UNIDROIT Principles for this issue.).

16 Michaels (n11), 647-48.

17 See, for instance, the commentary to a 2020 CIETAC arbitral award available at: https://www.hsfkramer.com/notes/arbitration/2020-07/cietac-tribunal-applies-unidroit-principles-where-parties-fail-to-present-case-under-governing-law

18 Lake, (n 9) p.676.

but less established and potentially less comprehensive. This is also linked to the usual practice of arbitral courts.

22. In relation to their application by domestic courts, the UNIDROIT Principles have proven particularly useful in interpreting and supplementing the otherwise applicable domestic law. Such situations range from cursory references to the Principles to enabling the judge to clarify a debated issue, justify an innovative interpretation, or even fill in gaps in domestic laws.[19] They have also been occasionally used to interpret or supplement international uniform law instruments.

23. Moreover, the UNIDROIT Principles have inspired national and international legislators in the reform of their contract laws. On the national level, the Principles have 'served as a foundation for (1) the design of a contractual regime that is well suited to the development of a new market economy or (2) the modernisation of the existing legislative framework'.[20] Examples of the first category include, *inter alia*, the Estonian Law of Obligations Act [21] and the Civil Code of the Republic of Lithuania.[22] Estonia's Law of Obligations Act (2002) is widely recognised as one of the most comprehensive incorporations of the UNIDROIT Principles (UNIDROIT Principles) into national legislation. Its provisions on contract formation (§9–§18), interpretation (§29–§30), and performance and non-performance extensively adopt concepts directly inspired by the UNIDROIT Principles. This makes Estonia a leading example in comparative contract law scholarship of how the UNIDROIT Principles can influence domestic codification[23]. Examples of the second category include, *inter alia*, the 2015 amendment to the Russian Civil Code,[24] Argentina's new Civil and Commercial Code 2015,[25] the 2016 Ordinance

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19 For instance, *Churchill Falls (Labrador) Corporation Ltd v Hydro-Québec* [2016] QCCA 1229, para 150 (the Quebec Court of Appeal referred to the UNIDROIT Principles on hardship when interpreting the applicability of such theory under Quebec law); *Hengxing Company v Guangdong Petrochemical Subsidiary Company*, Shao Zhong Fa Min Er Chu Zi No 8 (2005) (the Chinese First-Instance Court referred to the UNIDROIT Principles to explain the legal concept of 'hardship' in supplement to the domestic law.); *Corte dei Conti – Sez Reg Sicilia* 197/2012 (Judgment) (the Italian court interpreted Articles 1175 and 1375 of the Italian Civil Code according to Article 1.8 of the Principles.); *Rock Advertising Ltd v MWB Business Exchange Centres Ltd* [2018] UKSC 24 (The UKSC referred to the UNIDROIT Principles on contract formation to uphold that a general rule allowing contracts to be made informally does not conflict with a specific rule requiring written variations under English law.); ICC, Case No 19127, Final Award, 2013 (the tribunal found the arbitration clause defective based on Swiss law supplemented by Article1.7 and 1.8 of the UNIDROIT Principles); Spanish case law shows a growing willingness to use the UNIDROIT Principles not merely as comparative authority, but as a persuasive tool to supplement and modernise domestic contract law in areas where the Civil Code or the Commercial Code is sparse, outdated or insufficiently systematic. Thus, while the UNIDROIT Principles do not displace Spanish law, they have been relied upon to support the interpretation of domestic provisions, to refine general clauses, and, in some instances, to help articulate solutions in areas where Spanish contract law lacked a sufficiently developed doctrinal framework. See, i.a., Spanish Supreme Court (Civil Chamber), 4 July 2006; 23 July 2007; 3 December 2008; 21 December 2007; 26 February 2013; 4 March 2015; and, in the context of hardship and the modern recasting of rebus sic stantibus, 17 January 2013 and 30 June 2014. Additional cases to be found in UNILEX.

20 Faria (n 11), 242.

21 Estonian Law of Obligations Act (passed on 26 September 2001, entered into force on 1 July 2002). The Principles impacted, *inter alia*, the provisions on contract formation (§9–§22), interpretation (§29), merger clause (§31), force majeure (§103). See also, Kull, I., 'Reform of Contract Law in Estonia: Influences of Harmonisation of European Private Law' (2008) 14 Juridica Int'l 122-129, 127.

22 Civil Code of the Republic of Lithuania, of July 18, 2000, Law No. VIII-1864 (as amended on 12 April 2011, No. XI-1312), Part II, Chapter XI-XVII. The Lithuanian Civil Code closely follows the UNIDROIT Principles in contract-related provisions: Faria (n 11), 248-49.

23 European and Estonian Law of Obligations - Transposition of Law or Mutual Influence? available at: https://www.juridicainternational.eu/article_full.php?uri=2004_IX_32_european-and-estonian-law-of-obligations-transposition-of-law-or-mutual-influence

24 Federal Act of 8 March 2015, No. 42 FZ, on amendments to the first part of the Civil Code of the Russian Federation (entered into force 1 June 2015). The UNIDROIT Principles influenced, *inter alia*, the articles on good-faith negotiation (Article434) and compensation for damages (Article393.1): Faria (n 11), 246.

25 Civil and Commercial Code of the Argentine Republic (approved by Law No. 26.994 of October 1, 2014, and amended up to Decree No. 62/2019 of January 21, 2019). The UNIDROIT Principles influenced,

amending the French Civil Code,[26] and China's new Civil Code of 2020.[27] In Argentina, for example, the official explanatory report of the Code explicitly acknowledges the UNIDROIT Principles as a key reference during the drafting process.[28] At the international level, the UNIDROIT Principles have been positioned at the centre of debates over the global or regional unification of codes of contract.[29]

24. Finally, the UNIDROIT Principles have gradually gained recognition among law schools and other teaching institutions as an important instrument for effectively teaching fundamental aspects of contract law in a comparative perspective as well as international commercial law. Modules on the UNIDROIT Principles have become part of the curriculum of law schools.[30] In addition, the knowledge and understanding of the UNIDROIT Principles among students has been enhanced by moot court competitions using UNIDROIT Principles as the governing law.

2. Engagement

25. Since their first adoption, the UNIDROIT Secretariat has prioritised the promotion of the UNIDROIT Principles through various activities and in different forums. More recently, the Secretariat has presented a strategy for promoting the UNIDROIT Principles based on five main tenets, which were discussed on the occasion of the 30th anniversary of the first edition of the UNIDROIT Principles held in Rome in May 2024:

- *Awareness raising*: One of the main goals in the implementation of the UNIDROIT Principles is to raise awareness of the principles and the potential advantages of their use, both in international commercial transactions and for legislative reform. To this end, the Secretariat relies on the initiative of UNIDROIT Correspondents, Governing Council Members, and other experts. It also, however, implements its own initiatives, often in cooperation with academic and professional circles and other organisations, including arbitral institutions. One very fruitful form of

inter alia, the articles on good faith (Article990), contract interpretation (Article1061-65),and termination (Article1076-91): Rivera, J.C., 'The Use of the UNIDROIT Principles of International Commercial Contracts in Order to Interpret or Supplement Argentine Contract Law' in Garro, A., Moreno Rodríguez, J.A. (eds) *Use of the UNIDROIT Principles to Interpret and Supplement Domestic Contract Law*. Ius Comparatum - Global Studies in Comparative Law (2021) vol 51. 39-53. In Argentina, Article 961 of the new Civil and Commercial Code (2015) establishes that contracts must be interpreted in light of the parties' intentions and the principle of good faith, with wording that closely mirrors UNIDROIT Principles Article 4.1.

[26] French Ordinance No. 2016-131 (published on 10 February 2016). The UNIDROIT Principles influenced, *inter alia*, the revision of articles regarding good faith (Article 1104) and confidentiality (Article 1112), and supervening circumstances (*imprévision*): Fauvarque-Cosson, B., The UNIDROIT Principles, the World and the French Reform of Contract Law, in Eppur si muove: The Age of Uniform Law Essays in honour of Michael Joachim Bonell, vol. 2, 1350.

[27] Civil Code of the People's Republic of China (entered into force on 1 January 2021). The Principles influenced, *inter alia*, articles on contract validity (Article597), hardship (Article533), and force majeure (Article545): Ji, W., 'The Influence of the UNIDROIT Principles on the Contract Book of the Chinese Civil Code: Process and Examples', (2024) 29 Unif L Rev 449-459.

[28] The Use of the UNIDROIT Principles of International Commercial Contracts in Order to Interpret or Supplement Argentine Contract Law, available at: https://www.academia.edu/85219173/The_Use_of_the_UNIDROIT_Principles_of_International_Commercial_Contracts_in_Order_to_Interpret_or_Supplement_Argentine_Contract_Law

[29] Michaels (n 11), 69 With respect to the application of the UNIDROIT Principles as non-state law, see for example, aside from the 2015 HCCH Principles on Choice of Law in International Commercial Contracts, the 2019 OAS Guide on the Law Applicable to International Commercial Contracts.

[30] Just by way of example, the Geneva Graduate Institute has long incorporated an intensive course on the UNIDROIT Principles for its master student in International Dispute Settlement, <https://mids.ch/academics/curriculum/> accessed 17 July 2025; in the same vein, University of Miami School of Law offers Law 313 International Sales providing students with an overview of the UNIDROIT Principles, <https://lawapps2.law.miami.edu/clink/course?cof_id=4291#:~:text=Course%20Description%20The%20course%20will,make%20the%20application%20of%20these> accessed 17 July 2025.

engagement is represented by the cooperation with global professional organisations such as the IBA, the UIA, and the ICC. With regard to professional organisations, a helpful promotional activity consisted in seeking approval of statements of support for the application of the UNIDROIT Principles by lawyers and arbitrators, and in concluding agreements to this effect.

- *Translations*: Translations play an essential role in the dissemination of knowledge on the UNIDROIT Principles and enhancing their practical application.[31]
- *Targeted regional strategy*: The Secretariat has further strengthened its targeted promotion of the UNIDROIT Principles in regions where they are still less well known and used, but where they could play an important role, introducing more predictability in international dispute resolution or contributing to legislative reforms. The Secretariat is focusing on the Middle East and North Africa (MENA) region, through intensified exchanges with academia and practitioners from the region. Targeted efforts have also been devoted to enhancing the visibility of the UNIDROIT Principles in Africa and Central Asia through the capacity-building International Programme for Law and Development. Finally, the creation of the Asian Transnational Law Centre has enabled the launching of a Moot Court entirely dedicated to the UNIDROIT Principles and addressed to universities in the Asia Pacific Region.
- *Case Law database*: UNILEX is a freely accessible database of international case law and bibliography on the UNIDROIT Principles, under the direction of Michael Joachim Bonell and Eleonora Finazzi Agrò: https://www.unilex.info. It provides detailed abstracts of the most important court and arbitral cases rendered worldwide (the latter to the extent they are accessible), and the full text of each decision in its original language where available. It allows users to research by date, country or arbitral tribunal, and by article number, as well as by specific issues listed under each article. More recently, decisions can be searched by type of contract involved, nationality of the parties, domestic law involved, and international law involved. It also contains a comprehensive bibliography.
- *Use of the UNIDROIT Principles for the development of instruments on specific contract types*: In recent years, the UNIDROIT Principles have increasingly been used as a starting point and as background to general contract law for UNIDROIT projects dedicated to specific types of (international) contracts. This is reflected in contract-specific instruments developed by UNIDROIT in cooperation with partner organisations or institutions, including the 2015 UNIDROIT /FAO/IFAD Legal Guide on Contract Farming, the 2021 UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts (ALIC), and, more recently, the Principles of Reinsurance Contract Law (PRICL) (see Section II below). Continuing this strategy, which has proved successful, the UNIDROIT Principles are being used as a starting point for the ongoing project on international investment contracts (IICs) and the UNIDROIT Principles, in partnership with the ICC Institute of World Business Law (see Section IV below). During the 30 Years of UNIDROIT Principles Anniversary Conference in May 2024, the potential interest and need to develop targeted guidance in other contractual sectors, such as construction and engineering contracts, were raised and discussed. This led to a formal proposal from the International Federation of Consulting Engineers (FIDIC) for a joint project on

[31] The UNIDROIT Principles were drafted in a single original in English, French, German, Italian and Spanish. Recognising the importance of providing translations in additional world languages to ensure wider dissemination and use, the 2016 UNIDROIT Principles are further translated into Arabic, Chinese, Georgian, Japanese, Korean, Persian (Farsi), Portuguese, Romanian, Russian, Turkish, Ukrainian and Vietnamese, with a Latvian translation in the pipeline.

Principles of international construction and engineering contracts (see Section VI below).

C. Recommendations for the future in relation to implementation and engagement

26. In addition to the strategy implemented so far, the Committee recommends a series of further actions:

- Promote wider integration of the UNIDROIT Principles into legal education around the world. This could be done both as part of a standard contract law course, by comparing domestic solutions to those of the UNIDROIT Principles, and in the context of comparative law. To raise wider awareness, legal education must play a key role.

- Encourage additional mooting competitions based on the UNIDROIT Principles.

- Work with national law societies and regulatory bodies, including the UIA, AIJA and IBA, to incorporate training on the UNIDROIT Principles as part of continuing professional development.

- Consider the development of short courses, perhaps through a series of online videos, delivered by experts.

D. Recommendations for the future in relation to new legislative action

1. Good Faith and Fair Dealing

(a) Lack of uniformity in the understanding of the concept of good faith

27. International instruments designed to establish legal standards for contracts frequently refer to the concept of good faith, but rarely define it:

28. Art. 7 (1) of CISG provides that "In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade." It is important to note that this provision by its terms indicates only that good faith plays an interpretive role with respect to the CISG.

29. The CISG does not, however, define or explain the concept of "good faith." While there is a reference to good faith in the explanatory note to the CISG by the Secretariat, it does not define or explain the concept. The note states that "This Convention for the unification of the law governing the international sale of goods will better fulfil its purpose if it is interpreted in a consistent manner in all legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise as to its meaning and application. When this occurs, all parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade."

30. In the UNIDROIT Principles, "good faith" is treated with somewhat more detail, but there is no specific definition of the concept.

- Article 1.7 states that "Each party must act in accordance with good faith and fair dealing in international trade."

- Comment 1 to Article 1.7 states that "good faith and fair dealing may be considered to be one of the fundamental ideas underlying the Principles".
- Some guidance as to the meaning of the obligation is provided by examples. See Comment 1 to Article 1.7. In addition, Comment 2 to Article 1.7 draws a connection between "good faith" and "abuse of rights."
- Comment 3 to Article 1.7 distinguishes between "good faith and fair dealing in international trade" and the same concepts under national law, noting that "domestic standards may be taken into account only to the extent that they are shown to be generally accepted among the various legal systems. A further implication of the formula used is that good faith and fair dealing must be construed in the light of the special conditions of international trade." Yet no specific guidance is provided as to what constitutes "good faith and fair dealing in international trade."
- In addition, the UNIDROIT Principles contain numerous provisions that are expressly indicated as being specifications of the general principle of good faith, including Articles 1.8, 1.9(2); 2.1.4(2)(b), 2.1.15, 2.1.16, 2.1.18 and 2.1.20; 2.2.4(2), 2.2.5(2), 2.2.7 and 2.2.10; 3.2.2, 3.2.5 and 3.2.7; 4.1(2), 4.2(2), 4.6 and 4.8; 5.1.2 and 5.1.3; 5.2.5; 5.3.3 and 5.3.4; 6.1.3, 6.1.5, 6.1.16(2) and 6.1.17(1); 6.2.3(3)(4); 7.1.2, 7.1.6 and 7.1.7; 7.2.2(b)(c); 7.4.8 and 7.4.13; and 9.1.3, 9.1.4 and 9.1.10(1).

31. The concept of "good faith" (or "good faith and fair dealing") appears to be well-developed and widely accepted in many civil law jurisdictions, while the concept, and the duties it embodies, is far less developed in common law jurisdictions.

- Moreover, common law concepts differ significantly from each other with respect to obligations of good faith and fair dealing. For example:
    - In the United States, the general duty of good faith has been accepted for over a half-century, but the common law concept differs from state to state and the statutory concept in the Uniform Commercial Code (governing, for example, sales of goods) is sometimes considered to differ from the common law concept.
    - Moreover, state common law rules in the United States differ as to whether party autonomy extends to the general duty of good faith (or good faith and fair dealing) and thus, whether good faith can be disclaimed or limited by agreement.
    - By way of contrast, Canadian courts have only recently concluded that contracts impose a duty of good faith, and that duty is significantly limited as compared with the duty in the United States.
    - The duty of good faith is not generally found to exist in English contract law.
    - Common law jurisdictions differ as to whether the duty of good faith, when it exists at all, applies to negotiations.
- In addition, it is not clear whether the standard against which a contract party's actions are to be measured is purely subjective or also has an objective component:
    - Subjective standards are sometimes referred to as "pure heart" tests, such as an assessment of whether the party acted with honesty and without intent to cause injury
    - By way of contrast, it is sometimes said that there is an objective component to the duty of good faith and fair dealing that would measure compliance with the fair dealing aspect of the standard by assessing

whether a party has gone beyond the bounds of industry standards as to what constitutes "fair dealing"

32. Questions have been raised in some jurisdictions as to whether the duty to act consistently with the concept of good faith and fair dealing is:

- A limit on the actions a party may take in the performance of contractual obligations or enforcement of contractual rights; or, rather
- An affirmative obligation to take certain actions not otherwise required by the terms of the contract.

33. In light of the differences between civil law and common law jurisdictions as a matter of domestic law (and the wide variation among common law jurisdictions), as well as the lack of an accepted definition or description of "good faith and fair dealing in international trade" and the nature of the duty to act in accordance with good faith and fair dealing, consideration might be given to elaborating on the meaning of "good faith and fair dealing in international trade" and the nature of the obligation to act consistently with that standard. This could add a greater degree of predictability and certainty to UNIDROIT Principles and future UNIDROIT instruments, especially in the case of transactions between parties whose domestic concepts of good faith differ meaningfully.

34. In addition, it would be useful to clarify gradations of the good faith obligation, such as obligations to act with the "utmost good faith," identifying how those standards differ from each other and indicating why one standard or the other is imposed in different contexts.

(b) Recommendations for further work to clarify the scope of good faith in the UNIDROIT Principles

35. The above-described diversity in the application of the principle of good faith across legal traditions and the lack of a uniform, autonomous understanding in international trade may have repercussions on the application of the UNIDROIT Principles. While the comments to Article 1.7 of the UNIDROIT Principles explain, in section 3, that the principle shall be understood autonomously, the lack of a uniform framework in international trade may create uncertainty about its scope. In turn, this may, in the eyes of commercial parties, act as a deterrent against choosing the UNIDROIT Principles to govern their contracts.[32]

(c) The interaction of the UNIDROIT Principles with agreed contract terms

36. An aspect that could benefit from clarification and thus potentially render the UNIDROIT Principles more attractive to commercial parties, is the impact that the principle of good faith has on the agreed contract terms.

37. The following sections are devoted to the relationship between the UNIDROIT Principles and contracts between commercial parties that are professionally drafted and negotiated. Such commercial contracts are often written in a very detailed way and contain extensive regulation of the relationship between the parties – they regulate not only the issues peculiar to the particular contract (such as quantity, quality, price, place of delivery, technical specifications, etc.), but also the interpretation of the contract and its general operation. Contracts thus spell out rules of general contract law and seek to create a self-sufficient system covering the whole life cycle of the contract: from the pre-contractual phase (addressed *i.a.* by Subject to Contract

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[32] An empirical analysis of all arbitral awards rendered under the ICC Rules of Arbitration in the years 2000, 2010 and 2020 shows that in 98,1% of the disputes the law chosen by the parties was a state law: Giuditta Cordero-Moss, Michele Miozzo, "The interpretation of contracts in arbitration: an empirical analysis of ICC awards", in *ICC Dispute Resolution Bulletin,* forthcoming 2026, section 8 and section 5 in the Appendix.

clauses exempting a party from liability in case the negotiations do not result into a contract, as well as by Representations & Warranties clauses which limit the duty of information by listing the specific characteristics the debtor assumes liability for), to interpretation (addressed *i.a.* by so-called Entire Agreement clauses specifying that the agreed contract terms constitute the sole source of rights and obligations for the parties towards each other), performance (addressed *i.a*. by so-called No Oral Amendment clauses specifying that amendments are binding only if they are formalised) and remedies (addressed *i.a.* by so-called No Waiver clauses specifying that failure to exercise a remedy does not constitute waiver thereof, as well as by so-called Sole Remedy clauses, specifying that the only remedies available in case of breach of contract are those regulated in the contract).

38. These contract terms may overlap with the principle of good faith and its various specifications in the UNIDROIT Principles. As noted above, these specifications are found in numerous provisions relating to all phases of a contract's life cycle: negotiations, interpretation, performance and remedies. For example, Article 1.8 prohibits contradictory conduct, Article 2.1.15 sanctions negotiations in bad faith, Article 4.3 mentions pre-contractual negotiations and subsequent conduct as elements in the reasonableness test[33] according to which the scope of the contract is to be determined, Article 4.8 mentions the intentions of the parties and good faith as a source for supplementing the contract, Article 5.1.2 mentions the intentions of the parties and good faith as a source for implied duties between the parties, Article 5.1.3 provides for a duty to cooperate with each other, Articles 7.2.2, 7.3.2 and 7.4.13 prevent a party from requesting performance, terminating the contract, or obtaining payment of agreed damages, where doing so would be unreasonable.

39. The importance of the duty to act in good faith is such that the second paragraph of Article 1.7 excludes the possibility for the parties to restrict it. This raises the question of how the principle of good faith interacts with the contract terms agreed by the parties, particularly when the various specifications of good faith in the UNIDROIT Principles contradict or overlap with specific contract terms. Where a literal interpretation of the contractual term would seem to allow speculative conduct, the principle of good faith may override the letter of the agreed terms of contract to prevent that the contractual right be applied unreasonably. In these situations, it may be unclear whether it is the agreed terms that prevail, or the relevant UNIDROIT Principles provision.

40. For example, upon a breach of contract the non-defaulting party may, as long as market conditions are favourable, elect not to exercise a remedy it is entitled to, and then decide long after the breach, if the market conditions change, to exercise it. The No Waiver clause seems to allow this conduct, whereas the duty to perform contractual rights in good faith seems to restrict it. This creates uncertainty about how the contract term will be applied.

41. Another illustration of the uncertainties arising from the overlap between the specific concretisations of the UNIDROIT Principles good faith principle and the agreed contract terms is the contractual regulation of pre-contractual information duties, often reflected in so-called Representations & Warranties clauses. The seller represents and warrants certain characteristics of the goods as listed in the contract's Representations and Warranties; where the list does not contain information that, if it had been disclosed to the buyer, would have affected buyer's decision to enter into the contract on the agreed terms, the question arises whether the contract terms prevail, or whether they are overridden by the principle of good faith. If the agreed terms prevail, the buyer may be deemed to have accepted the risk for the characteristics that were not mentioned in the Representations & Warranties. If the principle

[33] See Comment No 1 to Article 4.3, referring to the reasonableness test according to Articles 4.1 and 4.2. In turn, Articles 4.1 and 4.2 are specifications of the principle of good faith, see Comment No 1 to Article 1.7.

of good faith (as specified in Article 4.3 which refers to reasonableness) prevails, the list contained in the Representations & Warranties cannot be deemed to be exhaustive, and the seller may be liable for failing to disclose important information.

42. Yet another illustration of the uncertain relationship between the UNIDROIT Principles good faith principle and the agreed terms is the duty of cooperation laid down in Article 5.1.3. By creating ancillary obligations that were not provided for in the contract, the duty may be seen as contradicting contractual language or clauses that seem exhaustive, such as the Entire Agreement clause.

43. The foregoing illustrates some of the UNIDROIT Principles articles for which it would be useful to clarify the relationship between the UNIDROIT Principles and agreed terms.[34] Such a clarification would enhance predictability and may render the UNIDROIT Principles more attractive to commercial parties.

(d) The lack of a uniform understanding

44. The interaction between agreed contract terms and the various specifications of the principle of good faith creates uncertainty where the scope of the principle is not determined in a uniform manner, but is left to the discretion of the interpreter. The interpreter may privilege party autonomy or prefer balancing the parties' interests. In the former case the contract may be applied according to the agreed terms, thus allowing a speculative conduct; in the latter case a balanced result will be sought, thus overriding the wording of the agreed terms.

45. As was mentioned above, the application of the principle of good faith under the UNIDROIT Principles is not affected by the differences across the various legal systems, as Article 1.7 directs to interpret the principle autonomously, as it is applied "in international trade."

46. However, there is no evidence of a uniform understanding of good faith in international trade. Although it is sometimes affirmed that international commercial arbitration has developed a uniform approach to contract interpretation and dispute resolution, and that this would contribute to determining an autonomous understanding of how the principle of good faith is applied, a recent empirical study shows that there is no uniform approach. [35]

47. The study is based on a questionnaire completed by more than 100 international arbitrators. The questionnaire presented 10 cases based each on a contract clause that regulated certain issues in plain language - for example, a termination clause giving the bank the right to terminate the loan agreement if the borrower was in breach of certain obligations. Each case further presented a set of facts to which the clause should be applied - for example, the borrower was in breach of an immaterial obligation (it sent its audited financial statements to the bank one day late), and the bank invoked the termination clause. The real reason for termination however, was not the immaterial breach, but a change in interest rates that rendered the loan agreement not profitable for the bank. For each case, the arbitrator was asked whether the clause should be applied literally (in our example, whether the contract could be terminated on the basis of the termination clause), or whether it should be read in a corrective or purposive way (so that the contract could not be terminated on the basis of immaterial breaches).

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[34] For a more detailed analysis see G Cordero-Moss, "The UNIDROIT Principles: Long-Term Contracts", in Pietro Galizzi, Giacomo Rojas Elgueta, Anna Veneziano (eds.), *The Multiple Uses of the UNIDROIT Principles of International Commercial Contracts: Theory and Practice,* Giuffrè Francis Lefebvre 2020, 75-96.

[35] https://www.corderomoss.org/contractinterpretationinarbitration

48. A first, preliminary analysis of the results shows that about 50% of the responding arbitrators considered the contract to be self-sufficient or subject to transnational principles – two approaches that may be deemed to reflect the practice of international trade.[36] Of these, about 50% read the contract literally (in our example, they determined that the bank could terminate the loan agreement), whereas about 50% read the contract purposively (in our example, they determined that the bank could not terminate the loan). These preliminary results suggest that, even when international arbitrators profess that they are reading the contract simply on the basis of its terms, they do not apply a uniform, transnational approach.

49. If, based on the same contract language and the same set of facts, half of the arbitrators consider that exercising the termination clause is lawful and half of them consider it unlawful, it can be inferred that in arbitration there is no uniform approach to the relationship between the principle of good faith and the wording of the contract. This, in turn, creates uncertainty about the application of the UNIDROIT Principles.

(e) Recommendations

50. The combination of a central role granted to the principle of good faith in the UNIDROIT Principles and the difficulty in determining the scope of good faith in international trade is detrimental to predictability. As was suggested elsewhere, [37] commercial parties cherish predictability: if they are not capable of predicting the outcome of a dispute, they may not develop a commercial strategy. This may play a role in explaining why the UNIDROIT Principles are seldom chosen by commercial parties to govern their contracts.

51. To enhance the use of the UNIDROIT Principles by commercial parties, therefore, it may be useful to clarify what the principle of good faith entails, particularly in its interaction with contract wording.

52. Such clarification would involve three steps: (i) a systematic analysis of the UNIDROIT Principles specifying the principle of good faith in the distinct contexts, (ii) a critical comparison with commercial contract practice, and (iii) an evaluation of how the possible tension could be addressed. For such an extensive work, it is recommended to establish an Expert Group.

53. A possible way to clarify the interaction of the UNIDROIT Principles with the agreed terms would be for the Expert Group to evaluate whether the comments to specific articles of the UNIDROIT Principles could be supplemented. The comments to each article of the UNIDROIT Principles explain the scope and the effects of good faith in the relevant context and may thus give guidance as to the relationship between the specification of good faith and any overlapping agreed term. Such guidance could be enhanced, as the example of Article 4.3 on interpretation illustrates.

54. Article 4.3 lit. c) directs that the contract be interpreted also in light of the parties' subsequent conduct. However, in contract practice, parties often insert a clause requiring any amendments to the contract to be in writing and duly signed (so-called No Oral Amendments clause). Particularly in the field of construction, amendments are usually made subject to the formalisation of variation orders. Contract practice preventing informal amendments based on the conduct of party representatives is justified because of the complexity of construction

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[36] The remaining 50% arbitrators answered that they would apply the governing law. The rate of answers favouring application of the governing law is lower than that emerging from the already mentioned analysis of ICC awards, see Cordero-Moss, Miozzo, "The interpretation of contracts in arbitration: an empirical analysis of ICC awards", cit. section 4, ICC tribunals applied a state law in 80,5% of the decided issues.

[37] G. Cordero-Moss, "The Use of the UPICC as Law Governing Commercial Contracts - An Empirical Study On The Principle Of Good Faith", *Acts of the Conference to celebrate the 30th Anniversary of the adoption of the UNIDROIT Principles,* UNIDROIT 2025, 61-79, section 2.

contracts and the plurality of party representatives involved – which render it necessary to coordinate variations and subject their effectiveness to formalisation. However, the need to take into consideration subsequent conduct by the parties when interpreting the contract, combined with the obligation not to act inconsistently laid down in Article 1.8 and the rule that good faith overrides the parties' agreement laid down in Article 1.7(2), may give rise to doubts about the effectiveness of the agreed terms on variation orders.

55. In 2016, the comments to Article 4.3 c) were supplemented to clarify the interaction between the provision and the agreed terms, explaining that "[a]s a rule the subsequent conduct of the parties can only be an interpretative tool, i.e. be used to explain or amplify, but not to contradict, the terms of the contract as originally agreed between the parties. […] [o]bviously, the more precisely the parties regulate the procedure for adjustments to the contract, the less relevant any informal conduct of the parties would be to the interpretation of the contract". [38] This is a useful clarification of the relationship between Article 4.3 c) and the contract terms on variation orders, albeit a relatively careful clarification.

56. The same Article 4.3 also provides an example of lack of guidance in the comments. In section 4, the comments refer to the contractual practice of inserting No Oral Amendments clauses. Here, the comments do not recognise the justified interest in ensuring that contract terms are amended in a coordinated and formalized way and refer to the general principle of good faith: "see Article 2.1.18, and the limitation of the rule therein contained by virtue of the principle of prohibition of inconsistent behaviour laid down in Article 1.8." By making reference both to Article 2.1.18 on No Oral Modification and to Article 1.8 on inconsistent behaviour, the comment does not clarify the relationship between the expressed contract term and the principle of good faith.

57. The Expert Group could identify the articles of the UNIDROIT Principles for which it may be useful to supplement the comments with a clarification of the relationship between the UNIDROIT Principles rule and the contract's terms.

(f) Relationship with other UNIDROIT instruments

58. The principle of good faith is referred to in numerous UNIDROIT instruments, such as the ongoing UNIDROIT/ICC work on International Investment Contracts, and the PRICL. Clarification of the scope of good faith in the UNIDROIT Principles may also be significant for these instruments, which are ultimately based on the UNIDROIT Principles. However, these instruments are tailored to the specific legal relationships they are meant to apply to, and may thus reflect own requirements.

59. In the project on International Investment Contracts, the interaction between the principle of good faith and the contract is sought to be clarified in the comments to specific provisions of the UNIDROIT Principles (for example, Article 2.1.15 on negotiations, Articles 2.1.17 on entire agreement clauses, Article 4.3 on relevant circumstances, Article 4.8 on omitted terms, and article 5.1.2 on implied obligations), or by suggesting model clauses.

60. The PRICL adopted a different approach, based on the specificities of reinsurance contracts. Reflecting reinsurance practice, the PRICL introduced the concept of "utmost good faith". While this practice could be subsumed under the general principle laid down in article 1.7 of the UNIDROIT Principles, the PRICL developed it specifically for reinsurance contracts, with illustrations showing the different nuances.

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[38] Comment to Article 4.3, section 3.

61. Investment contracts and reinsurance contracts present specific features and the comments or model clauses developed in these contexts are not necessarily transferable to other contract types. However, it may be possible to draw some analogies and create synergies with the recommended work towards clarifying the scope of good faith in the UNIDROIT Principles.

62. It is recommended to specify the scope of good faith in the context of the UNIDROIT Principles, which represent a basis for the instruments relating to specific contract types – commercial contracts come in many different shapes, and the interaction between detailed contract terms and the principle of good faith is relevant to all contract types. Therefore, a general clarification in the context of the UNIDROIT Principles would be very useful.

63. A specification of this interaction for specific contract types (for example, for construction contracts) could be pursued in parallel or at a later stage.

2. New Rules for Network Contracts

(a) Background

64. Contractual networks occur in a wide variety of forms across virtually all sectors of the economy. They include, among others, supply chains, vertical marketing/distribution systems, transport and logistics systems, cashless payment infrastructures, platform ecosystems, Internet-of-Things and data-driven infrastructures, as well as production, construction and infrastructure projects. Despite their diversity, contractual networks share a common structural characteristic: they arise among legally independent actors through a plurality of bilateral (long-term) contracts which, taken together, are functionally interdependent and oriented towards a shared economic purpose. These contracts are not necessarily organised hierarchically. Instead, they coordinate through decentralised decision-making by way of contracts and create economically interwoven systems. This functional interdependence serves to align incentives and reduce transaction costs, while at the same time giving rise to legal questions that challenge traditional bilateral conceptions of contract law.

65. The effects of contractual networks are generally distinguished along three analytical dimensions. First, contractual networks generate network effects on the bilateral contractual relationships within the network, in the sense that the performance, interpretation, modification, or termination of individual contracts may be influenced by their functional interdependence with other contracts forming part of the same network. Secondly, contractual networks give rise to internal network effects on legal relationships between network participants that are not directly linked by contract, raising questions as to whether and to what extent rights, duties, or liabilities may arise across contractual boundaries within the network. Thirdly, contractual networks may produce external network effects *vis-à-vis* third parties outside the network, for example where the collective operation of the network affects other market participants (such as consumers or competitors) or causes damage to third parties and the network as such becomes a relevant point of reference for internalising such external effects via regulatory intervention.

66. Contractual networks are characterised by a set of inherent tensions. The mutual interdependence of all network participants stands in tension with their legal autonomy and the fact that each participant bears its own entrepreneurial risk. Similarly, the trust that network participants must extend to one another in order to enable coordination and long-term cooperation is constantly confronted with the risk of opportunistic behaviour. This includes, in particular, exploiting informational asymmetries in order to reduce one's own contributions to the functioning of the network while continuing to benefit from the efforts of other participants (the free rider problem). Finally, the cooperative dimension of contractual

networks coexists uneasily with the competitive relationship that may subsist between network participants, particularly where they operate at the same or adjacent levels of the market. The economic success of an enterprise-based contractual network as a whole depends decisively on the extent to which its participants comply with the existing contractual arrangements and adhere to shared expectations of conduct.

(b) Normative Implications

67. The most significant normative implications include, in particular:

- A definition of network contracts and their distinction from parallel concepts like linked contracts;
- the recognition of duties of loyalty, cooperation, coordination, and transparency, reflecting a more relational understanding of contract law;
- enhanced information duties within and, where appropriate, across contractual networks;
- the interpretation of individual contracts in light of the overarching purpose and functional logic of the network;
- the systemic consequences of invalidity of an individual contract within the network;
- the systemic consequences of non-performance of an individual contract within the network;
- the development of supplementary due-diligence mechanisms tailored to network structures (taking account also of sustainability considerations);
- the allocation of risks across the network rather than exclusively at the level of individual bilateral contracts;
- the potential extension of liability to non-contracting third parties and to other participants within the network, taking account of the external effects of the contract (e.g. Financial Crisis 2008);
- possible direct claims within the network or a right to redress (e.g. Article 18 Dir. 2019/771/EU);
- network-sensitive rules governing termination and its systemic effects;
- network-sensitive dispute resolution mechanisms, including coordination of proceedings and the management of multi-party disputes; and
- the implications on third-parties external to the network but affected by its actions.

(c) Recommendations for the future

68. Given their transnational character and their growing importance in international trade, contractual networks represent a phenomenon of direct relevance to the UNIDROIT Principles of International Commercial Contracts. The current edition of the UNIDROIT Principles already provides important tools that are highly relevant to contractual networks. Most notably, the 2016 edition introduced the concept of long-term contracts as an overarching category, defined by their duration, complexity and relational aspects. Many contracts that form part of contractual networks fall within this category, including e.g. distribution, agency, franchising, leasing and joint venture agreements. In addition, core principles of the UNIDROIT Principles – such as good faith and fair dealing, the duty of cooperation, reasonableness, and flexible

mechanisms for hardship and termination – provide a solid normative basis for addressing relational and adaptive aspects of contractual performance.

69. However, the long-term contract framework remains essentially bilateral in its conceptualisation. It does not fully capture the legal consequences that arise from the functional interdependence of multiple contracts within a network. In particular, the UNIDROIT Principles do not currently address situations in which the performance, interpretation, modification or termination of one contract has foreseeable and legally relevant effects on other contracts or participants within the same network.

70. While existing provisions of the UNIDROIT Principles can be applied to network situations by analogy, the absence of explicit guidance creates uncertainty. This gap has become more visible in light of recent regulatory developments, such as sustainability due diligence obligations in supply chains, platform governance, and compliance-driven contractual arrangements, which increasingly rely on networks of contracts as instruments of governance.

71. UNIDROIT should consider further developing the UNIDROIT Principles by introducing provisions specifically addressing contractual networks. This might be achieved – by analogy with the treatment of long-term contracts – either through the inclusion of additional articles, paragraphs and comments, or by the creation of a separate chapter designed to accommodate the particular features and regulatory needs of this phenomenon. By way of example, UNIDROIT could recognise the "network purpose" as an interpretative factor, thereby providing guidance that would allow tribunals and courts, where appropriate, to take into account the identifiable purpose and functional logic of the contractual network when interpreting individual contracts, without displacing the primacy of party consent. Especially sustainability due-diligence obligations in supply chains, platform contracts, and modern distribution arrangements provide contemporary examples of contractual networks that extend beyond the paradigm of traditional long-term contracts and therefore warrant specific attention. Such a project would therefore need to be carefully coordinated with related initiatives, including any future reconsideration of franchising agreements, the ongoing project on Collaborative Legal Structures for Agricultural Enterprises (CLSAE), the international investment contracts project, and prospective developments concerning platform contracts.

3. New Rules for the Control of Standard Terms

72. The UNIDROIT Principles do not provide a general framework for the substantive control of unfair standard terms in B2B contracts. They contain specific control mechanisms, notably in Articles 3.2.7 for gross disparity, 7.1.6 for unfair limitations of liability and 7.4.13 for excessive sums to be paid in case of non-performance. By contrast, standard terms are primarily addressed in the context of formation and interpretation, notably in Articles 2.1.20–2.1.21 and Article 4.6. While these provisions regulate incorporation, transparency, and interpretation against the drafter, they do not provide a framework for assessing the substantive imbalance of non-negotiated terms in B2B contracts. In particular, Article 2.1.20 UNIDROIT Principles excludes "surprising terms" in standard contracts unless they have been expressly accepted. While this rule may assist in eliminating unexpected or insufficiently transparent clauses, its scope remains limited: a party using standard terms can draw specific attention to them, thereby avoiding the application of Article 2.1.20. The real concern, however, lies with terms that are expected yet imbalanced. Beyond the specific mechanisms identified the UNIDROIT Principles currently lack a general rule addressing substantive unfairness in standard terms between professional parties.

73. Contemporary commercial realities show that, although formally concluded between professional parties, contracts are not always the result of arm's-length bargaining. In global

supply chains, agricultural and food markets, franchising systems, digital platform markets, and transactions involving SMEs, standard terms are frequently imposed unilaterally by structurally dominant actors. Economic dependence, switching costs, network effects, and information asymmetries often deprive the weaker party of meaningful negotiating power. At the level of national law, German law applies substantive control to standard terms even in B2B contracts under §§ 305–310 of the Bürgerliches Gesetzbuch, albeit with adjustments reflecting commercial practice. French law, following the 2016 reform of the Code civil, contains now a general provision (Art. 1171) applicable also to B2B constellations and annulling non-negotiable standard terms creating a significant imbalance between the rights and obligations of the parties to the contract. Turkey has introduced a parallel general rule in the Law of Obligations applicable to B2B as well as B2C contracts. Spanish law on the other hand does not establish a general unfairness test for B2B contracts, substantive content control may result though from mandatory rules (Article 8 LCGC), the overarching principles of good faith and abuse of rights (Articles 1258 and 7 Civil Code), specific statutory regimes such as Article 9 of the Late Payment Act (Ley 3/2004) and Article 3 of the Insurance Contract Act (Ley 50/1980). In Japan, Article 548-2(2) of the Minpo (Civil Code), which was added in 2017 and which is also applicable to B2B transactions, provides that certain standard terms used by one party are not binding, if they unilaterally prejudice the interests of the other party in a manner that is against good faith. In parallel, Article 4:110 PECL and DCFR II.–9:405 (both soft-law instruments) provide for fairness control of non-negotiated terms beyond the consumer sphere.

74. As a general rule, the common law rarely intervenes in the substance of (commercial) contracts due to its strong emphasis of freedom of contract and respect for the parties' contractual risk allocation. The extent to which intervention can happen varies between common law jurisdictions. For instance, the English common law rarely treats terms with suspicion, although it has developed some controls over certain types of term. Thus, contractual terms which specify the amount of damages payable by a party in the event of a breach are generally upheld except where they are treated as a 'penalty clause'. Thus, where the stipulated sum of money is out of all proportion to the damages that would be recoverable under the common law's default rules and where the amount cannot be justified based on a legitimate interest of the party entitled to the damages, the clause would not be enforced. Another term for which controls have evolved in recent years are those which grant a discretion to one of the contracting parties (e.g., unilateral variation clauses); here, the courts can police the exercise of that discretion by implying a term into the relevant contract that the discretion must be exercised in good faith and in a reasonable, and not arbitrary manner. Furthermore, statutory controls were introduced in the Unfair Contract Terms Act 1977, which subjects most exclusion and limitation of liability clauses to a reasonableness test; any term which fails this test is not enforceable. In comparison, under the US Uniform Commercial Code (applicable to contracts of sale), contract terms can be invalidated if they are unconscionable. The Australian Consumer Law subjects standard-form contracts concluded with certain small businesses to unfair-contract-terms control. Thus, whilst common law jurisdictions tend to be less interventionist, there is recognition that some terms are so objectionable that they should not be enforced.

75. In the EU, Directive 2011/7[39] on combating late payment in commercial transactions provides in Article 7 that contractual terms or practices relating to payment dates, interest rates, or compensation for recovery costs which are "grossly unfair" to the creditor shall not be enforceable or shall give rise to a claim for damages. Likewise, Directive 2019/633[40]

[39] Directive 2011/7/EU of 16 February 2011 on combating late payment in commercial transactions, ELI: http://data.europa.eu/eli/dir/2011/7/oj

[40] Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, ELI: http://data.europa.eu/eli/dir/2019/633/2019-04-25

addresses unfair trading practices in the agricultural and food supply chain, explicitly recognising bargaining power asymmetries between suppliers and buyers. The Platform-to-Business Regulation[41] seeks to correct imbalances between online intermediation services and business users, the Data Act[42] governs access to data and controls unfair contractual terms unilaterally imposed on another enterprise. The Digital Services Act[43] and the Digital Markets Act[44] further acknowledge structural dependency and gatekeeper power in digital ecosystems.

76. The Committee suggests that the UNIDROIT Governing Council place this topic on its agenda and consider whether national and international developments warrant the introduction of a provision on the control of unfair standard terms in the UNIDROIT Principles, for example after Article 3.2.7, or whether it would be preferable to identify particular situations of dependency and address them through targeted protective rules in specific instruments, such as the projects on franchise contracts, network contracts, or specific rules on platforms.

77. Any possible provision to be included in the UNIDROIT Principles should only subject stipulations to control if they are non-negotiated due to e.g. a structural imbalance, economic dependence, absence of realistic alternatives and are therefore unilaterally imposed on one party creating significant imbalance contrary to good faith and fair dealing. Importantly, the threshold in B2B relationships should not mirror that applicable in consumer contracts. As illustrated in Articles 7.1.6 and 7.4.13 (grossly unfair or excessive) or by DCFR II.-9:405 (grossly deviating from good commercial practice), it may be set at a higher level, requiring a gross or manifest deviation from good commercial practice. In this way, the UNIDROIT Principles could distinguish clearly between ordinary hard bargaining - which is perfectly fine in commercial dealings - and structural abuse of standard terms.

4. Integrating Sustainability Considerations into UNIDROIT Principles

78. The UNIDROIT Principles do not specifically address sustainability or ESG-related matters.[45] As a body of general principles and rules governing international commercial contracts, they are capable of accommodating sustainability-related issues through interpretation.[46]However, in order to reduce uncertainty and in light of the growing importance of sustainability in contractual practice (cf. e.g. the UN Guiding Principles on Business and Human Rights[47], the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct[48], and the EU Corporate Sustainability Due Diligence Directive [CSDDD][49]) it may be appropriate to reflect on how such considerations could be expressly integrated into the

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[41] Regulation (EU) 2019/1150 of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, ELI: http://data.europa.eu/eli/reg/2019/1150/2019-07-11

[42] Regulation (EU) 2023/2854 of 13 December 2023 on harmonised rules on fair access to and use of data (Data Act), ELI: http://data.europa.eu/eli/reg/2023/2854/oj

[43] Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market For Digital Services (Digital Services Act), ELI: http://data.europa.eu/eli/reg/2022/2065/oj

[44] Regulation (EU) 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), ELI:http://data.europa.eu/eli/reg/2022/1925/oj

[45] See also below section

[46] See UNIDROIT 2025 – C.D. (104) 2, Update on developments and proposal to upgrade the priority level of the project on Corporate Sustainability Due Diligence in Global Value Chains, prepared by the Secretariat, March 2025, nº30 and Annex I nº74 et seq.

[47] https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

[48] https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990/81f92357-en.pdf.

[49] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, http://data.europa.eu/eli/dir/2024/1760/2026-03-18 (as amended on 24 February 2026).

UNIDROIT Principles framework, either by explicit articles and/or through addressing the issues in the Comments.

79. First of all, the widespread use of sustainability clauses underlines the practical importance of contractual mechanisms that aim at securing compliance. Given that sustainability-related issues frequently arise in long-term contractual settings involving global value chains, any remedial scheme must also take into account the need to preserve such contractual relationships. Traditional remedies like specific performance (Article 7.2.2 UNIDROIT Principles) and termination (Article 7.3.1 UNIDROIT Principles) may serve as compliance-enhancing tools; however, their application may entail disproportionate consequences for upstream suppliers. In this context, further consideration needs to be given to mechanisms grounded in the duty to cooperate (Article 5.1.3 UNIDROIT Principles), including contractual arrangements that encourage joint efforts for compliance as well as remedying non-compliance. Possible future work on networked contractual settings could also provide an important framework for addressing these challenges.

80. This cooperative structure reinforces the relevance of Article 7.1.2 (interference by the other party), given that sustainability obligations are frequently reciprocal: effective compliance may depend on information, support, or adjustments provided by the obligee. Where the latter contributes to non-compliance, or fails to facilitate performance, remedies must be adjusted accordingly. As sustainability regimes increasingly rely on shared responsibility, this provision becomes central in calibrating contractual liability.[50]

81. At the same time, sustainability practice underscores the role of the right to suspend performance as an intermediate mechanism. Suspension may offer a means of exerting pressure to ensure compliance without triggering the radical consequences associated with termination. This development is reinforced by recent EU sustainability legislation, in particular the amendments introduced through the CSDDD Omnibus Directive[51], which prioritises suspension, corrective action plans, and restrictions on the continuation or expansion of business relationships, while no longer providing for termination as a last resort regulatory response.

82. In such a regulatory environment, the assessment of contractual remedies may depend not only on the gravity of the non-performance, but also on whether continued performance remains compatible with overriding sustainability obligations. The growing integration of sustainability considerations into mandatory regulatory frameworks introduces an additional layer that may independently affect the permissibility of contractual continuity. While this does not require modification of the black-letter provisions of the UNIDROIT Principles, it may justify clarification in the Comments. In particular, the interpretation of Articles 7.1.3 and 7.3.1 may need to recognise that suspension or termination can also be influenced by mandatory sustainability obligations that constrain or preclude continued performance.

83. Another important aspect of sustainability-related contracting raises renewed questions regarding contracts in favour of third parties under Articles 5.2.1 and 5.2.2 of the UNIDROIT Principles, especially in the context of global value chains where contractual commitments are intended to protect stakeholder interests. Without prejudging any specific outcome, the project may provide useful material for future interpretative guidance or

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[50] Cf. e.g. on the application of Article 80 CISG in this context Atamer/Wittum, 'Sustainability Due Diligence in International Sales Contracts: Insights from the CISG', 30(3) Uniform Law Review 2025, pp. 287-313.

[51] Directive (EU) 2026/470 of the European Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting requirements and certain corporate sustainability due diligence requirements.

commentary clarifying the application of these provisions in sustainability-driven contractual practice.

84. In a different context, greater emphasis on the right to repair (Article 7.2.3 UNIDROIT Principles), and the right to cure (Article 7.1.4 UNIDROIT Principles) may support environmental sustainability objectives, notably by promoting resource efficiency and circular economy approaches. At the same time, the application of these remedies must remain sensitive to competing policy considerations, including the promotion of innovation capable of delivering improved environmental performance. In certain circumstances, replacement rather than repair or cure may therefore constitute the more sustainable outcome.

85. Additionally, the decision of the drafters of the UNIDROIT Principles not to include price reduction as a remedy could be reconsidered in this context. Such a remedy may become relevant where the buyer cannot prove recoverable loss despite a breach of sustainability-related contractual commitments. This may be the case, for example, where beef produced from cattle fed in rainforests, contrary to a contractual undertaking, can nevertheless be resold without any reduction in market price. A similar situation may arise in construction contracts where the building itself conforms to the contract, although child labour was used during its construction. Given that the buyer has paid for compliance with such commitments, it may be justified to allow a corresponding reduction of the price.

5. Digitalisation and UNIDROIT Principles

86. Digitalisation has had a considerable impact on commercial practice. The early days of digitalisation were characterised by a shift towards use of electronic communications and the use of digital documents rather than paper-based ones. However, more recently, the growth of online platforms and other digital business models based on contractual architectures has challenged contract law. Furthermore, contracts for the provision of software, smart goods (physical goods relying on software for core functionalities) and data have all become prevalent and raise novel questions about contracting. Added to this is the major advances in artificial intelligence technologies (AI); so-called AI agents could be deployed for automating the contracting process. All these developments invite a review of the UNIDROIT Principles to determine whether changes or additions are needed, either to the black-letter rules and/or the comments, to fully address these developments. These issues are explored further in section 7 in this document.

6. Recommendations regarding a general review of UNIDROIT Principles

87. Should the UNIDROIT Principles black-letter rules and comments be revisited, as proposed, in light of a more sophisticated understanding of good faith, sustainability requirements, technological developments, and increasingly complex network contracting, the exercise could usefully extend beyond the specific provisions currently under consideration. While the existing proposals already envisage targeted revisions of both the black-letter rules and their accompanying comments, the process also offers an opportunity to reassess the comments more generally. Given their central role in guiding the interpretation and application of international commercial contracts, it would be worth examining whether they continue to reflect contemporary commercial realities and current practice in the use of the UNIDROIT Principles. In particular, the growing body of case law and arbitral decisions referring to the UNIDROIT Principles could be integrated more systematically, both to update existing illustrations and to enrich the explanatory framework.

II. THE PRINCIPLES OF REINSURANCE CONTRACT LAW (PRICL)

A. Development and adoption

88. The Principles of Reinsurance Contract Law (PRICL) were included in UNIDROIT's 2017–2019 Work Programme at the proposal of the Universities of Zurich, Frankfurt, and Vienna, with the aim of formulating a global restatement of reinsurance law. Inspired by the Principles of European Insurance Contract Law (PEICL), the project was developed by an international group of experts, in consultation with representatives of the global insurance and reinsurance markets. UNIDROIT participated in the project to ensure consistency with the UNIDROIT Principles, which serve as the model for general contract law.

89. Version 1.0 of the PRICL was approved by the UNIDROIT Governing Council in 2019, and the project continued in subsequent work programmes to expand its coverage. The final version (November 2025) adds new chapters on coverage, costs, and contract duration, includes the black-letter text of the UNIDROIT Principles as an annex, and supersedes version 1.0. In 2023, the PRICL Project Group in cooperation with UNIDROIT released a Note on the PRICL and the COVID-19 health crisis.

90. The PRICL are a non-binding set of principles and rules that parties may choose as the governing law or incorporate into their contracts. They respond to a long-standing need for greater legal certainty in international reinsurance, traditionally based on informal "handshake" agreements. By providing a coherent and neutral framework, the PRICL address inconsistencies among national laws and enhance predictability and transparency. The PRICL provides specific rules on reinsurance contract law while incorporating uniform rules on general contract law by virtue of a reference to UNIDROIT Principles. The PRICL represent one of the first attempts to apply the UNIDROIT Principles method to a sector characterised by strong technical specialisation and a mutualised logic of risk, and as such it could serve as an example for other specific sectors.

91. The relationship between the PRICL and the UNIDROIT Principles regarding good faith deserves particular attention. The duty of utmost good faith found in the PRICL[52] should not be understood as a mere specification of Article 1.7 of the UNIDROIT Principles. Historically, utmost good faith emerged as a distinctive principle of insurance and reinsurance law long before the adoption of the UNIDROIT Principles and reflects the specific needs of a market traditionally based on mutual trust, extensive information sharing and long-term cooperation. At the same time, the PRICL comments emphasise that the concept of utmost good faith is consistent with the general duty of good faith and fair dealing embodied in Article 1.7 of the UNIDROIT Principles and that many of the same duties could arguably be derived from that provision[53]. The significance of the PRICL therefore lies less in developing the UNIDROIT Principles concept of good faith than in recognising, preserving and restating a sector-specific transnational standard that has long formed part of international reinsurance practice.

92. In this respect, the relationship between the two instruments may be viewed as complementary rather than hierarchical. The UNIDROIT Principles provide the general contractual framework, while the PRICL adapt the principle of good faith to the particular characteristics of reinsurance transactions. The duty of utmost good faith serves as the foundation for a number of more specific obligations that are especially significant in reinsurance practice, including extensive pre-contractual disclosure duties, confidentiality

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[52] Article 2.1.2 (Duty of utmost good faith): The parties owe one another the duty of utmost good faith. "Utmost Good Faith" means honesty and transparency as well as fairly taking into account the interests of the other party.

[53] Comments 2 and 3 to Article 2.1.2 PRICL.

obligations, duties of cooperation and the obligation to conduct dispute resolution in an efficient and fair manner. Thus, while Article 1.7 of the UNIDROIT Principles formulates a general standard applicable to all international commercial contracts, the PRICL provide a sector-specific articulation of that standard tailored to the informational asymmetries, mutual reliance and continuing cooperation that characterise reinsurance relationships. As a soft law instrument, the effectiveness of the PRICL depends on their practical use by parties and adjudicators. They have already been cited in arbitral practice and partially integrated into reinsurance contracts, with ongoing industry collaboration. Their key contributions include promoting legal certainty, introducing proportional remedies for non-disclosure, and setting clearer standards for claims handling and loss allocation.

B. Purpose and Key Content

93. Soft law instruments like the PRICL perform a bridging function between general contract principles and the specific practices of a highly specialised industry. Their potential lies in offering a coherent legal framework for cross-border reinsurance contracts, where party autonomy and custom have traditionally prevailed over codified law. By adapting the UNIDROIT Principles to reinsurance realities—while maintaining their neutral and transnational character—the PRICL help reduce legal uncertainty and fragmentation, especially in disputes involving parties from jurisdictions with divergent regulatory, doctrinal or judicial backgrounds. In this sense, the PRICL serve as both a standardisation tool and a reference point for interpretation, much like *lex mercatoria* did in earlier phases of commercial law development.

C. Implementation and Engagement

1. Practical usefulness and implementation challenges

94. The PRICL's practical utility differs from the UNIDROIT Principles in degree and focus. While the UNIDROIT Principles provide a horizontal model for international contract law, the PRICL are a sector-specific instrument, offering vertical integration within the reinsurance market. Their success depends not only on doctrinal soundness but also on industry acceptance—brokers, insurance and reinsurance companies, judges, arbitrators and arbitral institutions must perceive them as operationally useful.

95. The main challenges are therefore:

- Industry buy-in: translating academic legitimacy into contractual practice.
- Awareness and training: ensuring that practitioners and reinsurance operators, including brokers, arbitrators, and regulators understand their function and relation to the UNIDROIT Principles.
- Dissemination and visibility: promoting broader awareness of the Principles and of emerging case law or arbitral practice applying them.
- Perception of neutrality: maintaining credibility across jurisdictions with differing regulatory sensitivities. If these are addressed, the PRICL could play a stronger role than the UNIDROIT Principles in standardising contractual practice within one sector, rather than across the entire spectrum of commercial law.

2. Institutional cooperation models: The Zurich Agreement

96. UNIDROIT and the University of Zurich have signed a Memorandum of Understanding to monitor the implementation of the PRICL and to foster their dissemination through teaching,

training, and research, thereby establishing a model for future cooperation on UNIDROIT instruments. This collaborative model could provide a blueprint for other initiatives undertaken by UNIDROIT.

97. This form of cooperation is particularly beneficial, as it fosters interaction between theory and practice, strengthens academic dissemination and professional training, and helps ensure the continued relevance and visibility of UNIDROIT instruments. In short, the cooperation with the University of Zurich illustrates how partnerships between UNIDROIT, academia, and industry can transform soft law instruments from drafted texts into living tools—continuously monitored, tested, and refined through real-world application.

D. Recommendations for the future: Recommendations for implementation, dissemination and capacity-building

1. Promotion and dissemination

98. Given that the PRICL are a relatively new instrument, particularly the recently published 2025 edition, continued efforts are needed to promote its dissemination and practical use within both the reinsurance industry and the broader legal community. Traditional ways for promoting the text are easily available such as networking events, conferences, special courses, teaching courses, moots, etc.

(a) Past experiences and academic initiatives

99. Past experiences could be built upon. For example, in 2020, a PRICL Mock Arbitration was organised by AIDA Europe, the PRICL Project Group, the AIDA Reinsurance Working Party and the AIDA Dispute Resolution Working Party. Another example is the use of the PRICL in the XIII Madrid Moot edition in 2021.

(b) Industry partnerships and professional associations

100. Potential agreements with reinsurance associations, brokers, companies and operators in the industry could be a good starting point. Potential partner organisations include, among others, AIDA World, AIDA Europe, BILTIR, FIDES, GFIA, Geneva Association, GRF, IAIS, Insurance Europe, IUA, LMA, RAA and SRA.

(c) Arbitration and institutional cooperation

101. As reflected in the PRICL 2025, Foreword, the Principles have already gained recognition in arbitration practice and academia. This development is highly positive because it shows that the PRICL are moving from theory to real practice. Their incorporation into reinsurance contracts proves that the market views them as a credible and operational framework rather than a purely academic exercise. The collaboration of industry actors in drafting a contract entirely based on the PRICL further enhances legitimacy and encourages broader adoption. This, in turn, promotes greater legal certainty and uniformity across jurisdictions—precisely the purpose for which the PRICL were conceived.

102. Similarly, given that arbitration is a natural forum for the reinsurance industry, even though some are ad hoc arbitration, collaboration with arbitral institutions would be welcomed.

103. In this vein, a memorandum of "adhesion" or a "manifesto" to promote the use of the PRICL in arbitration and their incorporation into arbitration clauses and reinsurance contracts could be an idea to follow, like recent initiatives in relation with the UNIDROIT Principles.

104. Building on this idea, a memorandum of adhesion or a manifesto endorsed by leading arbitral institutions or main industry organisations could serve as a powerful mechanism to promote the practical use of the PRICL. Such an initiative would formalise institutional support for the Principles and signal to the market that arbitral and industry bodies recognise their value as a neutral and reliable reference framework. This memorandum could include a set of commitments: to encourage parties to consider the PRICL when drafting arbitration clauses or governing law provisions; to train arbitrators on their content and interaction with the UNIDROIT Principles; and to make express reference to the PRICL in procedural guidelines or model clauses for reinsurance disputes.

105. It would also have an important symbolic function. An individual or a collective statement of endorsement from arbitral institutions or specialised arbitration working groups—such as ARIAS, LCIA, ICC, AIDA Reinsurance Working Party or AIDA Dispute Resolution Working Party, or the CIIAM/SEAIDA Working Group on Arbitration in insurance and reinsurance—would increase the instrument's visibility and legitimacy, creating a bridge between academia, UNIDROIT, and market practice. Such cooperation transforms UNIDROIT instruments from texts of reference into living tools actively embedded in legal and commercial practice.

(d) Case Law dissemination and databases

106. Engaging arbitral institutions to publicise awards in which the Principles are applied is also envisaged. In fact, the PRICL have already been used by arbitration panels as a source of persuasive authority[54]. Arbitral institutions should be encouraged to (i) identify and publish—in full or in summary form—awards in which the PRICL or the UNIDROIT Principles are invoked or applied; (ii) create a dedicated section on their websites or yearbooks; and (iii) share such materials with academic and professional repositories.

107. In Spain, a valuable academic–institutional collaboration model already exists, where the Madrid Court of Arbitration (CAM), the CIIAM and the Carlos III University of Madrid (UC3M) have jointly promoted the publication of arbitral awards on UNIDROIT Principles and the CISG, through summaries and in an open database[55]. This approach could be extended to develop a public corpus of awards applying the PRICL.

108. Finally, UNILEX could be enhanced to include a dedicated section on reinsurance case law, incorporating decisions from both arbitral awards and domestic courts. As with the UNIDROIT Principles, the Reinsurance Principles can be a source to interpret or supplement domestic law[56].

2. Integrate the international community

109. While it is true that the drafting of the PRICL involved strong representation from academics, reinsurance experts, and industry participants, global participation has so far remained limited. Representation from Latin America has been scarce. Future promotional and dissemination activities could therefore focus more explicitly on engaging stakeholders from Latin American jurisdictions, and Asian jurisdictions, where reinsurance markets are

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54 PRICL, Introduction, p.19.

55 https://www.cisgspanish.com/seccion/jurisprudencia/otros-casos/. Summaries were also shared with Unilex and CLOUT.

56 In Spain, the High Supreme Court decisions: STS 22 November 2022; STS 20 April 2023, and STS 2 July 2025, used Article 9:101 of the Principles of European Insurance Contract Law ("PEICL") of 1999 to confirm the interpretation under the Spanish Insurance Contract Act (Article19).

increasingly active and could greatly benefit from the adoption of a harmonised soft law framework.

3. Translations and Linguistic Accessibility

110. The PRICL (2025) are available in English only. Unofficial translations of the 2019 edition are available in Japanese, Turkish, Polish and Spanish.

111. Expanding the number of PRICL translations is a crucial step towards achieving true uniformity in transnational reinsurance law. Language accessibility is not merely a matter of dissemination but a structural element of legal harmonisation, as demonstrated by the UNIDROIT Principles. Uniform interpretation presupposes that users, practitioners, and adjudicators can read and understand the text in their own language.

E. Recommendations for the future: Recommendations for new legislative action

1. Development of Model Clauses

112. The PRICL offer twice within its text models for applying the Principles: in the Introductory section, letter D (Models for Applying the Principles), which is a new section not included as such in the 2019 edition[57], and in Article 1.1.1, Comment, Section 6, Model Clauses for the choice of the PRICL[58].

113. Although the PRICL already provide model clauses and explain the principal modes and legal effects of their application, this guidance could be made more accessible through a consolidated, stand-alone document. Such a document could bring together the existing models, explanatory material and practical examples, while clarifying their interaction with the UNIDROIT Principles and applicable domestic law.

114. The 2025 edition introduces a new section entitled *Models for Applying the Principles,* but this addition does not entirely resolve the structural gap. The new section and the existing comment to Article 1.1.1 of the PRICL are not fully coordinated, nor do they form part of a unified explanatory framework. They appear as parallel initiatives rather than as components of a coherent and systematic instrument. In practice, users seeking guidance on the contractual implementation of the PRICL must navigate between different parts of the text without a consolidated explanation of their interaction or hierarchy.

115. The issue, therefore, is not simply a matter of replicating clauses from one section into another. Rather, the underlying concern is the absence of coordination and conceptual integration between the references to model clauses and the broader explanatory material. What is currently lacking is a single, authoritative document that clearly articulates the operational pathways for the use of the PRICL in contractual practice.

116. To strengthen the usability of the PRICL, it is therefore proposed to expand this element into a separate, self-standing document -a set of Model Clauses-, which would give greater visibility to the Principles and explain in a structured and detailed manner how parties may select or incorporate the PRICL into their contracts. Such a document should also clarify

[57] PRICL, Introduction, pp.15 et seq.
[58] PRICL, nº6, Model Clauses for a choice of the PRICL, p.46. See C18 and Illustrations I4-I5.

how the PRICL interact with the UNIDROIT Principles and with applicable domestic laws, addressing questions of hierarchy, complementarity, and residual application.

117. This instrument, which could be inspired by the UNIDROIT Model Clauses for the UNIDROIT Principles, would not merely reproduce standard formulations. Rather, it would provide contextual explanations, commentary, and practical examples of application. It should address, *inter alia*, different modes of incorporation (exclusive choice of PRICL, supplementary application alongside domestic law, incorporation of specific provisions), the legal effects of such incorporation, and the interpretative consequences in arbitral and judicial proceedings. It could also include guidance on the incorporation and effect of individual PRICL provisions where parties do not opt for application of the Principles as a whole.

2. A Legal Guide

118. The PRICL have a close relationship with the UNIDROIT Principles, as indicated in the Introduction to the PRICL: first as a source of reference and second by incorporating, albeit by reference, the general contract law principles of the UNIDROIT Principles. Therefore, the UNIDROIT Principles also constitute a suitable substantive general contract law for reinsurance contracts[59]; or if preferred the UNIDROIT Principles and PRICL must be viewed as a uniform package[60].

119. The PRICL propose the UNIDROIT Principles as the governing law of the contract for issues of general contract law not covered by the PRICL, and the UNIDROIT Principles have fulfilled an important function as "background" contract law in the development of the PRICL. The PRICL also follow the UNIDROIT Principles model in relation to its nature and structure, that is, a set of principles in the form of short black-letter rules and comments.

120. The relationship of the PRICL to the UNIDROIT Principles is expressly addressed and explained in the relevant parts of the Comments on the Articles (see, in particular, comment to Article. 1.1.1). The PRICL mainly contain reinsurance-specific rules that are not covered by the UNIDROIT Principles. For a limited number of general contract law issues, they provide reinsurance-specific rules that modify or include additions to the ones contained in the UNIDROIT Principles. Most of the other general contract law principles and rules of the UNIDROIT Principles are considered applicable to reinsurance contracts. The comments refer to those that are not replicated in the PRICL to clarify this point.

121. A legal guide or a guide for the users (like the Tripartite legal guide)[61] could provide clearance. This Guide would be useful either to explain the Principles in a more "digestive way" and to explain the interplay between the UNIDROIT Principles and the Reinsurance Principles which are meant to work hand in hand. In this way the legal operators could have a clearer idea on how to operate with "PRICL + UNIDROIT Principles" in international commercial and arbitral practice.

122. The overall objective is to assess the interaction between the PRICL and the UNIDROIT Principles within UNIDROIT's transnational contract law framework, and to formulate legal policy and drafting recommendations. The goal is not to provide an exhaustive commentary on the PRICL, but rather to illustrate: their level of integration with the UNIDROIT Principles, and their

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59 Comment 6 to the Introduction of the PRICL.

60 Comment 6 to the Introduction of the PRICL.

61 Inception Report, nº29 indicates that: "*The Legal Guide aims to clarify the relationship among these texts with a view to promoting their adoption, use and uniform interpretation and, ultimately, the establishment of a predictable and flexible legal environment for cross-border commercial transactions based on the principle of freedom of contract*".

practical usefulness in arbitration and insurance/reinsurance practice, and to offer a contractual roadmap for reinsurers and cedents that integrates the PRICL with the UNIDROIT Principles as supplementary law and remedial framework.

123. The feasibility of this proposal would depend on the outcome of the discussion concerning the effectiveness of the Tripartite Legal Guide.

3. Towards a Model Law on Reinsurance Contracts

124. Across jurisdictions, reinsurance is largely governed by general contract law and market usage, with little or no specific legislation addressing core contractual issues. For example, in Spain the Insurance Contract Act (Ley 50/1980) devotes only three provisions to reinsurance (Arts. 77–79), leaving most matters to agreement between parties. A similar pattern appears elsewhere, for example in Italy, where reinsurance is covered by only a few dedicated rules in the Civil Code (Articles 1928, 1929, and 2952 comma II).

125. Differences among national laws are also evident regarding statutory and case law on reinsurance contracts as is generally the case in common law systems.

126. In short, across legal systems reinsurance contracts are seldom subject to detailed mandatory rules; freedom of contract predominates, which explains both the value of sector-specific soft law (PRICL) and the need for a clearer default framework for formation, disclosure, claims cooperation, aggregation, and remedies. Prudential regimes (for example, the EU's Solvency II[62]) regulate supervision and capital, but not the content of reinsurance contracts; in the United States, NAIC models[63] focus on credit for reinsurance and collateral, not contractual terms. Taken together, these regulatory limitations and developments in reinsurance relationships [64] leave significant gaps and create legal uncertainty and fragmentation in relation to formation, disclosure, claims handling, loss allocation, and remedies. A model law would provide a uniform baseline to complement practice and soft law instruments.

127. The model law would not replace the PRICL or the UNIDROIT Principles. Rather, they would coexist, with the Model Law codifying a minimum set of default, widely acceptable rules for international and domestic reinsurance contracts, creating a common language for reinsurance contracts, expressly allowing parties to opt for the PRICL as sector-specific rules and the UNIDROIT Principles as general contract law where appropriate. This mirrors the PRICL's own "restatement" approach and acknowledges that reinsurance practice has long relied on custom and usage. This approach is reinforced by the fact that unlike the UNIDROIT Principles, the PRICL are not limited to international contracts, and that *while* reinsurance *business is carried out internationally, reinsurance law is essentially nationally anchored*[65]. This is because most reinsurance contracts are already international in nature[66]. Even when they are not,

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62 Solvency II (Directive 2009/138/EC of 25 November 2009, as amended by Directive 2014/51/EU and Commission Delegated Regulations (EU) 2015/35 and 2023/2408).

63 In the United States, the NAIC Model Laws and Regulations provide a clear example of functional harmonisation through soft law. The National Association of Insurance Commissioners develops model texts that each state may adopt voluntarily, often with modifications, leading over time to a high degree of regulatory convergence in key areas such as solvency, group supervision, and credit for reinsurance. This technique does not impose formal unification but instead creates shared, reviewable standards that reduce asymmetries and transaction costs while preserving state regulatory autonomy. Transposed to the international level, this logic aligns with the future methodology proposed here: rather than pursuing a binding convention, the objective would be to develop Global Reinsurance Model Law and model contractual clauses, with market and arbitral input.

64 PRICL, Introduction, From Gentlement´s Agreements to Legal Contracts, pp-2-4.

65 PRICL, Introduction, nº2, p.5.

66 PRICL, Comment 5 to Article 1.1.1, p.42.

parties usually have broad freedom to choose the rules governing their agreement and can therefore adopt the PRICL instead of domestic law to the extent permitted by applicable law. In addition, some national reinsurance contracts are part of wider international arrangements, where applying the PRICL ensures consistency within the overall scheme.

128. Moreover, the experience of the UNIDROIT Principles shows that soft law can effectively evolve into hard law. The UNIDROIT Principles have served as a direct or indirect model for numerous national civil and commercial codes, such as the reform of contract law in France (2016), the Civil Codes of Estonia and Lithuania, and the Chinese Civil Code (2020), among others. This demonstrates that a model law built upon the PRICL–UNIDROIT Principles architecture could eventually provide both legislators and practitioners with a credible, ready-made framework for codification or legislative alignment in the field of reinsurance.

129. In the field of reinsurance, the need for a renewed international methodology becomes evident. While prudential aspects have been progressively harmonised, the contractual and private law dimension of reinsurance remains largely uncoordinated. This fragmentation generates uncertainty regarding interpretation, applicable law, and the allocation of rights and duties among parties—uncertainty that ultimately translates into legal and systemic risk. The objective is to articulate a common language of principles that captures the essence of reinsurance practice—autonomy, good faith, proportionality, transparency, and cooperation—while remaining sufficiently flexible to accommodate evolving market practices and regulatory diversity.

130. Ultimately, the elaboration of a Global Model Law could serve as a bridge between prudential regulation and contract law, aligning financial stability objectives with the private law foundations of the reinsurance market. This approach recognises that global trade in risk cannot be effectively governed through fragmented domestic systems. It calls instead for an integrated architecture—adaptive, inclusive, and guided by shared principles—capable of ensuring predictability, fairness, and resilience in the governance of international reinsurance relations.

III. UNIDROIT'S WORK ON FRANCHISING CONTRACTS (GUIDE TO INTERNATIONAL MASTER FRANCHISE ARRANGEMENTS & MODEL FRANCHISE DISCLOSURE LAW)

A. Development and Adoption

131. UNIDROIT has developed two instruments on franchising: a Guide to International Master Franchise Arrangements ("Franchising Guide", first edition published in 1998, second edition in 2007) and a Model Franchise Disclosure Law ("Franchising Model Law", 2002).

132. Work within UNIDROIT on franchising goes back to a proposal made by the Canadian member of the Governing Council of UNIDROIT in 1985. At the time UNIDROIT was engaged in the preparation of what were to become the UNIDROIT Conventions on International Financial Leasing and International Factoring, and the Council members considered the preparation of uniform rules on franchising to be a natural development in the process of the preparation of uniform rules for the new types of agreements that were emerging at the time. Furthermore, there had been a few instances of practices in some countries that it was feared might spread to other countries as franchising expanded internationally and gathered momentum during those years.

133. In 1993, the Governing Council authorised the establishment of a Study Group on Franchising. The Study Group was tasked with examining the necessity and feasibility of

adopting an international instrument. To this end, it examined both international and domestic franchising. The Study Group concluded that a binding instrument such as an international convention would be inappropriate. However, a general consensus emerged on the opportunity, and indeed on the desirability, of preparing a Legal Guide to international franchising, and in particular to master franchise arrangements. This recommendation was endorsed by the UNIDROIT Governing Council in 1995.

134. Work on the Guide began immediately and was completed in 1998. A second edition of the Franchising Guide was published in 2007. That edition contained updates to the chapters that covered information on international conventions, other international instruments and national legislation.

135. Work on the preparation of a Model Franchise Disclosure Law began in January 1999 with the preparation by a Drafting Committee of a first draft. That draft was shared with the Study Group on Franchising, which further developed it. A Committee of Governmental Experts was established in 2001 to examine and further refine the draft prepared by the Study Group. The Committee of Governmental Experts met twice and finalised its work in April 2002.

136. The text of the draft Model Law and draft Explanatory Report thereto were transmitted to the Governing Council for approval in September 2002. On that occasion, the Franchising Model Law was adopted and approved for publication.

B. Purpose and Key Content

137. The purpose of the Franchising Guide is to disseminate knowledge and to provide all those who deal with franchising, whether they be franchise operators, lawyers, judges, arbitrators or scholars, with a tool for better understanding of the possibilities of franchising, particularly master franchising.

138. The main purpose of the Guide is to assist parties in negotiating and drawing up international master franchise agreements by identifying the legal issues involved in those agreements, discussing possible approaches to the issues and, where appropriate, suggesting solutions which the parties may wish to consider. The Guide seeks to achieve uniformity in practice: by providing information, the Guide aims to assist in placing the parties on the same level where no previous knowledge or experience would otherwise have placed one of them at a disadvantage. It should therefore contribute to enabling the parties to deal with the issues that arise with greater confidence.[67]

139. The Franchising Model Law aims to assist legislators in introducing rules on disclosure requirements for franchisors. It is intended to apply to both domestic and international franchising, and to different types of franchise agreement, such as traditional unit agreements, master franchise agreements and development agreements.

140. The Franchising Guide (second edition) is a 300-page volume, the main focus of which is master franchising. It does however also consider simple unit franchising, which it describes in Annex 1. It comprises twenty chapters and three annexes, covering all the essential elements of a franchise, beginning with a description of fundamental concepts and elements, such as the difference between master franchise agreements and other commercial vehicles and the selection of the appropriate vehicle for expansion abroad. The volume then examines the nature and extent of the rights granted and the relationship between the parties; the term of the agreement and the conditions of renewal; financial matters; the role of the franchisor

[67] See https:/www.unidroit.org/instruments/franchising/guide-first-edition-1998/overview/.

and the sub-franchisor; the sub-franchise agreement; advertising and the control of advertising; the supply of equipment, products and services; intellectual property; know-how and trade secrets; system changes; the sale, assignment or transfer of the franchise; vicarious liability, indemnification and insurance; remedies for non-performance; the end of the relationship and its consequences; applicable law and dispute resolution; other generally used clauses; ancillary documents; and regulatory requirements. The annexes cover general notions of franchising (the simple unit franchise), economic data on the development of franchising, and legislation and regulations relevant to franchising (including an overview of domestic frameworks in various jurisdictions).[68]

141. The Franchising Model Law comprises ten articles. As it is a disclosure law, all the provisions are linked to disclosure, even if they go beyond the mere listing of the items to be disclosed. Article 1 specifies the territorial scope of application of the Model Law, and Article 9 specifies the temporal scope of application. Article 2 provides definitions of terms used in the Model Law. Article 3 addresses the delivery of the disclosure document, and Article 4 its format, Article 5 lists several cases in which the franchisor is exempt from the obligation to disclose, and Article 7 addresses the acknowledgement on the part of the franchisee that he/she has received the document. Article 6 is the core provision of the Model Law and lists the items of information that a franchisor must disclose to a prospective franchisee. Article 8 addresses the remedies available to the franchisee in case of breach on the part of the franchisor of his/her duty to disclose, and Article 10 addresses waivers.[69]

C. Implementation and Recent Developments

142. Franchise regulations enacted worldwide typically pursue two regulatory objectives: ensuring informed consent through pre-contractual disclosure and rebalancing the franchise relationship through mandatory or semi-mandatory contractual rules. One aspect that falls somewhere in between these two objectives is the requirement of registration. Some states that have adopted franchise regulations have also introduced such a duty (mainly in Asian countries like China, South Korea, Malaysia, Indonesia). Some countries however have abolished it – for example, the province of Alberta, Canada, Austria, and Spain – apparently because it generated excessively high transaction costs.

143. Pre-contractual disclosure duties imposed on franchisors can now be found in many jurisdictions, either in statutory law or in case law. Although direct legislative borrowing from the UNIDROIT Model Franchise Disclosure Law can be demonstrated only in a few jurisdictions – such as Sweden and the Netherlands, the widespread adoption of pre-contractual disclosure duties nonetheless suggests that the Model Law, adopted in the early 2000s, struck a chord with the prevailing legal and commercial climate of its time. The Model Law also found resonance in academic writing, where it has frequently served as a point of reference in assessing the need for regulation.

144. Some of the jurisdictions examined provide rules extending beyond pre-contractual disclosure duties to the regulation of the ongoing franchise relationship, notably Australia, Belgium, Canada, China, France, Indonesia, Malaysia, the Netherlands, South Korea, and several U.S. states. The regulatory approaches adopted, however, differ considerably, making it difficult to identify any uniform trend. Australia and Malaysia, for example, provide for statutory cooling-off mechanisms allowing the franchisee to withdraw from the franchise agreement within a limited period after its conclusion. In Canada, several provincial franchise

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[68] See https://amedip.org/franchising-the-UNIDROIT-guide-to-international-master-franchise-arrangements-the-draft-model-franchise-disclosure-law-and-mexico/.

[69] See Explanatory Report to the Franchising Model Law, para. 35, available at https://www.UNIDROIT.org/instruments/franchising/model-law/.

statutes supplement disclosure duties with an overarching obligation of good faith that may affect termination, renewal, and the exercise of contractual discretion. In the Netherlands, Australia, and certain U.S. states, post-termination non-compete obligations are subject to statutory or judicial limitations, and in some cases prohibited. Moreover, Australian law, Californian law, and the laws of other U.S. states contain specific provisions governing termination and renewal of the franchise relationship. The same is true for jurisdictions such as France and Belgium – through doctrines addressing abrupt termination and economic dependence – as well as South Korea and China, where administrative franchise regimes impose mandatory constraints on the conduct and termination of franchise relationships. In Australia and California, the franchisee's ability to transfer the franchise agreement to a third party is further regulated and, in certain respects, strengthened, while Malaysian law requires the franchise agreement to address transfer conditions explicitly.

145. The Study Group tasked in the 1990s with assessing the need for a Model Law deliberately chose to confine the Model Law to pre-contractual disclosure duties, while addressing broader issues in a Guide to International Master Franchise Arrangements issued in 1998 and revised in 2007. This self-constraint was due to the considerable divergence both across sectors in which franchise relationships arise and among individual franchise systems. This circumstance continues to raise concerns about the suitability of more extensive franchise regulation today and can likely also be seen in the examined regulations, which differ significantly from one another. The different regulatory approaches likewise reflect the absence of an international consensus on what fair regulation of franchise agreements should look like. This lack of agreement certainly presents a challenge for the further development of the existing Model Law.

D. Recommendations for the future: future legislative activity

1. The Case for Revisiting Franchising Contracts

(a) The Need to Counter Structural Imbalances

146. Arguments in favour of a more extensive regulation include the fact that franchise relationships often involve a structural imbalance between franchisors and franchisees. The franchisor's superior position stems, among other things, from greater commercial experience and extensive knowledge of the franchise system, acquired through its development, operation, and often long-standing involvement. Potential franchisees, by contrast, are typically SMEs and usually lack extensive experience in running a business, as franchising often attracts newcomers (information asymmetry); moreover, franchisors may have an interest in working with less experienced franchisees. There is also often an economic imbalance. This imbalance is reinforced by the franchisee's ongoing dependence on the franchisor for operational know-how, technical support, and system updates. These and other circumstances create an uneven bargaining position which often leads to one-sided contracts defined by the franchisor's standard terms. Clauses regarding transferability of the contract, support and training, termination and renewal, early termination and compensation for investments, and post-term non-competes are particularly prone to unfairly prejudicing the franchisee.

147. This imbalance has served as a justification for introducing national franchise regulation in some countries. In both civil-law and common-law jurisdictions, courts have also attempted to counteract this imbalance by invoking the principles of good faith and fair dealing. However, given that the principle of good faith – at least until a settled body of case law emerges – is a very vague standard,[70] it may be difficult for the parties to a franchise

[70] See also section on good faith.

agreement to foresee their precise rights and obligations. Relying solely on judicial doctrines therefore offers only limited predictability, and the absence of clear statutory guidance may increase legal uncertainty, compliance costs, and litigation risks for both franchisors and franchisees.

(b) The Need for Harmonisation

148. At the same time, purely national regulatory approaches create a fragmented legal landscape, which can distort competition and place franchisors and franchisees in some jurisdictions at a relative disadvantage. Divergent national rules may incentivise regulatory arbitrage and complicate the cross-border expansion of franchise systems, thereby undermining the level playing field required for international commercial activity. A harmonised international framework would not only reduce these frictions but also help ensure that minimum standards of fairness and transparency apply consistently across jurisdictions. To fully exploit the potential of franchising, which is strongly transnational in nature, it is therefore advisable to reduce administrative and technical barriers as well as related compliance costs in the form of divergent regulatory requirements, so that successful franchise systems can expand across borders as effectively as possible.

(c) The Need to Incorporate Sustainability-related Obligations

149. A further issue requiring closer scrutiny in the context of franchise agreements is the emerging need to incorporate corporate sustainability due diligence obligations. The EU Corporate Sustainability Due Diligence Directive, for example, brings franchise arrangements within its scope where EU companies enter into franchising agreements that ensure a common identity, a common business concept, and the application of uniform business methods, provided that the royalties generated exceed EUR 75 million and the company's worldwide net turnover exceeds EUR 275 million. Likewise, non-EU companies fall within the scope of the Directive where they generate comparable levels of royalties and turnover within the EU. It therefore appears advisable for any franchise regulation – taking into account the "Sustainability and Green Issues" White Paper – to include rules clarifying how due diligence obligations should be allocated between the parties to a franchising agreement.

(d) Recommendations

150. Overall, recent developments suggest that regulations concerning the contractual relationship between franchisor and franchisee are likely to increase in the future. In recent years, for example, Argentina (2015), Australia (2025), Brazil (2019), the U.S. state of California (2015/2022), Indonesia (2024), the Netherlands (2021), Romania (2019), Saudi Arabia (2019) and South Korea (2024) have enacted such regulations or expanded their existing ones. It is therefore likely that UNIDROIT would once again be addressing a timely issue by developing a legal instrument on Franchising.

151. As regards the legal instrument, two options appear viable: a Model Law and/or a set of Principles. The purpose of a Model Law would be to extend the existing framework beyond pre-contractual disclosure obligations so as to include, for example, rules on information duties during the performance of the contract, obligations of cooperation and confidentiality, termination of the contract (particularly notice periods, the consequences of failure to observe such periods, and termination for non-performance) as well as issues relating to intellectual property rights and royalty payments.

152. In addition to, or alternatively to, a Model Law, consideration should also be given to drafting Principles on Franchising Contracts accompanied by explanatory comments. Given that the PRICL were the first to apply the UNIDROIT Principles methodology to a specific sectoral contract type, thereby paving the way for similar instruments in other fields, franchising would

be a strong candidate for such a soft-law approach. The objective would be to enhance contractual certainty and predictability by offering a set of optional rules which parties would be free to opt for. Moreover, as noted in the Preamble to the UNIDROIT Principles, such Principles could be applied where the parties have not chosen the law governing their contract. They could also serve to interpret or supplement domestic law in individual cases, or even provide a model for national and international legislators.

153. In preparing such Model Law and/or Principles on Franchising Contracts especially the output of the Study Group on a European Civil Code published in 2006 on Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC), the 2009 Draft Common Frame of Reference (DCFR) Book IV Part E, as well as the ICC Model International Franchising Contract (2011) can be of guidance.

2. Relation to Other UNIDROIT Instruments

154. The 2016 edition of the UNIDROIT Principles revised some black-letter rules and comments "to take better into account the special needs of long-term contracts". [71] Franchising, distribution and commercial agency agreements clearly fall within the notion of 'long-term contract', defined as "a contract which is to be performed over a period of time, and which normally involves, to a varying degree, complexity of the transaction and an ongoing relationship between the parties." (Article 1.11 UNIDROIT Principles). The UNIDROIT Principles also occasionally refer to these three contract types in its comments and illustrations.[72] In particular, the provisions on cooperation (Article 5.1.3), hardship (Article 6.2.2.) and force majeure (Article 7.1.7), post-termination obligations (Article 7.3.5), and the specific rule on restitution in long-term contracts (Article 7.3.7) are all directly relevant to vertical marketing arrangements.

155. However, the 2016 amendments to the UNIDROIT Principles do not fully resolve the legal complexities associated with these sophisticated contract types. Nor is it explicitly demonstrated that the general principles on long-term contracts are sufficiently tailored to address the structural features of vertical marketing relationships, such as asymmetries in bargaining power, network integration, brand control, or ongoing investment dependence. Moreover, the relevant guidance remains scattered across different provisions and explanatory comments. For commercial users, this dispersion reduces accessibility and practical usability, as the applicable rules must be pieced together from various parts of the instrument.

156. For these reasons, there is a case for consolidating the relevant provisions within a self-contained set of rules. As in national legal systems, where, notwithstanding the existence of a general law of obligations, specific contract types are regulated in dedicated sections that refer to the general part where appropriate, franchise contracts would benefit from a structured framework that refers to the general principles while addressing their particular characteristics in a systematic manner. However, any such initiative should be coordinated with possible future projects concerning network contracts[73], so as to ensure doctrinal consistency and systemic coherence across related instruments.

157. Moreover, prior to the publication of the 2016 edition of the UNIDROIT Principles, UNIDROIT had adopted the Guide to International Master Franchise Arrangements. Although the Guide is conceived as a practical reference tool for contracting parties rather than as a binding

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[71] UNIDROIT Principles of International Commercial Contracts 2016, p. vii (Introduction to the 2016 Edition).

[72] Article 2.1.15, Comment 4, Illustration 5; Article 4.8, Comment 3, Illustration 2; Article 5.1.3, Comment 2; Article 7.4.7, Comment 2, Illustration 1.

[73] See above section on network contracts.

instrument or set of legal principles, it would nonetheless be advisable to ensure coherence with the UNIDROIT Principles and with any future UNIDROIT instrument on franchising.

158. It is further suggested that any future revisions of, or supplementary work to, the UNCITRAL–HCCH–UNIDROIT Tripartite Legal Guide consider aligning its analysis to future instruments on franchising contracts (Part V of the Tripartite Guide).

PART TWO — ONGOING AND ADOPTED PROJECTS

I. PRINCIPLES AND MODEL CLAUSES ON INTERNATIONAL INVESTMENT CONTRACTS AND THE UNIDROIT PRINCIPLES (ONGOING PROJECT)

A. Background and Development

159. The protection of foreign investment is one of the most important achievements of contemporary international law. The treaty-based system developed over the last six decades has provided foreign investors with an impartial and effective mechanism – namely, investment arbitration – for the resolution of disputes with host States, while profoundly shaping the international legal architecture.

160. Most importantly, it has strengthened the rule of law at the international level by reducing the politicisation of investment disputes and replacing traditional mechanisms such as diplomatic protection and direct State intervention with legal procedures based on clear rules and objective principles. In this way, it has contributed to a more transparent, predictable, and fair environment for international economic relations.

161. In recent years, however, investment arbitration has been subject to criticism. Concerns have been raised regarding its democratic legitimacy, the high costs and duration of proceedings, and its potential impact on the regulatory autonomy of States.

162. In response, investment treaties have undergone a gradual reform process. Early reforms focused on recalibrating traditional protection standards and dispute-settlement mechanisms, while more recent agreements emphasise cooperation and facilitation, refine substantive investment protections, and reduce reliance on investor–State arbitration, often incorporating provisions on sustainable development.

163. The evolution of international investment law has increasingly been influenced by sustainable development considerations. Growing concerns over climate change, environmental degradation, and social inequality have highlighted the need for investment frameworks capable of reconciling investor protection with broader public interests. As a result, modern approaches to investment governance seek to align investment relations with environmental and social objectives, encouraging legal structures that balance economic development with regulatory responsibility and long-term societal welfare.

164. Nevertheless, a large stock of older, unreformed treaties continues to dominate the regime and to constrain regulatory flexibility in key policy areas.

165. These criticisms have prompted significant reform initiatives aimed at offering investors and States more balanced, transparent, and broadly acceptable alternatives to the treaty-based system of foreign investment protection.

<u>The UNIDROIT/ICC World Business Law Institute Project on International Investment Contracts</u>

166. In this context, the idea of the "contractualisation" of investment protection has emerged to describe the structuring of investor-State relations through sophisticated contracts that incorporate arbitration clauses and other forms of alternative dispute resolution.

167. This development is not entirely new. Contracts have historically been a primary instrument through which foreign investors agree with host States on the terms of their investments. Approximately 17% of all ICSID cases are contract-based, and the proportion is

likely to be higher when non-ICSID proceedings are considered. Contract law therefore played a central role in investor-State relations long before the rise of treaty-based dispute settlement.

168. Given the legitimacy concerns surrounding treaty-based investor-State dispute settlement, international investment contracts are increasingly expected to assume a more prominent role in structuring investment relations.

169. Against this background, the UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles) are particularly suited to provide a transnational framework for international investment contracts. UNIDROIT is therefore well placed to promote the development of investment contracts grounded in generally accepted contract law principles.

170. In 2023, UNIDROIT and the International Chamber of Commerce's Institute of World Business Law established a joint project to develop a contractual framework for international investments. The future instrument will consist of:

- principles with commentary;
- guidance on the application of existing UNIDROIT Principles provisions in the investment context; and
- model clauses, building on the ICC's expertise.

171. The future Principles and Model Clauses on International Investment Contracts do not seek to replace treaty arbitration. Rather, they offer an alternative legal architecture—one that addresses many of the structural criticisms of treaty-based investment protection through the most flexible instrument available in international practice: the contract.

172. In January 2026, the Working Group held its eighth session, followed by an online session in April. After a public consultation in June to September, the Working Group met again in October to finalise the instrument. Its adoption, subject to approval by the governing bodies of UNIDROIT and the ICC, is expected by the end of 2026.

173. The instrument will contain non-binding principles and rules that parties may choose as the governing law or incorporate into their contracts. It may also be used to supplement and interpret investment treaties and domestic laws, serve as a legislative model and function as a checklist for counsel negotiating investment contracts. As a soft-law instrument, its effectiveness will depend on its practical use by contracting parties and adjudicators.

174. The joint UNIDROIT–ICC project is best understood as an attempt to explore a different path for investment protection. It is not meant to displace treaty-based regimes. Rather, it offers a complementary instrument operating at a different legal level: the contract.

B. Purpose and Key Content

175. According to the instrument, both the State and the investor bear enforceable bilateral commitments, thus replacing the asymmetric protection model, typical of BITs, with a contractual logic of mutual accountability. The contractualisation of investment protection addresses, *inter alia*:

- the incorporation into international investment contracts (IIC) of protection standards developed in bilateral and multilateral investment treaties and case law;
- the State's right and power to regulate;

- the preservation of the economic equilibrium of the contract in the event of changed circumstances;
- the expropriation of investment;
- the use of IICs as instruments for public policy objectives, including environmental, social, and governance (ESG) goals;
- contractual and non-contractual liability, including exemption and limitation clauses;
- remedies for breach;
- damages assessment and liquidated damages clauses; and
- assignment of rights and obligations.

176. Importantly, the future Principles on IICs reflect a broader evolution in international investment law. Contemporary treaties – such as the CETA, recent EU FTAs and the USMCA – increasingly recognise the State's right to regulate, limitations on the scope of FET, and incorporate express references to sustainability objectives. They mirror that evolution at the contractual level, helping to align treaty practice and contractual practice within a coherent legal framework.

177. The result is not a rejection of investor protection, but an attempt to reconcile investment stability with legitimate regulatory action.

178. The current draft of the instrument contains an introduction and eight chapters, namely:

- General provisions;
- General Principles applicable to IICs;
- Formation of the IICs;
- Validity;
- Rights and obligations;
- Change of circumstances;
- Remedies, including compensation and damages; and
- Choice of law and dispute settlement.

179. Where the provisions of the UNIDROIT Principles cannot be applied *telles quelles*, specific principles have been developed. The instrument also includes commentary explaining the application of the UNIDROIT Principles in investment context.

180. The Working Group has formulated IIC-specific principles addressing:

- pre-contractual due diligence;
- sustainability obligations;
- change of circumstances;
- stabilisation clauses;
- remedies for breach of sustainability obligations; and
- transparency and conflict of interests in dispute settlement.

181. In addition, the instrument contains model clauses enabling parties to specify how the UNIDROIT Principles provisions and IIC-specific principles operate within their contract, as well as illustrations demonstrating their practical application.

182. Contractualisation does not replace treaty-based investment protection or investment arbitration. Rather, it complements and refines the investment protection regime, strengthening legal certainty while promoting balanced and sustainable investment relationships.

C. Implementation and Engagement

1. Implementation

183. As a soft-law instrument, the Principles for International Investment Contracts will not require formal ratification. Implementation will therefore occur primarily through voluntary uptake by contracting parties, arbitral tribunals, and domestic courts.

184. The most immediate form of implementation will likely be contractual incorporation. The instrument is designed to function as:

- the governing law of an international investment contract;
- a supplement to domestic law;
- an interpretative tool for investment treaties; or
- guidance for adjudicators and negotiators.

185. Drawing on the experience of the UNIDROIT Principles, gradual implementation can be expected through arbitral practice rather than legislative action. Early adoption will likely occur in large infrastructure and natural resource projects, public-private partnerships, and concession agreements.

2. Consistency with domestic laws

186. The instrument is compatible with most domestic legal systems because it does not displace mandatory rules. Instead, it operates within the space traditionally governed by party autonomy.

187. Its principles largely reflect widely recognised contract doctrines, including good faith, hardship, and proportional remedies.

188. Divergences may nevertheless arise in jurisdictions where administrative law places limits on contractual freedom in public contracts. In such cases, the instrument may still operate as an interpretative guide or drafting benchmark rather than directly applicable law.

3. Engagement in arbitral practice

189. The primary engagement mechanism will be arbitral decision-making. Following the pattern established by the UNIDROIT Principles, arbitral tribunals may:

- apply the instrument as chosen governing rules;
- use it as an expression of transnational contract law:

- employ it to interpret treaty standards such as fair and equitable treatment; or
- rely on it when determining damages or contract adaptation.

190. References to UNIDROIT instruments in arbitral awards already demonstrate a strong willingness of tribunals to use non-state rules in investment disputes, particularly in mixed contract-treaty disputes.

4. Relationship with other international instruments

191. The instrument will operate alongside:

- UNCITRAL dispute-settlement reform initiatives and the PPP Legislative Guide;
- the Hague Principles on Choice of Law in International Commercial Contracts; and
- Other UNIDROIT instruments (notably the UNIDROIT Principles).

192. It may function as a bridge between public international investment law and private commercial contract law, facilitating coherence between treaty obligations and contractual arrangements.

5. Geographical distribution and promotion

193. Initial uptake is likely to occur in jurisdictions with strong arbitration cultures and significant participation in infrastructure investment projects. Key jurisdictions include:

- States implementing public-private partnership frameworks;
- jurisdictions modernising investment laws; and
- countries actively engaged in treaty reform debates.

194. Promotion by UNIDROIT and the ICC, along with partner institutions through judicial training, arbitration conferences, and the dissemination of model contracts will play a decisive role in geographical reach of the instrument.

D. Recommendations for implementation, dissemination and capacity-building

195. In line with the goal of harmonising investment contract law, the following measures would promote adoption of the instrument. They may influence interpretation, drafting behaviour, adjudication patterns, and ultimately promote convergence of legal expectations across jurisdictions.

1. Translation and linguistic accessibility

196. Investment law fragmentation is partly linguistic. The treaty regime is *de facto* dominated by English-language drafting and arbitral practice, while domestic administrative and contract law operates in national legal languages. This produces semantic divergence: identical clauses are understood differently because legal concepts do not always translate

easily across legal cultures. Authoritative multilingual versions of the instrument not only promote adequate dissemination of its contents but also stabilise their interpretation.

2. Establish a monitoring and advisory group

197. Soft law promotes harmonisation only if its interpretation converges. Investment arbitration currently lacks a central interpretative authority. Tribunals cite each other selectively, and domestic courts rarely engage with arbitral jurisprudence. A permanent expert committee could collect case law, identify best practices and emerging consensus, and provide interpretative guidance. A monitoring body would function as a coordination mechanism, not an appellate body.

3. Develop official commentary updates and case digests

198. Investment law evolves through patterns of reasoning rather than formal precedent. Harmonisation therefore depends on argument structure convergence, not rule adoption alone. Regular publication of arbitral references and practical applications would enhance the legitimacy and usability of the instrument.

4. Integrate the instrument into model contracts and PPP toolkits

199. Investment law is largely contract-driven in practice. Harmonisation occurs at the drafting stage before disputes arise. If States and investors adopt similar clauses, adjudication converges naturally. Embedding clauses into development bank templates and procurement frameworks creates structural harmonisation. Cooperation with development banks and procurement agencies would also encourage practical use of the instrument.

5. Judicial and arbitral training programmes

200. Harmonisation fails when different adjudicators classify the instrument differently. Training promotes a shared understanding of the instrument's legal nature. Workshops for judges, State attorneys, and arbitrators would facilitate recognition and consistent interpretation.

6. Enhanced digital dissemination

201. In modern contract and arbitration practice, accessibility determines authority. Frequently cited sources become normative sources. A dedicated UNIDROIT platform containing case law, clauses, annotations, bibliographies, and teaching materials would significantly improve access to the instrument and related sources.

E. Recommendation for further normative development

202. Future normative work could include:

- sector-specific guidance (energy transition projects, digital infrastructure, and climate-related investments), which can produce controlled differentiation in the application of harmonised investment law;
- interaction between investment contracts and human-rights obligations, with the purpose of balancing investors' expectations and regulatory obligations;

- standardisation of contract adaptation mechanisms for economic crises and sanctions regimes, to reduce recourse to public international law necessity doctrines and anchor decisions in contract law methodology;

- a possible model law on international investment contracts for domestic legislatures, which could serve the purposes of (i) aligning domestic judicial control and (ii) bridging domestic and transnational legal orders; and

- harmonised drafting guidance for stabilisation and sustainability clauses, as these clauses vary dramatically and are the primary source of regulatory conflict litigation.

203. Periodic revision cycles (e.g., every 8–10 years) would ensure that the instrument remains responsive to evolving investment practices and dispute-resolution reforms.

204. The proposals aforementioned could contribute to harmonisation of investment law at different levels: (a) semantic harmonisation – shared interpretation (translations, commentary, training); (b) structural harmonisation – shared contractual practice (model clauses); and (c) systemic harmonisation – alignment with broader legal orders (environmental, sustainability and human rights framework).

II. CORPORATE SUSTAINABILITY DUE DILIGENCE IN GLOBAL VALUE CHAINS (ADOPTED PROJECT)

A. Background and Development

205. 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 work on Corporate Sustainability Due Diligence (CSDD) in global value chains, drawing on its expertise in contract law as a key potential catalyst for implementing sustainability measures through private law. The project was deemed of particular importance in light of the growing concern for sustainability along Global Value Chains (GVCs). Commercial contracts have become a central instrument for CSDD compliance, and the legal implications of this development raise a range of issues well suited to UNIDROIT's expertise in contract and commercial law.

206. Following the recommendation of the Governing Council, the General Assembly, at its 81st session in December 2022, included the "Development of a Guidance Document on Corporate Sustainability Due Diligence in Global Value Chains" as a medium-priority project in the Institute's Work Programme 2023-2025.[74] Subsequently, the European Law Institute (ELI) submitted a proposal to UNIDROIT to consider incorporating an assessment of the impact of technology and digital platforms in the context of GVCs, given the significant influence of technological developments on CSDD, both on the structure and functioning of GVCs, and its role in monitoring sustainability performance.

207. Consistent with its medium priority level, the Secretariat undertook extensive preparatory research, culminating in an Exploratory Workshop held at the Institute on 27 and 28 May 2024. The Workshop brought together leading international experts on corporate sustainability due diligence, covering legal systems including China, Italy, the Netherlands, Portugal, the United Kingdom, and the United States of America, as well as Governing Council Members from Belgium, Japan, and Latvia. Participants included legal and economic experts

[74] UNIDROIT 2022 – A.G. (81) 9.

from academia, the private sector, and intergovernmental organisations, notably the Organisation for Economic Cooperation and Development (OECD), the EBRD, the IDLO, and the ELI. Members of both the Working Group on the American Bar Association's Model Contract Clauses (ABA MCCs 2.0) and the Working Group on the European Model Clauses (EMCs) also took part.

208. The Workshop addressed core concepts of global value chains and corporate sustainability due diligence, and reviewed existing legal instruments and initiatives at international, regional, and domestic levels. It identified key gaps that a future UNIDROIT instrument could address and discussed in detail both substantive content and possible legal form.

209. Participants concluded that significant gaps remain in the international framework for addressing practical challenges in this field, and that a UNIDROIT instrument could provide meaningful added value as a complementary normative framework. They unanimously recommended that UNIDROIT proceed with its development, including guidance on due diligence-aligned contracting and model contract clauses with commentary. Such an instrument should: (i) offer an alternative to traditional contracting practices that often fail to promote sustainability objectives, (ii) lay out how to operationalise the requirements set out in relevant existing international instruments through contracts, (iii) fully implement the United Nations Guiding Principles on Business and Human Rights (the UNGPs), (iv) have global application and legitimacy, (v) be developed with the inclusion of the Global South, (vi) acknowledge sector-specific issues, and (vii) not be limited to specific contract types.

210. On the basis of these conclusions, the project's priority level was raised to high, with work scheduled to commence in the first semester of 2027, in line with the timetable adopted for new projects at the 105th session (see UNIDROIT 2025 – C.D. (105) 32, para. 198, in conjunction with Annexe II). At its 85th session in December 2025, the General Assembly approved the Organisation's Work Programme for the 2026–2028 triennium as proposed by the Governing Council, endorsing both the priority upgrade and the project timeline (UNIDROIT 2025 – A.G. (85) 14, para. 81).

211. Building on these preparatory steps, the Secretariat has compiled a draft list of experts and institutions to be invited to the Working Group. In line with UNIDROIT's established methodology, the process will remain inclusive and globally representative, ensuring meaningful participation from diverse legal systems and geographical regions, including strong representation from the Global South.

B. Purpose and Key Content

212. The purpose of the future instrument is to provide contractual guidance by translating existing international frameworks—such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines—into contractual mechanisms for implementation in global value chains. It should provide guidance on due diligence-aligned contracting, demonstrating how each stage of due diligence can be reflected in contractual arrangements.

213. It is envisaged that the future instrument will take the form of a legal guide primarily aimed at contracting parties – rather than legislative guidance addressed to legislators. The provision of contractual guidance falls squarely within UNIDROIT's core expertise. The legal guide should include guidance for contracting, illustrations and examples of good practices, plus model clauses, and should be designed in a way that allows parties to refer to the future UNIDROIT instrument in their contracts. Moreover, it was noted that the future instrument, while aimed at private parties, could also be useful for legislators and policymakers –as is the case with the

UNIDROIT PRINCIPLES and the LGCF, which are directly used by parties in contract drafting but have also been used as models for legal reform in many jurisdictions.

214. With regard to its content, the future instrument should build on the UNIDROIT Principles while adapting them to the specificities of global value chain contracting. While the UNIDROIT Principles provide a robust general framework for international commercial contracts, they were primarily designed for traditional bilateral transactions. Global value chain contracts, by contrast, function as governance structures extending beyond bilateral exchange. The instrument should therefore both interpret relevant UNIDROIT Principles provisions in this broader context and develop additional clauses where necessary.

215. Relevant UNIDROIT Principles provisions include Articles 1.8, 1.9, 2.2.1, 4.3, 5.1.4–5.1.6, 7.1.2, and 7.3.1. These may support, inter alia, the recognition of expectations arising from codes of conduct, the incorporation of sustainability standards through usage, and the assessment of buyer interference where purchasing practices contribute to supplier non-performance. Building on this framework, the instrument should introduce contractual mechanisms not covered by the UNIDROIT Principles, including general due diligence obligations, references to codes of conduct, remediation frameworks, grievance mechanisms, third-party rights, and dispute resolution clauses. It should also promote responsible purchasing practices, limit excessive reporting burdens on suppliers, and include "responsible exit" provisions requiring notice, impact assessment, and mitigation measures, reflecting a principle of shared responsibility in termination scenarios.

216. Digital technologies are integral to the functioning of due diligence in global value chains and should be addressed within the instrument as part of its core content rather than as a separate topic. Technology increasingly shapes contracting, monitoring, and enforcement of due diligence obligations, including through blockchain applications, automated decision-making systems, and data-driven compliance tools. Legal and contractual frameworks must therefore accommodate data-intensive and technology-enabled value chains. This is particularly relevant as businesses, including SMEs, increasingly rely on artificial intelligence and digital tools to implement due diligence obligations, raising important contractual implications for allocation of responsibility, compliance, and enforcement.

217. More broadly, digitalisation is transforming governance structures in global value chains, including through platform-based and networked models. This evolution challenges traditional concepts such as the "chain leader," as governance functions become distributed across multiple actors, including platform operators, lead suppliers, and network coordinators. The instrument should reflect these shifts in its conceptualisation of value chain governance and contractual responsibility.

C. Evaluation of the Approach Proposed by the Governing Council and the Exploratory Workshop

1. In General

218. The Workstream Committee on Contract Law strongly welcomes the decision of the UNIDROIT Governing Council to give the Corporate Sustainability Due Diligence in Global Value Chains (GVCs) project high priority and to establish a special Working Group. UNIDROIT can play a very important role in shaping discussions on sustainability governance in GVCs. Although current political developments suggest a move away from globalisation, with an increasing emphasis on national interests and a tendency to (once again) overlook the adverse effects of economic growth in some regions on others, this trend may prove temporary. Given that, beginning with climate change, the importance of sustainable growth can no longer be denied,

there is a clear need for the expertise and diplomatic capacity of organisations such as UNIDROIT (and UNCITRAL) to bring states together around a shared understanding that sustainable trade is both feasible and necessary - not only in the interest of the Global South, but also in that of the global community as a whole.

219. It is particularly important in this endeavour to include countries from the Global South so that a balanced approach is taken, rather than placing the costs of sustainability solely on these countries.[75] While national or regional regulation on sustainability governance remains important, platforms such as UNIDROIT can give Global South countries a meaningful opportunity to voice their concerns. This is all the more important as the increasing proliferation of mandatory ESG regimes across jurisdictions is likely to give rise to overlapping and potentially conflicting obligations. While such measures pursue legitimate public policy objectives, their cumulative effect may create significant compliance burdens and, in practice, function as barriers to trade.

220. A comprehensive international treaty appears unlikely in the short term. Instead, coordination is more likely to emerge through a combination of soft-law standards, mutual recognition mechanisms, and the contractual/sectoral standardisation of ESG requirements within global value chains. However, in the view of the Workstream Committee, another particularly valuable tool would be a Model Law, as it would give national legislators the flexibility to adapt rules to local circumstances where needed, while at the same time fostering a greater degree of uniformity in mandatory ESG regimes across both Global North and Global South countries.

2. The Legal Guide

221. The proposed legal guide on Corporate Sustainability Due Diligence in Global Value Chains appears to be an appropriate and timely response to current challenges, particularly in light of the significant gaps in the international framework. Its strength lies in the combination of a principles-based framework with a practical toolkit – including model clauses, guidance, and illustrative examples – anchored in private law but interoperable with emerging public law regulation. By translating broad policy objectives into contractual provisions, such an instrument can bridge the gap between sustainability regulation and daily business practice.

222. It appears compelling that the Legal Guide should not create new due-diligence standards but rather demonstrate how contractual practice can give effect to existing norms within transnational commerce. In this sense, the Guide would provide contractual mechanisms for implementing those standards. Such contract clauses could be used to operationalise both hard-law obligations (such as the EU CSDDD) and soft-law expectations (such as the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, or ISO 26000), provided that the parties agree to incorporate them into their contracts.

223. Whether the Legal Guide should develop sector-specific contract rules requires careful consideration, as this is an ambitious undertaking demanding detailed knowledge of operational realities, risk profiles, and regulatory frameworks. A more workable approach may be to begin with specialised groups organised around core contractual functions (such as sales, services, transport, insurance, or platform arrangements) each composed of experts with relevant legal, technical, and sustainability expertise. These groups would develop model clauses and principles for their respective contract types. Building on this, a second layer of work would focus on the integration of these contractual elements along the value chain. Such a group would examine how different contractual relationships interact in practice and adjust

[75] UNIDROIT 2025 – C.D. (104) 2, nº19 et seq.

the individual modules to ensure that ESG and due diligence obligations are coherent across production, distribution, and supporting services. A central steering committee would provide the overarching methodological framework and ensure alignment with standards such as the UNGPs and the OECD Guidelines, while maintaining consistency across both the functional and value chain levels. This structure would reflect market reality. As suggested in the Exploratory Workshop, expanding the project beyond manufacturing- and goods-related supply chain contracts is therefore conceptually sound and would significantly enhance its added value. Modern business models combine multiple contractual relationships, and ESG obligations operate across these interconnected arrangements rather than within isolated sectors. A guide with such a holistic approach would have greater practical relevance and broader acceptance.

224. The Workstream Committee is of the opinion that – as suggested in the Exploratory Workshop[76] – the legal guide should also be addressed to SMEs not only to companies above a certain size. Given that the guidance is directed not only at buyers but also, and in particular, at upstream suppliers/buyers, which are often SMEs, a narrow approach would limit the usefulness of the Guide. Indeed, it is recommended to differentiate due diligence expectations according to the characteristics of the contracting parties and to draft the model rules accordingly. While it may be acceptable, in contracts between large companies, for one party to assume significant risks, the same allocation cannot simply be passed on in subsequent contracts where the counterparty is an SME. Reflecting such differentiation in the model rules through alternative formulations would also signal to larger companies that they must take into account the capacities and needs of their contractual partners.

225. It would also be advisable for the Legal Guide to explicitly address procurement contracts. As major buyers (approx. 15% of global GDP), states possess significant leverage to enforce due diligence obligations, including through contractual requirements and the possibility of excluding non-compliant companies from bidding procedures. At the same time, the limitations and capacities of upstream SMEs within these supply chains must be duly taken into account. In particular, model rules governing how bidding companies should structure their contractual relationships with SME-suppliers will be crucial, as they enable states to indirectly steer behaviour throughout the supply chain.

3. Guidance for a More Relational Contract Drafting

226. The future instrument should offer alternative drafting approaches that move away from purely "zero-tolerance/termination" models towards shared responsibility, remediation, and responsible exit.[77] In that sense, a legal guide is structurally capable of accommodating sustainability-linked performance metrics (for example, through incentive, remediation and monitoring clauses) and responsible supply-chain clauses (cascading assurances, information-sharing, audit, grievance and corrective action mechanisms) while remaining firmly within UNIDROIT's mandate in contract and commercial law.

227. While doing so, the Legal Guide should take into account that network theory of contracting (particularly relational contracting approaches) offers valuable insights for drafting such clauses.[78] In particular, it is essential to recognise that traditional contract law, which presupposes a merely bilateral relationship, is inadequate for addressing the realities of chains and clusters of interdependent contractual relationships. These interdependencies must be reflected in duties of cooperation and information across the various contractual layers of the network; the legitimate reliance of non-contracting parties should be considered; and risk

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76 UNIDROIT, 104, Governing Council, nº31 and Annexe I nº59.

77 Cf. UNIDROIT 2024 – S87 – E.W. – Doc. 4, nº38.

78 Cf. also section on network contracts.

allocation must be adapted to the complexities of a multi-party contractual setting. In this regard, information obligations before and during performance, cooperation duties, the right to demand performance, the right to withhold one's own performance, and anticipatory breach mechanisms are all key contractual tools that should be taken into account. Moreover, given that such international contracts frequently create long-term relationships, the Legal Guide would benefit from drawing on the UNIDROIT Principles provisions that expressly address long-term contracts.

4. Model Clauses

228. As underlined also by the Governing Council and the Exploratory Workshop[79] the major added value of the Legal Guide would be the inclusion of model clauses that show how the proposed principles function in real commercial contract settings, especially in different sectors and along the supply chain. In that regard, real-life examples used by Companies and/or law firms might be of special value given how complex value chains are. It is advisable that UNIDROIT tries to establish such a database.

229. Model clauses constitute a particularly effective vehicle for translating sustainability-related requirements into contractual practice. The development of model clauses could therefore complement the Legal Guide as well as the UNIDROIT Principles by offering concrete drafting options reflecting proportionality, cooperation and the long-term nature of global value chain relationships. Such clauses could address, *inter alia*, information and reporting duties, audit mechanisms, corrective action plans, suspension of performance and graduated remedies. In addition, preparing model clauses may help illustrate alternative drafting strategies that move beyond termination-based approaches and support continuous compliance and improvement.

230. In light of the ongoing discussions within UNCITRAL, and in particular the proposals emerging from the 2024 colloquium on *The Law of International Trade for a Greener Future*, the envisaged cooperation between UNIDROIT and UNCITRAL is to be strongly welcomed.[80] Given the complementary mandates of both organisations and their shared focus on international commercial law, such coordination offers a valuable opportunity to ensure consistency and avoid duplication in the development of instruments addressing sustainability due diligence in global value chains. Against this background, and in light of Article 18 CSDDD, which provides that the EU Commission shall adopt guidance on voluntary model contractual clauses by 26 July 2027, UNIDROIT could also position its Sustainability Governance project so as to engage with this process from an early stage. Such engagement would allow UNIDROIT to ensure that its work remains closely aligned with significant regulatory developments, while at the same time drawing on its independent, international mandate to develop transnational contract law instruments and thereby contribute a broader and more inclusive perspective than a purely regional initiative.

D. Recommendations for the future

1. Beyond a Legal Guide

231. While the development of a contractual guidance document on Corporate Sustainability Due Diligence in Global Value Chains, including model clauses, represents a focused and highly promising avenue for addressing sustainability obligations through contract governance by the

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[79] UNIDROIT 2025 – C.D. (104) 2, nº24 et seq. and UNIDROIT 2024 – S87 – E.W. – Doc. 4, nº52 et seq.

[80] Cf. UNIDROIT 2025 – C.D. (104) 2, nº43.

parties, it is not the only conceivable way forward. A complementary strategy – as also discussed in the Exploratory Workshop – would be to integrate sustainability-related considerations, not limited to due diligence in the strict sense, more directly into existing uniform contract law instruments and to draft a model law.

(a) Model Law on Sustainability Governance in International Contracts

232. UNIDROIT may contemplate the development of a Model Law on Sustainability Governance in International Contracts. This could incentivise Global South countries to enact their own frameworks and mitigate concerns that sustainability regulation constitutes a renewed form of legal colonialism. By including practical legislative guidance on sustainable contracting, due diligence obligations, and appropriate remedies, such a model law could provide a contract law framework that not only ensures compliance with ESG standards but also protects smaller companies and suppliers in developing countries facing increasingly demanding requirements imposed by multinational partners. Importantly, it could also strengthen their contractual position by encouraging or, where appropriate, mandating the inclusion of provisions on e.g. cooperation, financing, and the sharing of responsibilities by the buyer or ordering company. In this way, the model law would help to rebalance contractual relationships within global value chains and ensure that the burden of sustainability obligations is not imposed unilaterally on weaker parties.

(b) Expanding the Tripartite Guide

233. The UNCITRAL–HCCH–UNIDROIT Tripartite Legal Guide[81] could be expanded to reflect the evolving role of contracts in responsible supply chain governance, thereby aligning due diligence mechanisms with the principles of international commercial law. While the Guide currently focuses on traditional aspects of international sales and conflict-of-laws coordination, it does not fully capture the transformation of global trade driven by sustainability imperatives. Given the central role of sales contracts and the CISG in implementing sustainability obligations, such an expansion would significantly enhance its relevance.

234. It would, first, reflect modern trade practice, where supply chains consist of complex networks and sustainability clauses increasingly turn contracts themselves into instruments of governance. Second, it would bridge public and private frameworks by clarifying how contractual principles such as good faith, cooperation, and mitigation support compliance with sustainability regimes. Third, it could strengthen contractual governance by addressing mechanisms such as cascading clauses, audit rights, corrective action plans, and sustainability-linked termination or incentives. Finally, it would promote consistency in dispute resolution by guiding the application of uniform law instruments to ESG-related disputes.

235. Overall, incorporating sustainability considerations would transform the Guide into a forward-looking instrument that bridges traditional private law with the demands of responsible and sustainable international commerce

(c) Integrating Sustainability Considerations into Unidroit Principles

236. As discussed above[82], a more direct integration of sustainability considerations into the UNIDROIT Principles could also contribute to the broader objective of facilitating the implementation of sustainability-related obligations within global value chains through contractual mechanisms. In particular, the UNIDROIT Principles may provide an important

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81 https://www.UNIDROIT.org/instruments/commercial-contracts/tripartite-legal-guide/

82 See para 79 et seq.

transnational framework for addressing issues such as cooperation duties, shared responsibility, preservation of long-term contractual relationships, and the protection of third-party interests in sustainability-driven contracting.

2. Challenges of Incorporating Sustainability Considerations into Harmonisation Instruments

237. First, the instrument must avoid duplication and instead complement an already dense and evolving ecosystem of instruments (UNGPs, OECD Guidelines, CSDDD and related EU measures, national due diligence laws, trade restrictions, and private initiatives such as the ABA MCCs, EMCs, Ecoterms, and forthcoming EU model clauses). Its added value lies in focusing on the contractual dimension, which remains insufficiently systematised, while building on existing standards in a globally balanced and inclusive manner, including perspectives from the Global South.

238. Second, there is an institutional challenge: UNIDROIT's work should, as far as possible, be coordinated with parallel initiatives to ensure coherence, avoid fragmentation, and maintain legitimacy in a politically sensitive field. This is particularly important in securing broad international acceptance, including from Global South jurisdictions.

239. Third, the regulatory and technological environment is highly dynamic. Ongoing legislative developments, supervisory practices, and digital technologies (e.g. data-driven due diligence, platform governance, and blockchain) are reshaping global value chains. The instrument should therefore adopt a principles-based, modular design, combined with a clear update strategy, to remain adaptable without locking in transient solutions.

240. Fourth, dispute resolution and enforcement raise practical challenges. Sustainability-related disputes are likely to increase, particularly in cross-border arbitration. Adjudicators may need to interpret contractual clauses in light of overriding mandatory rules and public policy. While private-law instruments remain neutral, guidance on this interaction could enhance legal certainty without disturbing the balance between contractual autonomy and regulatory objectives.

241. Finally, regardless of the chosen format (Guide, Model Law, or expansion of the Tripartite Legal Guide), the instrument should not attempt to resolve politically sensitive questions. Its primary function should be to clarify how existing private law frameworks can accommodate sustainability related obligations. Any treatment of asymmetries should rely on neutral techniques, such as proportionality, company size (SMEs), reasonable expectations, and context-sensitive allocation of responsibilities, while ensuring that sustainability requirements remain commercially realistic and do not exclude suppliers from developing countries. Properly framed, such guidance can support sustainability objectives while preserving the neutrality and inclusiveness of international commercial law.

III. CONSTRUCTION AND ENGINEERING CONTRACTS (ADOPTED PROJECT)

A. Background and Development

242. UNIDROIT received a proposal for a joint project by International Federation of Consulting Engineers (FIDIC) on international general principles of construction and engineering contracts.[83] The Proposal suggests developing international legal principles and rules in the form of a soft law instrument, to improve the international legal framework for the construction and engineering sector, and address specificities of construction and engineering contracts to supplement the general contractual principles of the UNIDROIT Principles.

243. The construction industry is one of the key sectors operating worldwide, and according to recent WTO statistics, it accounts for around one-tenth of the world's GDP and 7 per cent of employment. Construction and other related contracts such as engineering contracts are among the most commonly used in international trade as well as within national boundaries. Despite the existence of widely used model contracts and clauses at the international level, such as those developed by FIDIC, the law applicable to such contracts is still fragmented and not always adapted to the needs of the sector. As explained in the proposal, a number of legal systems do not possess sufficiently developed laws to deal with construction and engineering contracts, particularly (but not exclusively) when used in an international context. The new instrument could usefully fill this gap, by serving as a model for domestic legislators, or as a tool for the interpretation of the applicable domestic law by adjudicators (courts and arbitrators) in accordance with best international practices. Such an instrument would also facilitate cross-border contractual relationships by offering a set of international principles and rules to the parties that build upon the UNIDROIT Principles and can be perceived as fair and culturally neutral by parties from different countries.

244. The project was approved at the 105th session of the Governing Council in May 2025 and has been designated for implementation as a high-priority project within the 2026–2028 Work Programme.[84]

B. Purpose and Key Content

245. The project expressly refers to the UNIDROIT Principles as the starting point for the project. This is perfectly in line with the strategy that the Secretariat is adopting to fulfil the high-priority mandate of promoting the UNIDROIT Principles and enhancing their visibility among market players in specific industry sectors, particularly in complex and long-term transactions. The new project would constitute a powerful means of further supporting the international acceptance of the UNIDROIT Principles as a neutral and balanced set of general principles and rules.

246. The project would first of all assess whether, and to what extent the UNIDROIT Principles already meet the demands of the international construction and engineering industries. The aim of the project would be to identify areas in which the UNIDROIT Principles do not offer sufficient guidance and consider developing best contractual principles. The partnership with FIDIC would ensure that existing best practices already embodied in model contracts and clauses are considered and, where appropriate, extrapolated and clarified in specific legal principles. Based on practical experience at the international level, the Proposal already lists

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[83] UNIDROIT 2025 – C.D. (105) 32 – Report, at nº91-101.

[84] This White Paper does not include consideration of the outcome of the first session of the Working Group which was held in late October 2026.

some substantive law areas for which principles and rules could be potentially developed by the joint project and where legal systems often offer diverging solutions or lack specific rules, and for which the existing lack of clarity creates disputes and uncertainty.

247. The topics mentioned in the proposal by way of example range from design liability to clarification of the role of the contract manager (engineer), defect (non-conformity) liability, contract variations, supervening circumstances, contractual dispute resolution systems, resolution boards and contractual time bars.

248. The project also considers the potential scope of the project, suggesting the inclusion of contracts for the provision of design and engineering services that are sometimes integrated into the construction contract but often concluded as separate related agreements. Moreover, the proposal recognises that "while the natural target of the new instrument would be international contracts, the new instrument could provide a useful tool for domestic law legislators, judges, adjudicators and other neutrals interpreting domestic laws", in the same way that the UNIDROIT Principles have been widely used as a model for national legislators and in the interpretation of domestic laws. The project would usefully complement and build synergies with the current project on UNIDROIT Principles and IICs.[85]

C. Implementation and Engagement

249. International construction and engineering practice displays a remarkable diversity of contractual configurations. At one end of that spectrum lies the traditional design–bid–build model (DBB), characterised by a separation between design and construction, a high degree of employer control and a fragmented allocation of responsibilities. At the other end stands the fully integrated engineering, procurement and construction (EPC) structure, under which the contractor assumes a global obligation to deliver a completed facility and acts as a single point of responsibility *vis-à-vis* the employer.

250. Between these two poles, a range of hybrid and differentiated models has emerged:

- EPC variants (mixed, partial, or semi-turnkey), where responsibility is shared or layered;
- EPC-Management (EPCM) structures, under which the contractor acts primarily as project manager without assuming overall execution risk;
- extended turnkey arrangements (sometimes described as "product-in-hand" or "market-in-hand" models), incorporating operational guarantees or technology transfer elements; and
- concession and PPP structures, in which the construction contract forms part of a broader financing and operational framework.

251. These models differ not merely terminologically but structurally: in the allocation of risk, the nature of the contractor's obligation (result-based versus due skill and care), the degree of functional integration, and their interaction with financing, insurance, and regulatory regimes. This diversity explains why a UNIDROIT instrument should refrain from codifying or rigidly defining specific construction contract "types." Any attempt to establish a fixed taxonomy would risk oversimplification or rapid obsolescence, given the dynamic evolution and hybridisation of industry practice. The added value of a UNIDROIT project lies elsewhere. It should focus on identifying and articulating general principles addressing recurring structural issues common across contractual configurations. These are not type-specific questions but

[85] See section on IICs.

systemic risk patterns that arise irrespective of whether a contract is labelled EPC, EPCM, PPP, or otherwise. By concentrating on these structural dimensions, UNIDROIT would enhance coherence and predictability in international construction practice without interfering with commercial flexibility or duplicating existing model forms (such as FIDIC).

D. Recommendations for the Future

252. The areas identified in the Proposal provide an important starting point. The objective should be to formulate general principles capable of guiding interpretation, filling gaps, and reconciling divergent domestic approaches. The fact that the FIDIC forms already contain detailed provisions on many of the matters listed below does not render further work unnecessary. The recurring disputes observed in practice do not typically stem from the absence of provisions, but from divergent domestic doctrines and interpretive approaches relating to complex construction projects.

253. The proposed instrument should be conceived as building upon, and operationalising, the existing framework of the UNIDROIT Principles in a sector-specific context. The UNIDROIT Principles already provide a coherent set of general rules, including for example, on good faith and fair dealing (Article 1.7), inconsistent behaviour (Article 1.8), interpretation of the contract (Article 4.1. et seq.), cooperation duty (Article 5.1.3), hardship (Article 6.2.2–6.2.3), notice requirements (Article 1.10), agreed payments for non-performance (Article 7.4.13), and restitution upon avoidance (Article 3.2.15). However, the practical realities of construction and engineering projects often require more detailed guidance on how these general standards operate within complex, multi-actor, long-term contractual structures.

254. In this sense, the new instrument would not replace or duplicate the UNIDROIT Principles but rather clarify their application in areas such as variations and cumulative scope change (in light of hardship and cooperation principles), contractual time bars (in interaction with good faith and notice regimes), or the exercise of contractual discretion by contract managers or engineers (in connection with doctrines of consistency, procedural fairness and reviewability). The following highlights selected areas of construction contracts that remain contested, in order to illustrate the potential contribution of a UNIDROIT instrument.

Design Liability and Allocation of Professional Risk

255. Design liability remains one of the contested issues across jurisdictions, especially in design-and-build and EPC models. Legal systems diverge significantly regarding implied fitness for purpose obligations, the interaction between contractual specifications and performance guarantees, and the standard of care applicable to professional designers (cf. e.g. *MT Højgaard A/S v E.ON Climate & Renewables UK Robin Rigg East Ltd*). Particular attention must be given to hybrid clauses combining professional standards with output guarantees, which have generated divergent interpretations across jurisdictions. In particular, courts have differed on whether compliance with a professional standard of care is sufficient to discharge liability where the contract simultaneously contains performance guarantees or fitness-for-purpose undertakings.

256. A UNIDROIT instrument could clarify:

- the relationship between compliance with employer's requirements and performance responsibility;
- the allocation of risk for ambiguities in specifications;

- the interaction between professional negligence standards and contractual guarantees; and
- the limits of liability in multi-layered design constellations.

257. Such clarification would be particularly valuable in cross-border projects where parties operate under different assumptions regarding implied warranties.

Defect Liability and the Interface with Limitation Regimes

258. Construction defect regimes differ markedly across jurisdictions, particularly regarding latent defects, decennial liability, burden of proof, and time limitation. The project could address:

- the distinction between defects and performance deficiencies;
- allocation of evidentiary burdens in complex projects;
- the relationship between contractual liability periods and mandatory statutory regimes;
- the impact of acceptance and taking-over certificates; and
- the interaction between contractual defect liability regimes and construction-specific insurance frameworks, including latent defect insurance and decennial liability insurance.

259. In many jurisdictions, defect liability in construction contracts operates alongside mandatory or market-driven insurance regimes, such as decennial liability insurance or latent defect coverage. These regimes significantly influence risk allocation, evidentiary burdens, and the practical enforcement of liability. Divergent approaches exist as to the relationship between contractual limitation clauses and insurance-triggering events, as well as the extent to which insurance structures affect recourse claims within multi-tiered project constellations. Clarifying the interaction between contractual liability and insurance-based risk transfer mechanisms would therefore enhance predictability in cross-border projects.

Variations and Cumulative Scope Change

260. Variations are a central feature of construction practice, yet their cumulative effect often destabilises the original contractual equilibrium and may challenge the underlying agreement of the Parties. Legal systems diverge on doctrines comparable to cardinal change, fundamental alteration, or material/substantial modification. Principles could clarify:

- thresholds for cumulative variations altering the contractual basis;
- valuation methodologies where original pricing logic collapses;
- interaction between variations, acceleration, and mitigation duties;
- form of variation orders and the role of subsequent inconsistent behaviour; and
- systemic documentation and cooperation obligations.

Supervening Events, Hardship, and Adaptation

261. Recent geopolitical disruptions, supply-chain breakdowns, state interventions, and extreme price volatility have revealed uncertainties in the interaction between force majeure,

hardship, and contractual adaptation. While the UNIDROIT Principles already contain hardship and force majeure provisions, sector-specific adjustments for construction contracts may be necessary, including:

- economic thresholds, the limit of sacrifice;
- temporary measures and suspension;
- allocation of delay risks and additional costs;
- coordination with time-extension mechanisms and notice requirements.

262. Particular attention should be given to the interaction between hardship doctrines and contractual price adjustment or fluctuation clauses, which are common in construction practice. In large-scale projects, parties frequently regulate cost escalation risks contractually through indexation mechanisms, escalation formulas, or remeasurement systems. As a result, pure hardship in the sense of an unforeseeable and fundamentally altering event rarely operates in isolation. Legal systems diverge as to whether the existence of contractual price adjustment mechanisms excludes recourse to hardship, limits it, or operates cumulatively with it. Clarifying this boundary would significantly enhance predictability in international construction projects.

Contractual Time Bars and Procedural Mechanisms

263. Time-bar clauses remain among the most litigated features of international construction contracts. While the 1999 FIDIC forms were criticised for the strict operation of Sub-Clause 20.1, which treated timely notice as a condition precedent leading to automatic forfeiture, the 2017 suite introduced a more flexible claims regime. In particular, Sub-Clause 20.2.5, read together with Clause 3.7, empowers the Engineer to consider late notices in light of the circumstances, including the reasons for delay and any prejudice suffered.

264. However, the introduction of discretion has not eliminated disputes. Instead, it has shifted the focus of controversy from the mere fact of late notice to questions concerning the proper exercise and review of contractual discretion. Legal systems diverge significantly as to the standards governing discretionary powers, the extent to which good faith or proportionality constrain reliance on time bars, and the relevance of employer knowledge or the absence of prejudice. Moreover, the increased procedural complexity of the 2017 regime has itself generated compliance disputes in large-scale projects, where administrative burdens are considerable.

265. A UNIDROIT instrument could therefore usefully formulate principles addressing:

- proportionality in the operation of time bars;
- the relevance of actual prejudice;
- waiver and estoppel through conduct; and
- standards governing the exercise and review of contractual discretion

The Role and Status of the Contract Manager (Engineer)

266. Although FIDIC describes the function of the Engineer, disputes frequently arise concerning impartiality, independence, and the legal nature of determinations by the Engineer (Clause 3.7). Domestic approaches vary as to whether such determinations are contractual mechanisms, expert decisions, or quasi-arbitral acts. A UNIDROIT instrument could articulate baseline principles concerning:

- independence and procedural fairness in determinations;

- disclosure and conflict-of-interest standards;
- the consequences of defective or biased determinations; and
- the relationship between determinations and subsequent dispute resolution.

Dispute Resolution Boards and Multi-Tier Mechanisms

267. The enforceability and legal nature of dispute board decisions is debated. Issues include binding effect, admissibility of arbitration, and consequences of non-compliance. A transnational set of principles could clarify:

- the interim binding effect of board decisions;
- the obligation of the parties to comply pending final determination; and
- principles for the coordination of multi-party and multi-contract disputes.

Other Important Topics

268. Beyond the topics expressly listed in the proposal, practice suggests a number of additional structural issues that frequently generate uncertainty in international construction projects. These issues likewise do not depend on a specific contractual "type" but arise across different models and legal systems.

269. *Acceptance and delivery structures*. Although the taking-over certificate is regulated in FIDIC forms (mainly Sub-Clause 10.1.), legal systems diverge significantly as to the consequences attached to provisional and final acceptance. The distinction affects risk transfer, commencement of non-conformity liability periods, evidentiary burdens, and the interaction with mandatory regimes such as decennial liability.

270. *Concurrent delay and delay analysis*. While FIDIC regulates delay and extensions of time, legal systems diverge on the treatment of concurrent delay and apportionment. Different delay analysis methodologies (e.g. as-planned, as-built, and time impact analysis) frequently generate evidentiary conflict and inconsistent outcomes.

271. *Project financing and step-in rights*. Large infrastructure projects commonly involve lender step-in rights, direct agreements, assignment restrictions, and collateral warranties, creating a multi-layered contractual structure. FIDIC forms regulate bilateral relationships but do not fully address the systemic implications of such financing arrangements. Principles for coordination within these contractual networks would complement the discussion of network-sensitive contract governance.[86]

272. *Suspension rights and cash-flow protection*. Payment default and suspension rights remain highly sensitive in practice. Questions arise as to when suspension is justified, whether it triggers liability, and how proportionality and good faith considerations affect its exercise. These issues became particularly acute during the COVID-19 pandemic and subsequent supply-chain disruptions.

273. *Termination in cases of contractor insolvency*. Termination clauses triggered by insolvency may conflict with mandatory insolvency regimes, including restrictions on ipso facto clauses and statutory stays. The interaction between contractual termination mechanisms and restructuring frameworks varies considerably across legal systems.

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[86] See also section on network contracts.

274. *Termination for convenience*. Termination for convenience by the employer constitutes a deviation from ordinary termination rules. While the FIDIC forms recognise such a right and provide a basic compensation regime (Sub-Clause 15.5), they contain only a targeted safeguard against abuse, prohibiting termination for the purpose of re-letting or self-performing the works. They do not, however, develop a broader framework governing the limits of unilateral exit, leaving unresolved questions concerning compensation, risk allocation, and the role of good faith, abuse of rights, and proportionality.

275. *Effects of early termination*. Where termination occurs at an advanced stage of performance, complex issues arise concerning valuation of partially completed works, restitution, transfer of materials and documentation, and preservation of design rights. Legal systems diverge in their treatment of reliance interests and unjust enrichment.

276. *Sanctions, corruption, and compliance termination*. The interaction between contractual remedies and mandatory sanctions regimes, anti-corruption frameworks, and illegality doctrines remains unsettled. Questions concerning termination, restitution, and cross-border enforcement continue to generate uncertainty in transnational projects.

277. *Digital construction and data governance*. The increasing digitalisation of construction practice raises contractual issues not fully addressed by traditional FIDIC architecture. The use of BIM, digital project management systems, and AI-assisted design tools generate questions concerning model ownership, data accuracy, reliance on shared digital environments, and cybersecurity responsibilities.

278. *Sustainability standards and ESG integration*. Construction contracts increasingly incorporate ESG obligations, including compliance with sustainability standards and climate-related performance targets. The legal status of such standards, their interaction with performance obligations, and the consequences of non-compliance remain insufficiently clarified.

279. *Multi-contract structures and project coordination*. Major infrastructure projects typically involve multiple interrelated FIDIC contracts rather than a single bilateral agreement. Interface risks, cross-default effects, and interdependent milestones cannot always be adequately managed within a purely bilateral framework. Systemic coordination across project constellations remains under-theorised.

280. *Direct actions by subcontractors*. In several jurisdictions, subcontractors may have direct claims against the employer or benefit from statutory payment mechanisms, while other systems adhere strictly to privity. This divergence creates uncertainty in international projects structured through subcontracting chains.

281. *Model clauses on governing law and systemic coherence*. A recurrent source of uncertainty lies in the interaction between detailed standard forms and the domestic law chosen as governing law. Divergent national doctrines may affect the interpretation of core mechanisms (such as variations, time bars, risk allocation, or termination), thereby undermining predictability. Optional model clauses clarifying the relationship between the contract, transnational principles, and domestic law could enhance systemic coherence without interfering with party autonomy.

PART THREE — Emerging Cross Cutting Areas for Future Work

I. DIGITALISATION AND NEW TECHNOLOGIES

283. Technological developments, particularly the progressive digitalisation of many activities, can raise new legal challenges. It is not inevitable that every technological advance will give rise to new challenges that require changes in the law, but whenever a significant development occurs, it is, at the very least, important to check whether existing legal provisions remain fit for their intended purposes, and also whether technological developments create new gaps in the law that would need to be addressed.[87] The most significant technological development is the impact of digitalisation, and this part focuses on questions for UNIDROIT arising from the digitalisation of international (commercial) contracting. The analysis in this part will start with general considerations, before turning to the different ways in which digitalisation impacts contracting practice and contract law. While some impacts could be addressed through existing legal rules, others will require further action, whether through adjustments to existing rules, new provisions, or clarifications in explanatory commentaries. It should be noted that UNIDROIT has already expressed interest in a project on the "Regulation of Digital Risks Through Civil Liability Law".[88] Although not concerned with contract law as such, this project should be considered in any future work on digitalisation and contract law to identify synergies.

A. General Considerations

1. Addressing the challenges of digitalisation

284. Before considering specific areas that UNIDROIT might investigate, it is important to note several considerations that should inform how the impact of digitalisation on contract law is assessed. There are two related fundamental points to bear in mind: first, the fact that digitalisation has had a significant impact on contracts and contract law does not mean that new rules to cover every aspect of this development will be needed. In other words, there is no inextricable link between digitalisation of contracting and a need to develop Contract Law. It is perfectly plausible that existing Contract Law rules are sufficient to address many, if not all, contracting developments. For some instances, guidance on how the law applies or on the design of contracts, might suffice. Secondly, however, it is not certain that all existing Contract Law rules continue to be suitable for changes in contracting practice and contractual arrangements – for some aspects, new rules will be needed.[89]

285. Thirdly, the overarching concern should be the continuing fitness for purpose of Contract Law in light of digitalisation. This necessitates a careful review of the new challenges which the various developments in digital contracting create and a cross-check, in an iterative process, what the implications for Contract Law will be. Much of Contract Law is based on a paradigm of face-to-face, person-to-person interactions. This does not mean that it is inherently unfit for digital contracting, but it will be necessary to analyse whether existing legal rules continue to work when applied to digital business models and contracting practices. Some matters can be resolved through guidance that clarifies how Contract Law applies to some

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87 E.g., Roger Brownsword, "Law Disrupted, Law Re-imagined, Law Re-invented" (2019) *Technology and Regulation* 10-30 [https://doi.org/10.26116/techreg.2019.002].

88 UNIDROIT 2025 – C.D. (105) Misc. 3, P. 2.

89 Christian Twigg-Flesner, "Disruptive Technology - Disrupted Law? How the Digital Revolution affects (Contract) Law" in Alberto De Franceschi (ed), *European Contract Law and the Digital Single Market* (Intersentia, 2016).

aspects, but this should not result in unduly strained interpretation. For some aspects, new rules might be needed instead.

286. Below, we highlight potential areas of future work which UNIDROIT could undertake regarding digital technologies and contract law. This covers the main challenges for contract law and contracting practice arising from digitalisation. UNIDROIT might undertake work on any of these areas in two phases: first, to review existing UNIDROIT texts, and secondly, to consider the need for new provisions or instruments.

287. The first phase involves reviewing all existing UNIDROIT instruments relevant to Contract Law in order to assess whether they are still fit for their purpose in light of developments in digital technologies. A good starting point for this phase would be the *UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles)*. A comprehensive review should be undertaken to determine whether all its provisions remain relevant and whether clarification or additional guidance should be included in the notes and illustrations to the black-letter rules.

288. The second phase would involve determining where further action needs to be taken. Some of UNIDROIT's existing instruments might need to be updated. For some aspects, this might take the form of amendments to existing legal rules to ensure that they remain suitable for contracting in a digital context. For other aspects, it might be necessary to draft new supplementary provisions.

2. Existing work

289. Several international bodies have already undertaken work concerning aspects of digitalisation and their impact on contract law. UNCITRAL has already covered several aspects.[90] It would make little sense for UNIDROIT to concentrate its future work on matters already dealt with by UNCITRAL. However, this does not preclude further work on these topics, particularly where UNIDROIT instruments might lend themselves to a different approach.

290. In addition, the European Law Institute (ELI) has undertaken several projects relevant to contract law and digital technologies. Its work includes the Model Rules on Online Platforms (2020),[91] the Principles for the Data Economy – Data Transactions and Data Rights (2021, with the American Law Institute),[92] the Principles on Blockchain Technology, Smart Contracts and Consumer Protection (2022),[93] and the Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts (2025).[94]

291. As far as such existing work is concerned, it would be useful for UNIDROIT to review its existing instruments for any inconsistencies with specific work on aspects of digital contracting.

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[90] See instruments listed at UNCITRAL, *Electronic Commerce*, at https://uncitral.un.org/en/texts/ecommerce.

[91] ELI Model Rules on Online Platforms, at https://www.europeanlawinstitute.eu/projects-instruments/instruments/eli-model-rules-on-online-platforms/.

[92] ALI-ELI Principles for a Data Economy: Data Transactions and Data Rights at https://www.europeanlawinstitute.eu/projects-instruments/instruments/ali-eli-principles-for-a-data-economy-data-transactions-and-data-rights/.

[93] ELI Principles on Blockchain Technology, Smart Contracts and Consumer Protection at https://www.europeanlawinstitute.eu/projects-instruments/instruments/eli-principles-on-blockchain-technology-smart-contracts-and-consumer-protection/.

[94] ELI Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts at https://www.europeanlawinstitute.eu/projects-instruments/instruments/eli-guiding-principles-and-model-rules-on-digital-assistants-for-consumer-contracts/.

Furthermore, UNIDROIT instruments such as the UNIDROIT Principles might offer an opportunity to improve on existing work.

292. In the field of contract law, the impact of digitalisation is felt in four principal dimensions: digital communication methods for contracting, contracts for new digital products, digital business models, and digitalisation of contracting practice. The following sections consider these in turn.

3. Digital communication methods in contracting

293. First, digital communication methods, including electronic communications, are widely used for all the stages involved in the contracting process. Instead of communicating in a physical, face-to-face, setting, communications now often occur through asynchronous methods. Familiar examples include electronic mail, applications facilitating chats, and automated communication methods such as chatbots.

294. With regard to electronic and digital communications in contracting, UNCITRAL has already undertaken a significant amount of work. Its Model Law on Electronic Commerce (1996) and the Convention on the Use of Electronic Communications in International Contracts (2005) (CUECIC) introduced rules to facilitate the use of digital communication methods in international contracting. The focus of UNCITRAL has generally been to consider how legal rules developed in the context of traditional paper-based contracting could be extended into the digital realm. Its work is guided by the principles of functional equivalence and technology neutrality, as well as non-discrimination between different methods of communication. Rather than developing new rules for the use of digital communications in the contracting process, UNCITRAL's approach has been to extend the reach of established rules, such as those on contract formation in part II of the Convention on the International Sale of Goods 1980 (CISG) by explaining how different requirements could be met when electronic/digital communication methods are used.

295. UNIDROIT also considered the impact of what was then called electronic contracting in the first revision to the UNIDROIT Principles in 2004. At the time, only a few amendments to a handful of articles and/or accompanying comments or illustrations were necessary.[95] As Article 1.2 of the UNIDROIT Principles confirms that there are no specific form requirements for making or evidencing a contract, there is no need to consider the introduction of provisions on functional equivalents to form requirements such as writing, signature or an original (key matters addressed in the CUECIC; see Article 9).

4. New Digital Products

296. Secondly, new types of products have emerged. Many physical products now incorporate digital elements, such as operating software, that control their functionality. Often, these digital elements are static, i.e., they are integrated at the point of manufacture but generally not updated subsequently. However, increasingly, physical products can be connected to networks (such as the internet) and can receive software updates and upgrades. Over time, this can change the functionality and performance of the product. Moreover, it allows for continuing remote control over the product after its supply. Furthermore, products capable of network connectivity can be combined, e.g., as part of the Internet of Things.

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[95] The Introduction to the 2004 edition notes changes to what are now Articles 1.2, 2.1.8 and 2.18, with changes to comments for Articles 1.2, 1.10, 2.1, 2.7 and 2.8.

297. At the time of writing, work is in progress at UNCITRAL on model rules for so-called "data provision contracts", i.e. contracts involving the supply of data (other than software).[96] This is the first time UNCITRAL has specifically addressed contracts for the supply of a new form of digital product (i.e., data). The rules under discussion would address several aspects of such contracts going beyond merely dealing with functional equivalence. Related work on "Principles for the Data Economy – Data Transactions and Data Rights" was undertaken earlier by the American Law Institute and the European Law Institute, published in 2021.

5. Data as a counter-performance

298. The traditional contracting constellation is that one party supplies goods or services which the other party purchases and pays for. As a result of digitalisation, access to data has become sufficiently valuable to have emerged as a common aspect of the buyer's obligation to pay for the goods or services. This could affect the way in which payments as the counter-performance for the supply of goods or services is made; instead of paying a sum of money, the buyer might instead pay a (lower) sum of money and grant the supplier access to data controlled by the buyer. For instance, the supplier might have supplied an engine capable of collecting data about its performance, and the supplier could be granted continuing access to that data as part of the buyer's counter-performance. The obligation to pay for the goods or services received is therefore split between monetary payment and access to data. Such data could be any data under the buyer's control (subject to restrictions under data protection laws regarding personal data, and other legal constraints on data sharing). There could also be a situation where the buyer does not pay any money at all; instead, the buyer's entire counter-performance could be through access to data. For instance, the operator of an online intermediary platform might provide access to the platform in return for access to data, allowing a business to be present on the platform without having to pay money for this.

299. In any of these situations, questions might arise about how this form of counter-performance should be treated as a matter of law. Whilst access to data can be something of value, it is difficult to determine that value with any precision – particularly where access to data operates on a continuing basis. In consequence, this could have implications for applying contract law rules such as those regarding remedies for non-performance. Moreover, a counter-performance which is something other than money might affect the legal classification of such a contract; for instance, the lack of a monetary counter-performance might lead to the conclusion that a contract is not a contract of sale but some other supply transaction. This could create some uncertainty regarding the legal rules that would govern such a contract.

300. It is recommended that UNIDROIT undertakes a review of the UNIDROIT Principles to consider whether any of its provisions, particularly those on performance and remedies for non-performance, require modification to account for the right to access data as a form of counter-performance alongside, or instead of, the payment of a sum of money.

6. New Business Models and Digital Ecosystems

301. Thirdly, digitalisation has prompted the development of new business models and the use of contracts to create new ecosystems. A key example is online platforms, which bring together many different users (e.g., suppliers and customers) in a trading ecosystem managed by a platform operator. The platform operator is in a contractual relationship with all platform users and uses these contracts to set the terms on which participation in the platform is

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[96] See UNCITRAL Working Group IV, A/CN.9/WG. IV/WP.192 *Draft model legislative provisions on contracts for the provision of data: Text* at https://docs.un.org/en/A/CN.9/WG.IV/WP.192 (4 February 2026).

permitted. Thus, contracts are used both to create the digital platform ecosystem and to allow the platform operator to manage the entire ecosystem. Other examples include Internet of Things (IoT) systems, comprising a combination of physical devices, digital processes and data sources, e.g., for smart manufacturing or farming; and 3D Printing (additive layer manufacturing), a manufacturing technique that could be utilised for new production arrangements that would, in turn, create novel contracting constellations.

(a) Contracts as governance architecture

302. In addition to the contracting process itself, digital technologies have also enabled the creation and growth of new business models. From a commercial law perspective, online marketplace platforms are perhaps the best example.

303. Fundamentally, online platforms are organised as contractual architectures,[97] i.e., each platform user is in a contractual relationship with the operator, or owner, of the platform. The platform operator determines the terms and conditions of these contracts. They contain provisions governing access for users to the platform, the conditions for participating on the platform, as well as provisions on the suspension or termination of access for failing to comply with the platform's terms and conditions. The platform operator usually has the power to amend the terms of these contracts unilaterally.

304. Platform users can be either suppliers or buyers of goods, services or digital content. Contracts for the supply of a product are generally conducted between a supplier and a buyer, and do not directly involve the platform, i.e., the platform is not a party to the supply contract. Nevertheless, the platform operator may require such supply contracts contain terms stipulated by the platform operator, and platform users may also be required to use ancillary services provided by a platform, such as payment processing or dispute resolution mechanisms.

305. A platform operator may take a percentage on each transaction by way of remuneration. Platform operators are also able to collect data on all platform users, which can be monetised in several ways.

306. Although such platforms are based on a contractual architecture, the contracts between the platform operator and the platform users are not, primarily, contracts under which parties exchange something for value. Whilst there is an exchange element (the provision of the platform service in return for payment, data etc), the contracts are mostly a vehicle for managing the conduct of all platform users.

307. The ability to act unilaterally gives the platform operator considerable discretion and allows them to change the terms and conditions at their will. This raises questions as to whether it is necessary to constrain the actions of the platform operator, based on considerations of fairness and to avoid arbitrariness in the way the platform operator organises the platform and manages its activities. In this regard, Article 1.7 of the UNIDROIT Principles requiring each party to act in accordance with good faith and fair dealing in international trade provides a key reference point for policing the manner in which a platform operator exercises that discretion. Fairness concerns also include transparency of terms and their application, and the need for sufficient notice of any changes to the terms and conditions to allow platform users to adapt their activities. It may be that in some instances: the broad powers of a platform operator could amount to gross disparity within Article 3.2.7 of the UNIDROIT Principles if the powers constitute an unjustifiably excessive advantage. However, UNIDROIT might wish to consider whether additional provisions are needed to address the use of broad discretionary

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[97] Cf. UNCITRAL, *Taxonomy of legal issues related to the digital economy* (2023), part 4.

powers, whether at a general level or specifically in the context of contract-based business structures.

308. There are similarities between platforms and network contracts considered elsewhere in this White Paper in that all the contracts between a platform operator and platform users are not merely discrete contractual relationships but collectively form the platform ecosystem. This adds an additional dimension to these contracts, insofar as non-compliance with some terms could affect the platform ecosystem as a whole. However, unlike e.g., a major construction project, where different contracts involving different parties are linked by a common purpose, a platform is akin to a hub-and-spoke structure because the platform operator is a party to all of these contracts, i.e., all the platform users are connected through the platform operator. Nevertheless, the failure of individual platform users to comply with their contractual obligations could have implications for the wider platform ecosystem, particularly its reputation as a reliable trading environment. UNIDROIT may wish to explore further whether work is needed in respect of the wider impact of violating contractual obligations in the case of contracts forming part of a wider ecosystem, or network.

(b) Connected contracts and liability allocation

309. Some digital ecosystems raise novel questions about the interaction between different contractual relationships and liability allocation. One example is the Internet of Things (IoT). Essentially, an IoT system comprises physical and digital components. The physical components are devices capable of connecting to a network and to communicate with other components of the network. Some of these devices contain sensors and can collect data about the performance of the system or from the environment in which the system is deployed (e.g., farming). Data may also be supplied from external sources to the system (e.g. weather information).

310. Systems can be acquired as an integrated package under one contract and from one supplier, but also on a modular basis from multiple suppliers. Furthermore, any digital elements will often be supplied by third parties and will be subjected to separate contractual arrangements (under End-user licence agreements). In a typical IoT ecosystem, therefore, the user will be in multiple contractual relationships at once. Treating these as discrete contracts, based on privity, would fail to recognise fully that the devices and digital features, and therefore the relevant contracts, are all interconnected.

311. A second example is 3D-printing. This manufacturing process combines digital elements in the form of an imaging file with a physical device, namely the 3D printer, to make a physical product, such as a component part for a larger product. It makes it possible to separate the design aspect (the imaging file) from the production aspect (the printing process), which means that instead of acquiring a finished product from a supplier, a customer might acquire an imaging file and arrange with a separate 3D printing service to print and supply the physical item. A subsequent non-conformity could be due to a number of issues, such as a problem with the file itself or the printing process. Such an arrangement could split the liability for non-conformity of the finished product between multiple parties, rather than being channelled to the final supplier. Alternatively, 3D-printing could be used by a supplier of items made to order by making arrangements with printing services in multiple locations around the world to turn a digital imaging file into a physical item, instead of centralised large-scale manufacturing and subsequent shipping of the physical item.[98] In either instance, it is arguable

[98] Cf Dov Greenbaum, Amit Gelbart and Yana Sheinberg, "Digital Delivery of Physical Goods Shipping in the 3D Printing Era – Problems and Solutions" (2017) 41 *Tulane Maritime Law Journal* 395.

that the question of how liability for a non-conformity of the physical item should be determined is more complex.

312. UNIDROIT should explore liability issues in complex digital ecosystems involving multiple contractual relationships to determine whether there is a need for action, whether in the form of additional legal rules, a legal guide on IoT/3D-printing contracts, the development of model contract terms, or a combination of several of these. If UNIDROIT were to pursue further work on network contracts (see D.2 above), as suggested elsewhere in this White Paper, this could include work on both online platforms and aspects regarding liability in complex digital ecosystems.

7. New digital contracting practices (automation)

313. Digitalisation might be used to develop new digital contracting practices. Contract formation is one aspect where digital communication technologies can be used both to facilitate negotiations between the contracting parties, and where some automation could be utilised.

314. Furthermore, distributed ledger technology (DLT), also known as blockchain technology, could be used to automate some aspects of the performance of a contract, e.g., the automation of payments when the conditions for making payment have been fulfilled. More recently, attention has turned to the automation of all aspects of the contracting process through the use of AI-based technologies, i.e., AI Agents. Thus, a business might automate its stock management system by allowing an AI agent to order stock based on a variety of parameters.

315. Much of this is already well established. Indeed, Comment 3 to Article 2.1.1 of the UNIDROIT Principles on the manner of contract formation notes that it is already "sufficiently broad to cover also cases of so-called automated contracting". Automated contracting has been addressed more specifically by UNCITRAL instruments (the Model Law on Electronic Commerce, the Convention on the Use of Electronic Communications, and the Model Law on Automated Contracting). The recently adopted Model Law addresses some aspects of automated contracting, particularly the incorporation of dynamic data (Article 6 MLAC) and the attribution of the actions of an automated system to the person using the system for the purpose of automated contracting (Article 7 of the MLAC).

316. The European Law Institute's *Guiding Principles and Model Rules on Digital Assistants for Consumer Contracts* overlap in part with aspects of the MLAC, although their primary focus is the regulation of consumer contracts concluded through the use of digital assistants as an automation technology.

317. In light of this, it might be thought unnecessary for *UNIDROIT* to develop new instruments. However, the mere fact that other bodies have moved first on these topics should not preclude *UNIDROIT* from undertaking further work on these topics. It would still be important to review existing instruments to ensure that they facilitate the automation of the contracting process, e.g., through AI systems. Whilst Article 2.1.1 UNIDROIT Principles does, in principle, acknowledge the possibility of automated contracting, there are likely to be questions about whether and how other UNIDROIT Principles provisions apply to automated contracting.

318. Furthermore, recently adopted instruments might not be exhaustive, and some matters might require further elaboration. For example, in adopting the MLAC, a specific rule on unexpected actions by an automated system is dealt with only through an optional provision

in square brackets.[99] Rules in existing laws were generally regarded as sufficient, based on the principle of non-discrimination, Article 8 was therefore offered as a more specific provision on unexpected actions by an automated system. Although this offers a solution to those countries who wish to adopt it, it seems to bear a strong resemblance to the common law treatment of unilateral mistake.

319. The challenge of unexpected decisions by an automated system is heightened by the potential use of AI systems for automation, because many AI systems are adaptive and operate in a non-deterministic manner. This means that the actions that they may take are not pre-determined. This creates the risk that some actions might be unwanted, i.e., actions which the person using the system might not have taken themselves. This is inherent in the nature of such systems. There is a risk that some actions would not only be unwanted but also unexpected and go beyond what might have reasonably been expected to fall within the range of possible actions.

320. However, notwithstanding the treatment of this issue in the MLAC, there is a considerable academic debate about the appropriateness of using existing legal rules which were designed for contracting by humans and which often rely on concepts such as knowledge or awareness, because these seem unsuited for automated contracting. It is therefore not yet a settled issue, and UNIDROIT might therefore wish to explore work on supplementary contract law rules dealing with unexpected actions by an automated system, recognising that this aspect of automated contracting might require a tailored solution. In particular, the UNIDROIT Principles, should be reviewed for their fitness for automated contracting and the issue of unexpected action. In this regard, Articles 3.2.1, 3.2.2 and 3.2.3 of the UNIDROIT Principles on mistake, might be open to amendment, or form a basis for developing a tailored solution.

321. There are other legal rules that are drafted on the basis of what might be referred to as "human features", i.e., the cognitive abilities of humans. This includes matters such as "awareness",[100] "knowledge",[101] or having received "notice",[102] as well as intention or aim. In some instance, these notions will not be easily applied where contracting is automated. It would therefore be necessary to review all the relevant provisions and to determine whether there is a need to either supplement these provisions with explanatory provisions to explain how these concepts should be applied to automated contracting, or whether clarifications in the Notes to the relevant provisions would suffice. Not every instance of these terms will necessarily require any changes; rather, each provision should be examined individually.

322. More ambitiously, it might be considered whether altogether different provisions are needed that reflect the particular features of automated contracting and the fact that a human has been removed as an active participant from the decision-making loop. This is an aspect that was ultimately omitted from UNCITRAL's MLAC, but it would merit further analysis.

323. A more complex issue arises from the possibility that automated processes might be used not only to conclude a contract on the basis of the standard terms of one of the parties, but to negotiate some or all of the terms. In addition, contracts might be designed to be dynamic even after formation and allow for ongoing adjustments to the parties' respective rights and obligations even after the contract has been concluded.

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99 Article 8 MLAC.

100 See Articles 3.2.12, 4.2, 5.1.9, 7.2.2, or 7.3.2.

101 See Articles 2.2.3, 2.2.4, 2.2.6, 2.2.7, 2.2.9, 2.2.10, 3.2.2, 3.2.8, 3.2.12, 3.2.16, 3.3.1, 4.2, 7.1.7, or 9.1.9.

102 See Articles 1.10, 2.1.6, 2.1.9, 2.2.9, 3.2.7, 3.2.9, 3.2.10, 3.2.11, 3.2.12, 5.1.8, 6.1.15, 7.1.4, 7.1.5, 7.1.7, 7.3.2, 8.3, 8.4, 9.1.7, 9.1.10, 9.1.12, 9.1.13, 9.1.15, 9.2.4, 9.3.4, and 10.1.

B. Summary of recommendations for action by UNIDROIT

324. First, it is important that all existing UNIDROIT instruments be reviewed to determine whether they remain suitable for the digital age. This concerns both the continuing relevance of existing provisions to contracting in the digital age and the potential need to develop existing instruments to ensure they remain fit for purpose in the digital age. This review should include the *Tripartite Guide*.

325. Secondly, some developments, particularly new business models and automation of contracting processes, are likely to necessitate either further clarification of existing provisions, e.g., by supplementing the Comments to the UNIDROIT Principles with additional explanations and/or illustrations. However, there are also aspects that would require the development of new provisions, whether as new instruments or by enhancing existing ones such as the UNIDROIT Principles. Particular focus should be placed on addressing the legal aspects of contract-based governance structures (e.g., online platforms) and of liability issues in complex legal ecosystems.

326. For contract automation, a review of the UNIDROIT Principles and other relevant instruments should be undertaken, with particular focus on provisions in any rules that rely on human factors, to determine whether and what changes might be required.

327. Finally, the section on electronic contracting in the *Tripartite Guide on International Commercial Contracts* should be updated in light of legislative developments affecting digital commercial contracting.

PART FOUR — THE WAY FORWARD

328. Contract law has been a central component of UNIDROIT's work throughout the Institute's century. Over time, this work has evolved from the preparation of binding uniform law instruments towards an increasingly diversified use of Principles, Model Laws, Legal Guides, model clauses and other forms of soft law. The UNIDROIT Principles remain at the centre of this work, both as an autonomous instrument for international commercial transactions and as a general contractual framework supporting the development of instruments in specialised sectors. This experience demonstrates the continuing relevance of UNIDROIT's mandate in contract law, while also illustrating the value of flexible instruments capable of responding to different legal traditions, commercial sectors, and forms of international cooperation. The White Paper accordingly considers not only the continued implementation and development of existing instruments, but also how UNIDROIT contract-law work may respond to evolving commercial practices, technological developments, and sustainability-related challenges.

329. Against this background, and on the basis of the analysis undertaken in this White Paper, the Committee identifies the following priorities and possible directions for future work.

I. PROMOTION, DISSEMINATION AND CAPACITY-BUILDING IN RELATION TO THE UNIDROIT PRINCIPLES

330. The Committee generally recommends that promotional activities continue to take account of differences in the awareness and practical use of UNIDROIT instruments across regions and professional communities. Engagement should increasingly focus on users capable of promoting practical uptake, including transactional lawyers, arbitrators, judges, in-house counsel and relevant industry specialists. The Committee draws attention to the specific recommendations in relation to organisations and institutions that should be targeted for each instrument. *(see paras. 25–26, and 100 above)*

331. With specific regard to the UNIDROIT Principles, the Committee recommends that UNIDROIT continue and strengthen its efforts to promote knowledge and practical use of the UNIDROIT Principles. Particular attention should be given to legal education and comparative contract-law teaching, as well as moot court competitions, which ensure knowledge sharing and engagement of younger generations of lawyers. The Secretariat was also encouraged to pay special attention to continuing professional development and targeted training for practitioners and adjudicators. *(See paras. 24 and 26 above)*

332. In this context, cooperation with universities and other academic institutions, arbitral centres, professional associations, and other partner organisations should remain an important component of this strategy.[103] *(See paras. 25–26 and 96 above)*

333. The Committee recommends that UNIDROIT continue to support the collection and dissemination of relevant court decisions, arbitral awards and other evidence of practical application. Existing resources such as UNILEX, together with monitoring and institutional cooperation arrangements established in relation to particular instruments, provide useful models for maintaining the connection between normative work and subsequent practice. *(See paras. 25 and 96 above)*

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[103] See, for example, the Berlin Declaration on the UNIDROIT Principles, presented at the World Congress of the International Academy of Comparative Law in Berlin on 30 September 2026, as part of an international initiative led by Prof. Eckart Brödermann and Prof. Pedro Mendoza Montano to promote the practical use of the UNIDROIT Principles.

II. FUTURE DEVELOPMENT OF THE UNIDROIT PRINCIPLES

334. The UNIDROIT Principles have demonstrated their capacity to provide a stable general framework while accommodating successive developments in international commercial practice. At the same time, the White Paper identifies a number of areas in which further analysis may be warranted. Rather than presupposing the need for a comprehensive revision of the Principles, a future exercise should begin by identifying whether particular developments require action, which could range from explanatory documents developed with the assistance of experts, to the further development of the Tripartite Legal Guide, to introducing additional clarification or supplementation of the comments and illustrations, to amendments or additions to the black-letter provision themselves. Such an approach would preserve the stability and accumulated authority of the UNIDROIT Principles while allowing them to remain responsive to contemporary commercial practice.

A. Good faith and fair dealing

335. The Committee recommends further work to clarify the scope of good faith under the UNIDROIT Principles, particularly in its interaction with agreed contract terms. This work would involve (i) a systematic analysis of how the Principles give effect to good faith in different contexts, (ii) a critical comparison with commercial contract practice, and (iii) an assessment of how any tension between the two could be addressed. *(See paras. 51–52 above)*

336. The Committee recommends establishing an Expert Group to carry out this work. The Group could identify provisions for which supplementing the Comments would help clarify the relationship between the relevant rule and the agreed terms. *(See paras. 52 and 57 above)*

337. The Committee recommends clarifying the scope of good faith in the context of the UNIDROIT Principles. This work could draw on the approaches taken in the project on International Investment Contracts and in the PRICL, taking account of the specific features of those contracts. The clarification may also be significant for those instruments. Further work on the interaction between good faith and agreed terms in specific contract types, such as construction contracts, could be pursued in parallel or at a later stage. *(See paras. 58 and 61–63 above)*

B. Contractual networks and increasingly complex contractual structures

338. Modern commercial activity increasingly relies on multiple, functionally interconnected contractual relationships, including in supply chains, distribution systems, construction projects, digital platforms and other commercial ecosystems. The Committee recommends that UNIDROIT consider further developing the UNIDROIT Principles to address contractual networks more explicitly, whether through additional comments, new provisions, or a dedicated Chapter. Future work could consider, inter alia, whether the functional interdependence of contracts within a network, including an identifiable "network purpose", should be expressly recognised, while preserving the primacy of party consent and ensuring coordination with related UNIDROIT instruments. *(See paras. 64, 68–71 above)*

339. Such work could address, among other matters, the consequences of performance, non-performance, modification or termination across interconnected contracts; information and cooperation duties; risk allocation; and the coordination of multi-party disputes. Any future work should preserve the primacy of party consent and should be coordinated with related UNIDROIT work, with particular regard to the specific provisions already included in new projects such as the one on international investment contracts but also UNIDROIT previous and

potentially future work on franchising, global value chains, digital platforms, construction and engineering contracts and other forms of complex contractual organisations. *(See paras. 65, 67 and 71 above)*

C. Standard terms and contractual imbalance in B2B relationships

340. The Committee suggests that the UNIDROIT Governing Council place the topic on its agenda and consider whether developments in national and international law warrant the inclusion in the UNIDROIT Principles of a general provision on unfair non-negotiated standard terms, or whether particular relationships of dependency should instead be addressed through targeted rules in specific instruments. Any such B2B provision should be applied only exceptionally: it should concern terms unilaterally imposed in circumstances of structural imbalance, economic dependence, or a lack of realistic alternatives, and only where they create a significant imbalance contrary to good faith and fair dealing. The threshold should be distinctly higher than in consumer contracts, requiring a gross or manifest deviation from good commercial practice. *(See paras. 76–77 above)*

D. Sustainability and contract law

341. The Committee identifies the interaction between sustainability-related contractual obligations and general contract law as an area warranting continued examination. The White Paper identifies a number of provisions of the UNIDROIT Principles that may already be relevant to sustainability-related obligations, including rules on cooperation, performance, and remedies, while also raising the question whether additional clarification or development may be useful. *(See paras. 78–80 above)*

342. The Committee recommends that any further work first assess the extent to which existing provisions and Comments are capable of addressing these issues and whether clarifications and interpretative guidance in the Comments would be useful and sufficient before considering amendments to the Principles. Particular care should be taken to preserve the general character of the UNIDROIT Principles and to distinguish issues appropriate for a general contract-law instrument from those more appropriately addressed in specialised work on sustainability and global value chains. *(See paras. 78, 82–83 above)*

E. Digitalisation and new contracting practices

343. The Committee recommends that UNIDROIT undertake a review of its existing contract-law instruments, beginning with the UNIDROIT Principles, to assess whether they remain fit for purpose in light of developments in digital contracting. The review should distinguish between provisions that remain adequate, matters for which additional comments, illustrations or guidance would be sufficient, and areas in which amendments or new provisions may warrant consideration. *(See paras. 286–287 above)*

344. The Committee recommends that particular attention be given to contracts in which data constitutes all or part of the counter-performance; contract-based governance structures such as online platforms; liability allocation in interconnected digital ecosystems; and automated contracting, including provisions formulated by reference to human attributes such as knowledge, awareness, intention or receipt of notice. *(See paras. 299 and 320 above)*

345. The Committee further recommends that the electronic contracting section of the Tripartite Legal Guide be reviewed in light of subsequent legal and technological developments. Any work undertaken in this field should be coordinated with relevant work of UNCITRAL, the HCCH and other organisations, with UNIDROIT concentrating on areas in which its expertise in

substantive private law and general contract law can provide distinct added value. *(See paras. 288 and 326 above)*

III. IMPLEMENTATION AND FURTHER DEVELOPMENT OF SECTOR-SPECIFIC INSTRUMENTS

A. Principles of Reinsurance Contract Law

346. Following completion of the 2025 edition of the PRICL, the Committee recommends that immediate priority be given to its dissemination, practical application and engagement with the international reinsurance community. UNIDROIT should continue to cooperate with the PRICL Project Group, academic institutions, industry organisations, arbitral institutions and practitioners. Particular attention should be given to translations, training and educational activities, dissemination of relevant arbitral and judicial practice, and monitoring of implementation. *(See paras. 96, 98, 106 and 111 above)*

347. The Committee further recommends that possible future normative development—including model clauses, additional guidance or other instruments—be assessed in light of experience gained from the practical use of the PRICL and demonstrated demand from the reinsurance sector. *(See paras. 116, 121 and 127 above)*

348. The Committee recommends that future work proceed in stages, beginning with possible Model Clauses and later considering a Legal Guide or even a Model Law. *(See paras. 116, 121 and 127 above)*

B. Franchising

349. The Committee recommends that UNIDROIT consider renewed work on franchising contracts in light of developments since the adoption of its existing instruments. Further study should examine issues extending beyond pre-contractual disclosure, and master franchise agreements, with a view to assess whether the increasing diversity of national approaches creates sufficient need for further international harmonisation. *(See paras. 144–145 and 148 above)*

350. Should further work be pursued, the Committee recommends that the appropriate form of the instrument—including possible Principles, a Model Law or other guidance—be determined following comparative analysis, assessment of feasibility and consultation with relevant stakeholders. *(See paras. 151–153 above)*

C. International Investment Contracts

351. The ongoing UNIDROIT–ICC project on Principles and Model Clauses on International Investment Contracts represents an important application of the UNIDROIT Principles methodology to a specialised field of international contracting. The immediate priority should be the successful completion and adoption of the instrument and the preparation of an implementation and dissemination strategy capable of supporting its practical use. *(See para. 195 above)*

352. Following adoption, the Committee recommends consideration of authoritative translations, engagement with States and practitioners, integration into model contracts and relevant toolkits, training activities, digital dissemination and mechanisms for monitoring

emerging practice and collecting relevant contractual and adjudicative experience. *(See paras. 196–201 above)*

IV. PREPARATION OF INSTRUMENTS UNDER CURRENT PROJECTS

A. Construction and Engineering Contracts

353. The newly approved project on international construction and engineering contracts provides an opportunity to build on the general framework of the UNIDROIT Principles while responding to the specific characteristics of complex, long-term and multi-party projects. In developing the project, particular attention should be paid to issues identified in this White Paper, including design liability and professional risk, variations and cumulative scope change, supervening events and adaptation, contractual time bars, the role of the contract manager or engineer, and multi-tier dispute resolution mechanisms. *(See paras. 244–247 above)*

354. The Committee recommends that this project should be developed in close cooperation with relevant industry and professional organisations and should remain attentive to the relationship between standard contractual practice and general principles of international commercial contract law. Its development may also provide useful experience for the broader questions identified elsewhere in this White Paper concerning contractual networks, cooperation obligations and the interaction of multiple contracts within a single economic project. *(See paras. 246 and 253 above)*

B. Corporate Sustainability Due Diligence in Global Value Chains

355. The dedicated UNIDROIT project provides a more specific framework for addressing the contractual dimension of sustainability due diligence. Future work should continue to focus on practical private-law tools capable of assisting parties, legislators, and policymakers in structuring contractual relationships throughout global value chains, while paying particular attention to cooperation, proportionality and the allocation of responsibilities among participants with different levels of bargaining power and resources. *(See paras. 224 and 227 above).*

356. The future form of this work should remain sufficiently flexible to take account of the rapidly changing regulatory and market environment. The potential contribution of a Legal Guide, model clauses, or possibly of a model law should be evaluated in light of their practical utility, interaction with existing international standards, and capacity to remain relevant across different jurisdictions and stages of economic development. *(See paras. 231–232 and 239 above).*

V. DIGITALISATION AND NEW TECHNOLOGIES

357. First, it is important that all existing UNIDROIT instruments be reviewed to determine whether they remain suitable for the digital age. This concerns both the continuing relevance of existing provisions to contracting in the digital age and the potential need to develop existing instruments to ensure they remain fit for purpose in the digital age. This review should include the *Tripartite Guide*.

358. Secondly, some developments, particularly new business models and automation of contracting processes, are likely to necessitate either further clarification of existing provisions, e.g., by supplementing the Comments to the UNIDROIT Principles with additional explanations and/or illustrations. However, there are also aspects that would require the development of

new provisions, whether as new instruments or by enhancing existing ones such as the UNIDROIT Principles. Particular focus should be placed on addressing the legal aspects of contract-based governance structures (e.g., online platforms) and of liability issues in complex legal ecosystems.

359. For contract automation, a review of the UNIDROIT Principles and other relevant instruments should be undertaken, with particular focus on provisions in any rules that rely on human factors, to determine whether and what changes might be required.

360. Finally, the section on electronic contracting in the *Tripartite Guide on International Commercial Contracts* should be updated in light of legislative developments affecting digital commercial contracting. (*See paras. 283-327 above*).

VI. COORDINATION AND PRIORITISATION OF FUTURE WORK

361. The range of issues identified in this White Paper reflects both the breadth of UNIDROIT's existing work in contract law and the continuing transformation of international commercial practice. Not all of the possible areas identified require the development of a new legal instrument. In several areas, further comparative research, monitoring of legal and commercial developments, clarification of existing instruments or the preparation of practical guidance may provide a more appropriate response.

362. Future work should therefore be approached incrementally. In considering possible normative development, UNIDROIT should take account of demonstrated practical demand, the maturity of the relevant legal and commercial developments, UNIDROIT's comparative advantage in the harmonisation and modernisation of private law, consistency with its mandate, available institutional resources and the work of other international organisations. Cooperation with partner organisations should continue to be pursued where it can improve substantive expertise, stakeholder participation and the prospects for implementation.

363. The recommendations contained in this White Paper are intended to identify possible strategic directions for UNIDROIT's future work in contract law. Recommendations concerning new normative projects or the revision of existing instruments should be considered through the Institute's established procedures for the preparation and approval of its Work Programme and should not be understood as prejudging decisions to be taken by the Governing Council or the General Assembly.