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GOVERNING COUNCIL
92nd session
Rome, 8-10 May 2013

UNIDROIT 2013
C.D. (92) 8
Original : English
March 2013

**Item No. 8 on the agenda: Third party liability for Global Navigation Satellite System
(GNSS) Services**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Information on developments in 2012</i>
<i>Action to be taken</i>	<i>The Council is requested to authorise the Secretariat to proceed as proposed</i>
<i>Mandate</i>	<i>C.D.(88) 17, p. 13</i>
<i>Priority level</i>	<i>Medium / Low</i>
<i>Related documents</i>	<i>C.D.(86) 20, 22; C.D. (87) 23; C.D. (88) 7 Add. 4; C.D. (89) 7 Add. 1; C.D. (90) 6 rev.; C.D. (91) 6</i>

INTRODUCTION

1. In 2005, the Governing Council of UNIDROIT was seized of a proposal to examine the possibility of preparing an international instrument for liability resulting from GNSS malfunctioning.
2. In the years that followed, the positions for and against were advocated respectively by Messrs Sergio Carbone¹ and Hans-Georg Bollweg,² both members of the UNIDROIT Governing Council, the first difference between these positions being whether or not GNSS malfunctioning should be regulated at global level or at regional level, the second relating to the type of regime that might apply and consequently the type of instrument that should be prepared.

¹ Carbone S.M. - E. De Maestri, "The Rationale for an International Convention on Third Party Liability for Satellite Navigation Signals", in: *Uniform Law Review*, 2009, 38

² Bollweg H.G., "Initial considerations regarding the feasibility of an international UNIDROIT instrument to cover liability for damage caused by malfunctions in global (navigation) satellite systems", in: *Uniform Law Review*, 2008, 917

3. At its 88th session (Rome, 20-23 April 2009), the Governing Council entrusted the Secretariat with the preparation of a feasibility study focusing on gaps in liability resulting from the malfunctioning of satellite-based navigation systems.³ The study illustrated the situation as regards the different services available and the work that had already been done by other organisations such as the ICAO. The Governing Council considered that study at its 89th session (Rome, 10 – 12 May 2010).⁴ After a discussion, the Council confirmed the interest of the subject and recommended its inclusion in the triennial Work Programme of the Institute. The Council further invited the Secretariat to conduct informal consultations with the Governments and other organisations concerned, with a view to ascertaining the feasibility of the project.⁵

4. In compliance with this request, between 2010 and 2011 the UNIDROIT Secretariat organised three informal consultation meetings, all held in Rome.⁶

5. In the course of the third meeting participants were informed of the preparation by the EU Commission of an impact assessment intended to evaluate the need for a European regulation on the liability of GALILEO. The decision of the Commission whether or not to proceed with the drafting of a regulation would be based on that impact assessment. This information was met with the interest of the participants, who felt that its publication would assist in bringing the discussion forward. The Secretary-General suggested that after the impact assessment had become available, the Secretariat might organise another round of consultations of informal nature. The publication of the impact assessment was postponed a couple of times in the course of the year, first till November 2012, then to March 2013. At the time of writing (March 2013) the most recent indication is that the impact assessment will be issued in May 2013.

CONCLUSION

6. In consideration of the above, the year 2012 was a year of waiting, above all by reason of the importance attached to the EU impact assessment for the decision to be taken within UNIDROIT on the continuation of work.

7. In general, however, it may be observed that the increased number of uses of GNSS services lead to the conclusion that to have a complete picture permitting a final decision on whether or not work should be brought a stage further in UNIDROIT, it would be necessary to sound out a number of other sectors: the road sector, agriculture, financial services, but also location based services (LBS).

8. In addition, other aspects of the problems raised by GNSS services would need to be further investigated, such as the problem of the schematised identification of the defendant (channelling), the questions of competence, applicable law, the lifting of State judicial immunity and the rights of (internal) recourse.

9. It is suggested that the aspects of the problem so far not examined in depth be further investigated and that the results of this research, together with the conclusions of the EU impact assessment, be discussed at the next informal meeting, which could be held in the autumn of 2013 with the participation of the sectors so far not sounded out.

10. *The Council is requested to authorise the Secretariat to proceed in the manner proposed.*

³ See the Report on the session, document C.D.(88) 17, para. 65.

⁴ Document C.D.(89)7 Add. 1 (2010); also issued as: UNIDROIT Secretariat, "An instrument on third party liability for damages caused by Global Navigation Satellite System services: a preliminary study", (Study LXXIX – Preliminary Study (2010)).

⁵ See the Report on the session, document C.D.(89) 17, para. 96.

⁶ For a report on the three meetings, see document C.D. (91) 6.