



EN

GOVERNING COUNCIL
97th session
Rome, 2-4 May 2018

UNIDROIT 2018
C.D. (97) 10
Original: English
February 2018

**Item No. 10 on the agenda: International Sales Law –
Preparation of a guidance document on existing texts in the area of international
sales law in cooperation with UNCITRAL and The Hague Conference on Private
International Law**

(prepared by the Secretariat)

<i>Summary</i>	<i>First report on the project</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>High</i>
<i>Related document</i>	<i>UNIDROIT 2018 – C.D. (97) 2</i>

I. HISTORY AND STATUS OF THE PROJECT

1. On 14 December 2015, the Secretariat received a communication from the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) inviting UNIDROIT and the Hague Conference on Private International Law to cooperate on a project for the “creation of a roadmap to the existing texts in the area of international sales law (sales contracts) prepared by each organisation, primarily the CISG, the UNIDROIT Principles, and the Hague Principles, and providing an assessment of interactions between the texts, their actual and potential use, application, and impact, all with the goal to facilitate promotion of their appropriate use, uniform interpretation, and adoption.”

2. The Governing Council decided to recommend this topic for inclusion in the UNIDROIT Work Programme for the triennium 2017-2019 by the General Assembly, and proposed to assign it a high level of priority. The General Assembly endorsed this recommendation at its 75th session, on 1 December 2016.

3. During 2017, the three Secretariats devised an outline of the Guide and, in the interest of representing different legal traditions and geographic regions, they identified a small joint panel of experts of international commercial contracts law and/or private international law to produce it. The project study group is now composed of Professors Neil B. Cohen (Brooklyn Law School, the United States of America), Lauro Gama Jr (Pontifícia Universidade Católica do Rio de Janeiro, Brazil), Hiroo Sono (Hokkaido University, Japan), Pilar Perales Viscasillas (Universidad Carlos III de Madrid, Spain), and Stefan Vogenauer (Max Planck Institute for European Legal History, Germany).

4. The small joint group established by the three organisations held a teleconference on 18 July 2017 to agree upon an outline and timeline for the Guide. The group agreed to hold its first face-to-face meeting, kindly hosted by Professor Stefan Vogenauer in Frankfurt on 25 October 2017. The Group of Experts as well as representatives of the three Secretariats - UNIDROIT Secretary-General *a.i.* Prof. Anna Veneziano, Mr Luca Castellani (Legal Officer - UNCITRAL), Ms Ning Zhao (Senior Legal Officer - HCCH) - met with the aim to clarify scope, methodology and timeline of the project.

5. The very fruitful meeting permitted the group to agree on the table of contents of the guide: Introduction, Determination of the Law Applicable to International Commercial Contracts, Substantive Law of Sales, Recurring Legal Issues Arising in connection with Sales Contracts, Guidance for Specific Business Sectors, each chapter to be assigned to a sub-group.

6. The three Secretariats also agreed to consult relevant stakeholders, including associations of judges and practitioners, for comments before seeking formal approval of their respective governing bodies. In this context, it was suggested that a first version of the draft guide be presented at the International Bar Association Annual Conference in Rome (October 2018). As far as the timeline of approval of the Guide is concerned, UNCITRAL expressed the wish to have the finalised text, including the consultation period, approved by its organs by July 2020, in conjunction with the 40th Anniversary of the CISG. The three Secretariats agreed on this timeline; a consolidated draft should be however produced by the Experts and ready for distribution to the UNIDROIT Governing Council by May 2019.

7. The project will be next discussed at the Meeting of the Council on General Affairs and Policy of The HCCH (13-15 March 2018). Kindly refer to the Annexed document for further details. The Governing Council shall receive an oral report on any progress achieved in the interim period.

II. ACTION TO BE TAKEN

8. *The UNIDROIT Secretariat would invite the Governing Council to take note of the developments in relation to Preparation of a guidance document on existing texts in the area of international sales law in cooperation with UNCITRAL and The Hague Conference on Private International Law.*

Council on General Affairs and Policy of the Conference – March 2018

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	No 6 of December 2017
Title	The development of a Guide to uniform legal instruments in the area of international commercial contracts (with a focus on sales)	
Author	Permanent Bureau	
Agenda item	[To be determined]	
Mandate(s)	C&R No 23 of the 2016 Council on General Affairs and Policy C&R No 17 of the 2017 Council on General Affairs and Policy	
Objective	To report on the progress made on the project	
Action to be taken	For Approval <input checked="" type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/>	
Annexes		
Related documents		

A. Introduction

1. At its March 2016 meeting, the Council on General Affairs and Policy (Council) directed the Permanent Bureau (PB) of the Hague Conference on Private International Law (HCCH) to co-operate with the Secretariats of UNCITRAL and UNIDROIT in preparing an explanatory text in the area of international commercial contracts law (with a focus on sales).¹ Following up on the Council's mandate, the PB undertook the project in co-operation with the two Secretariats and at the March 2017 Council meeting reported orally on the progress made.

2. Based on this report, the Council directed the PB to continue co-operation with the Secretariats of UNCITRAL and UNIDROIT and the designated experts in the drafting of the text.² The purpose of this document is to inform Council on progress made so far and to seek endorsement from Council with regard to the timeline for the finalisation of the project.

B. Progress to date

3. In 2015, the Secretariat of UNCITRAL discussed with the PB and the secretariat of UNIDROIT the possibility of co-operating in preparing an explanatory text in the area of international commercial contracts law (with a focus on sales). The goal of this project is to further promote the adoption, application and uniform interpretation of the instruments of the three Organisations in the area of international commercial contracts law, by listing and summarising their relevant instruments in this area. In particular, the intended outcome of the project, a *Guide to Uniform Legal Instruments in the Area of International Commercial Contracts (with a focus on sales)* (Guide), will illustrate how the various instruments of the three Organisations interact and provide a comparative understanding of the coverage and basic themes of each instrument. The project is a continuation of the long-lasting co-operation between the three Secretariats in the field of common interests.

4. The Guide will be a practical and useful tool for various sectors, including legislators, judiciaries, practitioners and private enterprises. To this end, the Guide will be written in straightforward language and include flowcharts in each chapter. The Guide will not require any new legislative work, instead it will simply analyse existing instruments that are available in the relevant field.

5. The Guide will deal with both instruments on substantive law of sales as well as those on private international law. In this respect, the *Hague Principles on Choice of Law in International Commercial Contracts* (Hague Principles) will be addressed in detail; to some extent, the *Hague Convention of 30 June 2005 on Choice of Court Agreements* will also be touched upon. Substantive law of sales will include UNCITRAL instruments, such as, the *United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)* (CISG), the *United Nations Convention on the Limitation Period in the International Sale of Goods (New York, 1974)*, and the *UNIDROIT Principles of International Commercial Contracts*. The Guide will also contain regional instruments and models or guiding texts developed by other organisations, such as the ICC Model International Sale Contract and the ITC Model Contracts for Small Firms.

6. With a view to representing different legal traditions and geographical backgrounds, the three Secretariats identified a group of experts in the fields of international commercial contracts law and / or private international law to carry out this project. The following five final candidates, all of whom expressed a great interest in the project, were invited to contribute:

- Professor Neil B. Cohen (Brooklyn Law School, the United States of America),
- Professor Lauro Gama Jr (Pontificia Universidade Católica do Rio de Janeiro, Brazil),
- Professor Hiroo Sono (Hokkaido University, Japan),
- Professor Pilar Perales Viscasillas (Universidad Carlos III de Madrid, Spain),
- Professor Stefan Vogenauer (Max Planck Institute for European Legal History, Germany).

¹ See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (15-17 March 2016)", C&R No 23.

² See "Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference (14-16 March 2017)", C&R No 17.

7. Following up on various communications among the Secretariats and experts, the first in-person meeting was held on 25 October 2017 in Frankfurt, Germany, to formally kick off the project. The meeting was productive and fruitful. The experts developed a detailed Table of Contents, containing the following five chapters:

- Introduction
- Determination of the Law Applicable to International Commercial Contracts
- Substantive Law of Sales
- Recurring Legal Issues Arising in connection with Sales Contracts
- Guidance for Specific Business Sectors (optional).

They also confirmed the division of tasks and agreed on a number of important practical matters in the drafting of the Guide. The experts will work in sub-groups on different chapters.

8. To enhance the usefulness of the Guide and ensure its wide outreach, the three Secretariats agreed to consult relevant stakeholders, including associations of both judges and practitioners, for comments before seeking the formal approval of their respective governing bodies. As a result, it has been tentatively decided that the draft Guide, at least in a consolidated version, will be presented at the IBA Annual Conference in October 2018 in Rome. The three Secretariats are in the process of identifying and contacting other stakeholders for comments.

9. The timeline of the project was also discussed at the Frankfurt meeting. The UNCITRAL Secretariat is of the view that the Guide can best be adopted at its 53rd Commission Session in July 2020, in conjunction with the commemoration of the 40th anniversary of the CISG. The UNIDROIT Secretariat expressed the same preference for 2020 to present a revised draft to its Governing Council for approval. Given the planned consultation process with the stakeholders, the availability of the experts for finalising the Guide, and in particular in light of the clear priority to be attributed to the project of developing a Convention on the recognition and enforcement of foreign judgments in civil or commercial matters, the PB also prefers that the draft Guide be submitted to Council for approval at its meeting in 2020.

10. Based on the foregoing considerations, the Secretariats and experts agreed on the following tentative timelines.

- end of March 2018: experts to submit the first draft to the full Experts' group;
- end of April 2018: comments on the first draft among the Experts' group;
- end of May 2018: consolidation of all comments and circulation of the consolidated first draft to the stakeholders;
- October 2018: organisation of a panel during the IBA Annual Conference in Rome;
- May 2019: submission of a revised draft to the UNIDROIT Governing Council in March 2019 for consideration and comments in May 2019;
- March 2020: submission of a further revised draft to the HCCH Council at its meeting in 2020 for approval;
- May 2020: submission of a further revised draft to the UNIDROIT Governing Council for formal approval;
- July 2020: formal adoption of the Guide in the framework of the CISG 40th anniversary celebrations at UNCITRAL.

11. The PB will be pleased to share the provisional versions of the Table of Contents and of available texts with any interested Member and would welcome any feedback that Members would be in a position to provide at any stage of the project.

C. Suggested next step

12. In line with the above, the Permanent Bureau invites Council to approve the suggested timeline for the finalisation of the Guide.