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Work Programme

Possible future work on climate change mitigation, adaptation and resilience

Note by the Secretariat

Contents

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I. Introduction

1. This document reproduces comments received from international governmental and non-governmental organizations on the proposals for a possible contribution by UNCITRAL to the efforts of the international community to combat climate change and mitigate its effects and, in particular, to the findings and recommendations of the study on private law aspects of climate change that the secretariat had commissioned from an outside expert, professor Géraud de Lassus St-Geniès, of Laval University in Québec (Canada) and that were summarized in a note by the Secretariat on the desirability and feasibility of undertaking work in this area (A/CN.9/1120 and A/CN.9/1120/Add.1). The Commission considered that note at its fifty-fifth session (New York, 27 June–15 July 2022).

2. The comments are reproduced in the order in which they were received. For purposes of consistency and to facilitate their consideration by the Commission, the comments have been slightly edited and reformatted.

II. International governmental organizations

Secretariat of the United Nations Framework Convention on Climate Change

[Original: English]
[20 April 2023]

Private law can play a significant role in the fight against climate change and help create a more favourable environment for climate-friendly investment by providing more clarity, uniformity, and predictability in the area of carbon trading.

The development of international guidance on the private law treatment of carbon credits could represent a useful contribution to improve the operation of the Paris Agreement. Its article 6 establishes three cooperative approaches that have the potential to significantly contribute to the goals of the Paris Agreement. In particular, article 6.4 of the Agreement establishes an international mechanism which will issue emission credits against mitigation outcomes that meet internationally defined quality standards. The mechanism is governed by an international supervisory body under the guidance of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA). The effectiveness of the A6.4 mechanism would benefit from guidance and increased clarity on the national implementation of the mechanism and on the legal status of the standards defined at international level and not subject to a national regulator.

Given the wide spectrum of countries that may benefit from this work, the UNFCCC secretariat welcomes the willingness of an organization of the United Nations system with universal membership to carry out work in this area. I appreciate your invitation to contribute to the work UNCITRAL is proposing on private law aspects of carbon markets and to participate to the colloquium it is organizing on 13–14 July 2023 in Vienna. I am pleased to confirm that a representative from the UNFCCC secretariat will participate to the colloquium and that the secretariat is interested in contributing to the proposed work within its available resources.

III. International non-governmental organizations

A. Net Zero Lawyers Alliance (NZLA)

[Original: English]
[2 May 2023]

1. The Secretariat of the Net Zero Lawyers Alliance (NZLA), a UNFCCC Race to Zero Accelerator coalition of over 100,000 international commercial lawyers, offers its additional observations to supplement the Note.

2. The Study findings and recommendations focus predominantly on carbon offset and trading and carbon capture, and to a lesser extent, corporate compliance laws implementing the Task Force on Finance Related Climate Disclosure (TCFD). The NZLA encourages any UNCITRAL work programme to focus on the best way to utilise private law instruments to promote, facilitate and accelerate global investment into (and align global finance flows) new low-carbon energy, infrastructure, land use and industrial systems and away from incumbent high emitting activities and systems.

3. First, regarding investment in transition, OECD, GFANZ and others have indicated that $7 trillion (per annum) of new investment is required globally to transition energy, infrastructure, land use and industrial systems to net zero GHG emissions by 2050, with a 45 per cent reduction by 2030 (62 per cent in energy systems). New investment is required at every stage in the energy cycle and supply chain, including raw materials, as well as improving efficient use of electricity. A Just Transition is the reduction of greenhouse gas emissions in a manner that enables States to adapt to meet workers' needs.

4. Transition of global energy, infrastructure, land use and industrial systems – and alignment of global finance flows with the Paris Agreement goals – engages global investment and trade activity, policy and associated laws at different levels:

(a) 197 States parties have committed to transition pursuant to the United Nations Framework Convention on Climate Change and the Paris Agreement, guided by the Paris Rulebook and Glasgow Pact (administered by the UNFCCC);

(b) State parties implement bottom-up commitments through nationally determined contributions implemented by domestic policy, legislation and regulation and jurisprudence;

(c) Private law, supported by international trade and investment law conventions, including the CISG, New York Convention, various model laws and contracts and international dispute resolution mechanisms, provides a legal framework for mobilizing cross-border investment (administered by UNCITRAL).

5. UNCITRAL instruments and guidance assist States in facilitating development and attracting foreign direct investment. In order to align inbound and outbound foreign direct investment with the Paris Agreement, it is appropriate to conduct a stocktake of existing instruments. UNCITRAL instruments and guidance should maximize the opportunity to facilitate and accelerate transition through the application of private law in international investment and trade.

6. To that end, the Note deals briefly with Public Procurement (#B.20 to #B.22) and Public Private Partnerships (#B.23 to #B.27). Both could and should be expanded to ensure that the Work Programme fully explores how private law might facilitate investment in the transition to net zero. Public procurement guidance could incorporate best practices on accounting for carbon in supply chains as well as apportioning contractual risk and responsibility for embedded carbon in new infrastructure projects.

7. Secondly, the Note raises international commercial arbitration (#B.17 to #B.19), although citing primarily to investor-State treaty arbitration. International commercial arbitration frequently involves States parties or State-owned or regulated resources,

property and infrastructure. This “mixed” international commercial arbitration warrants careful consideration, insofar as it impacts States parties’ commitments under the Paris Agreement.

8. Enforcement of investment agreements in transition in energy, infrastructure, land use or industrial systems needs to comply with applicable laws, including but not limited to the mandatory law of the place of performance and place of registration of the investor (as well as the law of the contract and arbitration agreement). Increasingly, these laws incorporate climate change-related obligations; new climate change-related legislation, regulation, and jurisprudence are steadily increasing.

9. However, the current scope for review of awards by domestic courts for failure to apply the law is extremely narrow and limited. This is a symptom of a strong, pro-enforcement approach toward arbitral awards encouraged by UNCITRAL. This insulation is critical for facilitating investment and certainty. However, there is potential for conflicting public international law norms and arbitration must not become a vehicle through which investors are able to circumvent climate laws.

10. Thirdly, investor-State dispute settlement reform (as opposed to international commercial arbitration) is an area that could be included in the Work Programme. The recent work on the Energy Charter Treaty Modernisation demonstrates the level of concern surrounding the protection of investment in high carbon-emitting activity that State governments are increasingly phasing out as they implement their Paris Agreement commitments.

11. Arguably, that process did not fully explore the opportunity for utilizing investment promotion, protection and facilitation to scale up the necessary investment in low-carbon energy infrastructure and the commensurate and equally necessary investment in phasing down incumbent energy infrastructure. This leaves a gap for UNCITRAL to take the work further. Ultimately, ISDS may be able to play a key role in dealing with this in a measured and objective manner, properly reflecting the confluence of public and private international law and the resolution of conflicting public international law norms.

12. Fourthly, in addition to existing work and core instruments within Working Groups I, II and III, the Work Programme could also consider additional developments in types of investment activity that are critical to the transition to net zero. New areas could consider the role of private law in:

(a) Aligning finance flows using blended public and private finance models;

(b) Establishing/implementing carbon accounting standards across project infrastructure;

(c) Regulating critical mineral and metal allocation, extraction and processing;

(d) Accelerating climate change-related technology sharing through model licensing agreements providing for classification of “climate essential” technology, the establishment of a pricing formula (e.g. fair, reasonable and non-discriminatory), and appropriately tailored dispute resolution mechanisms that provide expertise and efficiency;

(e) Examining investment ownership structures that permit appropriate representation of local communities and indigenous peoples in governance decisions; and/or

(f) Considering insolvency laws and the impact of climate change-related liability in transnational insolvency proceedings (Working Group V).

13. Fifthly, the Note (#A.10 to #A.34) focuses primarily on carbon trading (Working Group II and Working Group IV). The NZLA agrees that there is an important role for private law in regulating contracts, rules and guidance through the life cycle of generating, accrediting, trading and retiring carbon units (as it presented to UNCITRAL in 2021). Carbon offsetting is indeed an important element in transition.

14. However, the transition to meet the Paris Agreement goal of climate change mitigation first and foremost requires GHG reduction. Successful transition requires investment in two aspects of GHG reduction: (i) scaling up low GHG-emitting energy, infrastructure, and use and industrial systems; and (ii) phasing down (and ultimately out) existing high GHG-emitting systems. Offsetting and capturing GHG removal are secondary (and temporary) where reduction is not yet achievable.

15. Carbon trading falls within various existing instruments and mechanisms:

(a) Article 6 of the Paris Agreement adopts certain accounting standards for States parties to offset their own GHG emissions to meet their nationally determined contributions (NDCs), permitting State-to-State trading and some further trading by States to non-States parties;

(b) National laws may implement carbon pricing mechanisms in the form of domestic taxes, direct or indirect subsidies or incentives (including carbon border adjustment mechanisms (CBAM)), and emissions trading schemes (ETS). ETS may permit offsetting and trading of offsets;

(c) Private law (contracts and voluntary rules and protocols) establish and govern voluntary carbon markets, which operate by private party consensus, largely independent of Article 6 and domestic carbon pricing mechanisms (tax and ETS). To date, the voluntary carbon markets remain unregulated and subject entirely to private enforcement through contracts and choice of arbitration or court proceedings.

16. The voluntary carbon market has raised integrity concerns regarding both project accreditation and claims by users to meet voluntary GHG emission reduction commitments. The Integrity Council for Voluntary Carbon Markets (ICVCM), formerly TSVCM, referred to in the Note (#A.13), recently published Core Carbon Principles to regulate accreditation (https://icvcm.org/). The Voluntary Carbon Markets Initiative (VCMI) has issued claims standards and guidance to regulate claims by users (https://vcmintegrity.org/). Neither have tackled standardization of end-to-end, carbon unit cycle contractual terms, governing law/s and/or dispute resolution. These are aspects that UNCITRAL is extremely well-positioned to consider, as suggested in the Note (#A.22) by reference to the “bundle of private contractual rights”.

17. Sixthly, other than the possible application of governing domestic law in enforcement of private law rights and obligations (primarily under investment agreements), the NZLA does not currently consider national carbon reporting, target setting and compliance regimes pursuant to TCFD or similar to be an obvious workstream for UNCITRAL. It is already the subject of considerable workstreams, initiatives and allocation of resources through other forums, including the UNFCCC Race to Zero platform, a new ISSB standards authority and the UNSG.

18. In conclusion, an UNCITRAL Work Programme on climate change mitigation (transition of energy, infrastructure, land use and industrial systems to net zero), adaptation and resilience is critical and increasingly urgent. UNCITRAL has a clear role in facilitating private investment and trade in accordance with uniform and consistent private laws and legal instruments.

19. In the light of this supplemental Note, the Commission may also wish to consider:

(a) Whether it is a viable option for it not to undertake, at minimum, a thorough and comprehensive stocktake of all existing UNCITRAL instruments impacting or potentially impacting international trade and investment in energy, infrastructure, land use and industrial systems that are required to transition to net zero emissions;

(b) The scope of work relating to existing instruments and activities (e.g. carbon emission reduction investment activity and aligning existing UNCITRAL instruments to promote and facilitate that critical path);

(c) The scope of additional work relating to potential new instruments or activities (including but not limited to new guidance) and a process for reporting recommendations for prioritizing further work; and

(d) The timetable for the comprehensive stocktake, report and recommendations in respect of existing and new activities and instruments.

20. The NZLA Secretariat and members have conducted considered research and analysis into the role of international economic law, particularly regarding the confluence of public and private international law in the global transition to net zero. The NZLA remains at the service of the Commission and secretariat and encourages its serious consideration of this critical new potential work programme.

B. International and Comparative Law Research Center

[Original: Russian]
[2 May 2022]

1. Since 2020, UNCITRAL has been examining the private-law aspects of the impact of climate change on the investment and business activities of companies from two perspectives:

(a) How existing UNCITRAL texts could be aligned with climate change mitigation, adaptation and resilience goals;

(b) Whether further work could be done by UNCITRAL to facilitate those goals in the implementation of its existing texts or in the development of new texts.

2. Among the issues identified in documents A/CN.9/1120 and A/CN.9/1120/Add.1 of the UNCITRAL secretariat that could be considered are the definition of the legal nature of carbon assets and the development of uniform/unified rules for the effective operation of carbon markets, including their operation across borders, with a view to achieving the objectives of the Paris Agreement.

3. The present note has been prepared to supplement the aforementioned documents of the UNCITRAL secretariat and is devoted to analysis of the legal regulation of the legal nature of carbon assets and emerging carbon markets in countries members of the Eurasian Economic Union (taking as examples the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan) in the context of global approaches, and to matters concerning the harmonization of such regulation within the framework of the Union.

4. The comments contained in this document reflect the expert opinion of the International and Comparative Law Research Center as an UNCITRAL observer and may be used in further work by the UNCITRAL secretariat on the harmonization of international approaches to trade in carbon assets.

Terminology

5. A single harmonized set of terms for universal use in relation to any carbon assets (any type of tradable equivalent of the reduction (or prevention) and/or increased removal of greenhouse gases, expressed as an amount of greenhouse gases equivalent to 1 ton of CO_2), has not yet been developed.

6. In the English-speaking world, the term “carbon credits” is usually used to refer to carbon assets (which arise and are traded both in so-called “regulated” markets and in so-called “voluntary” markets).

7. No standardized translation of that term in the Russian language has yet been established. The term is frequently translated as “carbon credits” and “carbon assets”, among other variant translations. Sometimes, the term “carbon credits” is translated into Russian as “carbon quotas” (this translation can be found in some Russian-language UNCITRAL documents).

8. However, it is inappropriate to translate the term “carbon credits” as “carbon quotas” and to use that translation as a blanket term that encompasses the entire range of carbon assets, since (a) the term “credits” in the context in question cannot be translated into Russian as “quota”; and (b) this causes needless confusion of the term and its meaning with the term – established under Russian law – “greenhouse gas emissions quota” (“quota”) and its meaning (the administratively established meaning of a cap on greenhouse gas emissions, not something that can be traded).

9. In that regard, for the purposes of this note, the term “carbon assets” is used to refer to both (a) carbon assets that arise and are traded in so-called “regulated” markets (usually referred to as “emission allowances” in the context of international regulation and in the literature, while the most accurate equivalent of that term in Russian would appear to be “emission permits”), and (b) carbon assets that arise and are traded in so-called “voluntary” markets (in the context of international regulation and in the English-language literature those assets are usually defined as “offset credits” or “offsets”). The most accurate equivalent of that term in Russian would appear to be “carbon offsets” (rather than the term “компенсационные квоты” (lit. “compensatory quotas”), which can be found in Russian-language UNCITRAL documents).

10. It should be taken into account that the terms “emission permits” and “carbon offsets” are generic and, depending on the national legislation concerned, the name of a particular carbon asset that in effect is an emission permit or a carbon offset may be different.

Russian Federation

11. In the Russian Federation, article 2, paragraph 9, of Federal Act No. 296 of 2 July 2021 on limiting greenhouse gas emissions introduces the term “carbon unit”. A carbon unit is defined as the verified outcome of implementation of a climate project, expressed as an amount of greenhouse gases equivalent to 1 ton of carbon dioxide. The Act lays the foundations for a legal environment for regulating the reduction (prevention) of emissions of greenhouse gases (including CO_2 and a number of other gases), a list of which has been defined by Russian legislation, and for increasing their removal.

12. Furthermore, in September 2022 in the Russian Federation, a pilot project was launched in participating constituent entities of the Russian Federation to determine whether greenhouse gas emissions could be reduced through the use of quota mechanisms. A significant role in the project has been assigned to business entities that meet certain criteria and whose activities generate greenhouse gas emissions at a specified level. Those entities are referred to by the term “regional regulated organizations”.

13. The pilot project is being implemented within the framework of Federal Act No. 34 of 6 March 2022 on the implementation of a pilot project to limit greenhouse gas emissions in certain constituent entities of the Russian Federation. That Act expands on the regulation of carbon assets.

14. Article 2, paragraph 1, of Federal Act No. 34 introduces the term “greenhouse gas emissions quota” (or “quota”). “Quota” means the level of allowable greenhouse gas emissions that characterizes the amount of those emissions and is established for a regional regulated organization in accordance with Federal Act No. 34 in order to achieve carbon neutrality in the territory of the constituent entity of the Russian Federation that is participating in the pilot project.

15. Federal Act No. 34 provides that one of the ways to fulfil the quota established for a regional regulated organization is to offset the so-called “quota fulfilment units” belonging to that regional regulated organization. “Quota fulfilment unit” means the verified outcome of fulfilment of an assigned quota, expressed as the difference between the assigned quota and the actual amount of greenhouse gas emissions, equivalent to 1 ton of carbon dioxide.

16. The pilot project is an exercise to test a cap-and-trade scheme aimed at reducing greenhouse gas emissions. Under this scheme, the quota administratively assigned according to a specified procedure to each regional regulated organization may be fulfilled both through direct measures leading to the reduction (prevention) of greenhouse gas emissions or to an increase in their removal, and through the offsetting of the carbon units and quota fulfilment units held by the regional regulated organization.

Republic of Kazakhstan

17. The regulation of carbon assets in the Republic of Kazakhstan has its own special characteristics. Article 299, paragraph 1, of the Environmental Code of the Republic of Kazakhstan establishes the term "carbon unit". This term refers generically to the following two types of carbon assets: "carbon quota units" and "carbon offset" (each representing the equivalent of 1 ton of carbon dioxide).

18. Unlike in the Russian Federation, where quotas apply directly to a person (a regional regulated organization), quotas in the Republic of Kazakhstan apply to a facility that meets certain criteria. "Facility" means a stationary source of greenhouse gas emissions or several stationary sources of greenhouse gas emissions connected by a single technological process and located at a single industrial site.

19. The regulatory authority of the Republic of Kazakhstan has also established the term "carbon quota", which means the quantitative volume of quota-based greenhouse gas emissions established for a facility subject to quotas for the period of validity of the National Plan of Carbon Quotas and credited to the appropriate account of the operator of the facility in question in the State registry of carbon units.

20. A "carbon quota unit", in turn, is defined as a carbon unit used to calculate the volume of the carbon quota.

21. Under the legislation of the Republic of Kazakhstan, "carbon offset" means the reduction of greenhouse gas emissions and (or) an increase in greenhouse gas removals achieved as a result of activities carried out in any economic sector in the Republic of Kazakhstan with the aim of reducing greenhouse gas emissions and (or) increasing greenhouse gas removals.

22. Thus, the legislation of the Republic of Kazakhstan establishes the generic term "carbon unit", which includes all types of carbon assets (carbon quota unit and carbon offset). In contrast, in the Russian Federation there is no legally defined term that would cover all existing types of carbon assets (including carbon units and quota fulfilment units).

Republic of Belarus

23. In the legislation of the Republic of Belarus there is no specific law that systematically regulates matters related to carbon assets. However, there are regulatory instruments having the force of law that concern a particular type of carbon assets. Carbon units are defined in paragraph 2 of Decision No. 4 of 22 January 2007 of the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus approving a directive on the procedure for establishing and maintaining a national registry of carbon units of the Republic of Belarus. According to that definition, the term covers removal units, emission reduction units, assigned amount units and certified emission reduction units as established by the decisions of the seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

24. Those terms are explained by reference to the Kyoto Protocol to the United Nations Framework Convention on Climate Change. Thus, the relevant regulations concern only those issues related to the implementation by the Republic of Belarus of the Kyoto Protocol and its mechanisms.

The legal nature of carbon assets

25. As illustrated by international experience and by analysis of UNCITRAL documents A/CN.9/1120 and A/CN.9/1120/Add.1, the legal nature (and in general the legal classification) of carbon assets varies from one State to another (for example, even at the level of individual member States of the European Union). The legal nature and legal classification of carbon assets within the respective State are thus determined chiefly by national legislation.

26. Taking into account existing regulations in individual countries, the following may be regarded as objective universal characteristics of carbon assets (both carbon units and quota fulfilment units):

(a) Their intangible nature (carbon assets as separate physical objects do not exist);

(b) The possibility of the circulation of carbon assets (including in the form of their transfer by the owner to a third party (in compliance with the procedures established for such a transfer, including, inter alia, the carrying out of the relevant transactions in a special registry));

(c) The point in time at which a carbon asset arises (is put into circulation) is the point at which it is credited, in accordance with the established procedure, to the account of the entity in question in a special registry (for example, in the Russian Federation, such a point in time would be, in the case of a quota fulfilment unit, the point at which it is credited to the account of the regional regulatory organization concerned in the registry of carbon units, and, in the case of a carbon unit, the point in time at which it is credited to the account of the entity implementing the climate project in question in the registry of carbon units).

27. National regulators take divergent approaches to determining the legal nature of carbon assets. For example, some States view such assets as being subject to regulation under civil law, while others consider them to be subject to regulation under administrative law. In some jurisdictions, this issue is not directly regulated at all, and there is no established practice as yet.

Legal classification of carbon assets in Eurasian Economic Union countries

28. There is, as yet, no unified approach to determining the legal nature and legal classification of carbon assets in the member States of the Eurasian Economic Union. These issues (and other issues pertaining to the circulation of carbon assets) are addressed in the national legislation of each individual State.

29. The development by UNCITRAL of a consolidated approach to defining the legal nature of carbon assets and unified rules for their circulation will facilitate the effective cross-border exchange of such assets both within the Eurasian Economic Union and in international trade between the States members of the Union and other States and will contribute to the compliance of the national structure of carbon markets with the Paris Agreement.

Russian Federation

30. In Russian legislation, the legal nature of carbon assets (both carbon units and quota fulfilment units) is not explicitly defined. This has led to debate among experts and other actors involved in the circulation of carbon assets.

31. Moreover, in order for carbon assets to be classified as objects of civil-law rights in the Russian Federation, it is not sufficient to classify them as “commodities” (as has been done in some countries of the Eurasian Economic Union). The civil legislation of the Russian Federation defines specific types of objects of civil-law rights. A list of such objects is set out in article 128 of the Civil Code of the Russian Federation; that list does not refer to “commodities” as a separate type of objects of civil-law rights.

32. Nevertheless, Federal Act No. 296 and Federal Act No. 34, as well as regulatory instruments having the force of law that have been adopted in accordance with those Acts, use civil-law terminology in relation to carbon assets (for example, they use “owner” and “ownership” in reference to carbon assets and rights to such assets).

33. In addition, Russian legislation allows the transfer of carbon assets (both direct transfer and transfer through organized trading) by their owner to another person, such transfers being carried out at the sole discretion of the owner of the carbon assets. In such cases, the standard contract with the operator of the carbon unit registry refers explicitly to the civil-law nature of transactions involving carbon assets (by defining them as a “contract or other transaction in accordance with the Civil Code of the Russian Federation, concluded for the purpose of transferring carbon units and (or) quota fulfilment units”).

34. It is important to highlight that the explanatory note accompanying the draft text of Federal Act No. 296 reflects the fact that the authors of the bill regarded carbon units as objects of civil-law rights – a new category of property rights. The explanatory note itself is not a binding document and does not create any regulatory norms, but it may be used (including by legal practitioners) for their interpretation.

35. Thus, carbon assets in the Russian Federation are a tradable object of civil-law rights. The category of objects of civil-law rights to which regulators assign carbon assets will become clear as practice evolves.

36. In economic terms, carbon assets in the Russian Federation may also be considered as a commodity (that is, as a tradable item). Within the framework of amendments contributing to the development of the carbon market, prepared by the Ministry of Economic Development of Russia, it is proposed that transactions involving carbon units and quota fulfilment units be exempted from VAT.

37. Furthermore, carbon units are already traded on the National Commodity Exchange, although the carbon unit is not formally considered a commodity in the sense of article 2, para. 1 (9), of Federal Act No. 325 of 21 November 2011 on organized trading.

38. In addition, a strategic document of the Central Bank of the Russian Federation states that carbon assets are an important element in the development of the financial market. However, that statement has not yet been elaborated on (including from the perspective of the legal classification of carbon assets).

Republic of Belarus

39. The legislation of the Republic of Belarus directly regulates only the implementation on the territory of that State of projects within the framework of the Kyoto Protocol. No steps have yet been taken to develop or expand regulations pertaining to carbon assets in the light of present-day conditions. Consequently, the question of the nature and legal classification of carbon assets in the Republic of Belarus remains unresolved.

40. However, the Belarusian Universal Commodity Exchange (an open joint-stock company), which is the only commodity exchange in the Republic of Belarus, is currently considering the possibility of trading carbon assets in the same way as such trade is conducted in the Russian Federation.

41. There is currently no legislation on the trading of carbon assets on exchanges in the Republic of Belarus.

Republic of Kazakhstan

42. While the legal nature of carbon assets is not defined in the Republic of Kazakhstan either, carbon units are recognized as a commodity by virtue of a direct reference to them in the legislation: paragraph 2 of the Environmental Code of the Republic of Kazakhstan stipulates that a carbon unit (carbon quota unit or offset unit)

is a commodity that may be traded among carbon market actors in the Republic of Kazakhstan in accordance with the Environmental Code.

43. Trading in carbon units in Kazakhstan takes place through the Caspian Commodity Exchange, a joint-stock company.

44. Thus, from an economic point of view, in the Russian Federation and the Republic of Kazakhstan the carbon unit is essentially a tradable commodity. In the Republic of Belarus, there is no legislation or established practice with regard to carbon assets and their circulation (outside the framework of the Kyoto Protocol).

45. However, the legislation of the Eurasian Economic Union countries shows that currently, carbon assets, in terms of their legal classification, are not considered by regulators to be a financial instrument and are sold (or are planned to be sold) on commodity exchanges.

Harmonization of national approaches at the Eurasian Economic Union level

46. Regulation in the main member States of the Eurasian Economic Union has its own special characteristics (including with regard to both the terminology used and the mechanisms for the circulation of carbon assets in general). As initial steps towards regulatory harmonization, it is important to create at the level of the Union a unified legal framework – based on international standards and possible UNCITRAL recommendations in this area – that makes it possible to ensure the appropriate and consistent use of terminology.

47. Some steps are being taken in that regard, since the States members of the Eurasian Economic Union are parties to the United Nations Framework Convention on Climate Change and the Paris Agreement. In 2021, a high-level working group was established with the task of preparing proposals for harmonizing the positions of the Eurasian Economic Union member States within the framework of the climate agenda.

48. At the end of July 2022, the working group had reached general agreement on an initial package of measures for the Eurasian Economic Union within the framework of the climate agenda. That document provides for coordination of the efforts of the Union’s member States in seven areas. One important area is the establishment of joint market and non-market mechanisms for carbon regulation.

49. Some aspects of climate regulation are also covered in “Strategic areas for the development of Eurasian economic integration until 2025”, a document that provides for the implementation of a coordinated policy on carbon regulation.

50. In January 2023, a model taxonomy developed by the Eurasian Economic Commission together with the national economic development institution of the Russian Federation (VEB.RF) and the Centre for Green Finance of the Astana International Financial Centre, which are the national developers of taxonomies in the Russian Federation and Kazakhstan, was approved at the conclusion of a meeting of the working group. The objective in drawing up criteria for green projects of the States members of the Eurasian Economic Union is to foster and harmonize the approaches of those States as part of the systematic development of green financing tools within the Union, and to ensure freedom of movement of capital. Those criteria may serve as a basis for the development or updating of national taxonomies. In order to define the criteria, global best practices were analysed and national approaches to achieving climate goals were taken into account, which ensured that the document was closely aligned with other international standards.

51. In addition, during a round table on climate policy in the Caspian Sea region, and likewise at a seminar on the climate agenda of the Eurasian Economic Union, attention was drawn to the need to enable dialogue on the establishment of carbon markets. To that end, it is important for the Union’s member States to agree on common standards, develop a system for verification and for the accreditation of organizations that will perform such verification, and define mechanisms for mutual

recognition. Accordingly, it is planned to prepare a document setting out the main areas of economic cooperation within the framework of the climate agenda.

52. Harmonization processes within the framework of the Eurasian Economic Union will make it possible to take into account the specific national characteristics of carbon regulation in individual countries and to ensure harmonized approaches to the terminology used and to the interpretation of terms, as well as to the mutual recognition of carbon assets.