Response to consultation on draft UNIDROIT Principles on the Legal Nature of Verified Carbon Credits

September 2026

Background

Established in 1961, the WFE is the global industry association for exchanges and clearing houses. Headquartered in London, it represents the providers of over 250 pieces of market infrastructure, including standalone CCPs that are not part of exchange groups. Of our members, 39% are in Asia Pacific, 41% in EMEA and 19% in the Americas region. The WFE's 74 member CCPs and clearing services collectively ensure that risk takers post some USD 1.4 trillion (equivalent) of resources to back their positions, in the form of initial margin and default fund requirements. WFE exchanges are home to over 41,000 listed companies, and the market capitalization of these entities is over $137 trillion; around $198.5 trillion in trading annually passes through WFE members (at end-2025).

The WFE is the definitive source for exchange-traded statistics and publishes over 350 market data indicators. Its free statistics database stretches back 50 years and provides information and insight into developments on global exchanges. The WFE works with standard-setters, policy makers, regulators and government organisations around the world to support and promote the development of fair, transparent, stable and efficient markets. The WFE shares regulatory authorities' goals of ensuring the safety and soundness of the global financial system.

With extensive experience of developing and enforcing high standards of conduct, the WFE and its members support an orderly, secure, fair and transparent environment for investors; for companies that raise capital; and for all who deal with financial risk. We seek outcomes that maximise the common good, consumer confidence and economic growth. And we engage with policymakers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in a globally integrated financial system. If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal.[1]

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If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal. Please contact:

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[1] Our EU Transparency Register number is 973382524675-69

Introduction

Voluntary Carbon Markets (VCMs) are expected to play an increasingly important role in enabling companies to offset residual emissions, demonstrate their commitment to the transition to a low-carbon economy and meet their Net Zero commitments. As a result, demand for Verified Carbon Credits (VCCs) is expected to grow significantly and VCMs are becoming more sophisticated to meet evolving demand and satisfy increasing scrutiny over companies' transition progress and commitments.

One factor impeding the growth of VCMs is that VCCs do not receive clear and consistent legal treatment internationally. This lack of clarity and consistency impacts market confidence, deterring prospective market participants, hinders cross-border activity and creates uncertainty around how VCCs should be treated in other contexts, such as accounting and tax. Where jurisdictions have legislated to provide legal certainty, the clarification provided is often limited to Carbon Credits issued under regulatory schemes, rather than VCCs issued by independent Crediting Bodies (CBs).

The International Institute for the Unification of Private Law (UNIDROIT) is seeking to address the global lack of consistency and clarity through its draft internationally applicable Principles for the legal treatment of VCCs that jurisdictions may adopt in domestic legislation and/or guidance. The WFE and its Members would like to take this opportunity to support UNIDROIT's efforts to improve global consistency and clarity, reduce barriers to VCM participation and cross-border activity, address fragmented liquidity, decrease transactional risk and costs, and build market confidence.

Response

The WFE supports the overarching objectives of the UNIDROIT draft Principles and UNIDROIT's use of existing legal structures and classifications to avoid unnecessary complexity, unintended consequences and market friction. In particular, the WFE would like to express support for:

1. **Creating Principles for clear and consistent legal treatment of VCCs in and across jurisdictions internationally.** Improving international clarity and consistency will support market confidence, encourage prospective market participants, facilitate cross-border activity, decrease transactional risk and costs, address fragmented liquidity and lay the groundwork for how VCCs should be treated in respect to accounting and tax. In particular, the proposals on how to deal with questions of legal domain, reversals of GHG mitigation outcomes, VCCs obtained through wrongful means, VCC nullification, VCCs created as a result of deliberate wrongdoing, and instances of overissuance could settle questions that many jurisdictions and market participants are currently grappling with and facilitate cross-border activity. Coupled with the widespread adoption of global quality assurance frameworks such as the Integrity Council for the Voluntary Carbon Market, this will support VCM growth.

2. **The flexible approach taken to implementation in the Principles**. The Principles are designed to be appropriate for all types of market and legal systems (including both civil and common-law systems). This will facilitate their application in any jurisdiction and support consistent international adoption, facilitating cross-border activity and liquidity. Additionally, the Principles enable States to choose whether, how and to what extent to include the Principles within their private law. This will support broad uptake, including by States that already have laws in place relating to some of the issues covered. It will also enable States to reflect targeted jurisdiction-specific considerations in their implementation.

3. **Encouraging adopting national competent authorities to deviate only where necessary.** Where national competent authorities elect to implement the UNIDROIT Principles, the WFE would encourage them to prioritise international consistency by deviating from the global Principles only where necessary to accommodate jurisdictional realities and needs. Taking this approach avoids unnecessary fragmentation that would likely impede the growth of VCMs.

Additionally, WFE Members raised a number of areas that could warrant further exploration by UNIDROIT, specifically:

1. Whether the Principles could helpfully provide examples of prospective contractual arrangements that could be deployed to mitigate losses stemming from events such as reversals (making it clear to the reader how the legal system as a whole could function to maintain the effectiveness and efficiency of carbon markets). For example, the Principles could suggest that contractual arrangements may be made to nominate a named liable party, e.g. a Performance Guarantor, that absorbs the buyer's exposure in instances such as revocation where *bona fide* exceptions are not available because the VCC is rendered void *ab initio*.
2. Confirming whether a VCC that has already been retired remains exposed to cancellation for revocation under the current draft. Principles 8-10 do not appear to exclude the exposure of retired VCCs to cancellation for revocation and the *void ab initio* effect in Principle 10(4), together with the commentary in 10.25, suggests that this exposure may exist. If retired VCCs are exposed to cancellation for revocation, the WFE would encourage UNIDROIT to explore making retirement an unconditional bar to cancellation for revocation for holders with no knowledge of the wrongdoing at the time of retirement and, potentially, substitution mechanisms for the relevant climate activities to preserve market certainty. The Principles already propose mitigations to preserve market certainty in cases of overissuance where jurisdictions have elected to retain the orthodox principle of *nemo dat quod non habet*. Making retirement an unconditional bar to cancellation for revocation and exploring introducing mandatory substitution mechanisms would remove material pricing uncertainty and ensure that a compliance submission or claim, once made honestly, is final.

In relation to tokenisation, the consultation notes that a tokenised VCC does not automatically carry the legal rights of the original, meaning tokenisation can create a separate asset rather than a digital wrapper of the asset. The WFE would like to take this opportunity to direct UNIDROIT to the WFE's work on 'mimic tokens' recommend UNIDROIT considers tokenisation only once the liability structure has been clarified.

Though they do not directly fall within UNIDROIT's private-law remit, two further focuses that could boost growth in voluntary carbon markets are: 1) safe-harbour provisions that protect market participants and 2) clarity on the role that VCCs should play in companies' wider sustainability, Net Zero and transition planning efforts. UNIDROIT should consider whether they are able to provide guidance on these issues and, wherever possible, indicate where safe-harbour provisions and further clarity on the role of VCCs would complement the UNIDROIT Principles and support further growth in VCMs. Progress in these areas would help companies navigate evolving disclosure and claims-related expectations while reducing legal and reputational risks associated with allegations of greenwashing.

The WFE and its Members stand ready to discuss the issues raised in the consultation with UNIDROIT, national competent authorities and policy makers, as well as interested market participants.