



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES
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**COMMENTS BY GOVERNMENTS
AND INTERNATIONAL ORGANISATIONS**

(submitted by the delegation of Czech Republic)

I. Article 8.1(a) and 8.4

The Czech Republic proposes to clarify the nature of the agreement mentioned in Art. 8.1.(a) as to whether an account agreement (in the meaning of the definition in Art. 1(f)), under which an interest in intermediated securities is granted to the relevant intermediary by law, is supposed to be considered as the agreement in line with Art. 8.1.(a), or not. In other words, could the term “an agreement” in Art. 8.1.(a) be interpreted broadly enough to cover the following situation: while entering into an account agreement the interest in all intermediated securities credited to the clients account is automatically (without any special provisions regulating this issue) granted to the relevant intermediary by mandatory rules (according to the Czech law)? And consequently, should the declaration in line with Art. 8.4. be made in this case of non – consensual security interest?

If this is not the case, we propose to clarify that the agreement mentioned in Art. 8.1(a) means the agreement relating only to grant of interests in intermediated securities consensually. Subsequently it should be clear that the declaration made in line with Art. 8.4. will not apply in any way to granting non – consensual security interests.

II. Article 18.2(e)

The following amendment of this provision is proposed: *“where the intermediary is the operator of a securities settlement system, the uniform rules of that system, to the extent permitted by the non-Convention law”*

Explanation

Even though the uniform rules of securities settlement and clearing systems are usually subject to certain governmental supervisory control if not directly established by non-Convention law, we suggest afore mentioned wording to make this provision more precise. We think that

according to the current reading of the provision of Article 18.2(e) the uniform rules of settlement or clearing system could in certain cases prevail over the non-Convention law that is undesirable.

Therefore it is proposed to amend the provision with the words "to the extent permitted by the non-Convention law", as stipulated in other provisions regarding uniform rules of settlement or clearing systems.

III. Article 32.2(a)

Changing of negative ("*shall not apply*") to positive enumeration ("*shall apply*") of personal scope of Chapter IV is proposed.

Explanation

According to the Financial Collateral Directive No. 2002/47/EC only certain entities, as positively defined in the directive, may be collateral takers or providers. Therefore, as regards the EU Member States, the enumeration of categories of persons, that cannot enjoy the provisions of Chapter VI under the relevant non-Convention law, would be at least much more difficult and longer than positive enumeration to whom Chapter VI shall apply.