



**EN**

**UNIDROIT Committee of governmental experts  
on the enforceability of close-out netting  
provisions  
Second session  
Rome, 4 – 8 March 2013**

UNIDROIT 2013  
C.G.E./Netting/2/W.P. 9  
Original: English/French  
February 2013

## **JOINT PROPOSAL**

### **concerning Draft Principle 8**

*submitted by the Governments of  
Canada and France*

## **INTRODUCTION**

The UNIDROIT Secretariat has received the following joint proposal submitted by the Governments of Canada and France concerning the principle on the resolution of financial institutions (Draft Principle 8 of the revised draft in C.G.E./Netting/2/W.P. 2).

## **JOINT PROPOSAL**

### ***Principle 8***

These Principles are without prejudice to an implementing state's ability, subject to adequate safeguards, to

- (a) restrict the operation of a close-out netting provision that is triggered by the entry of one of the parties into resolution proceedings or the exercise of resolution powers, including crisis prevention measures; and
- (b) provide the competent resolution authorities with the power to temporarily stay the operation of a close-out netting provision that arises by reason only of the entry of one of the parties into resolution or the exercise of resolution powers, including crisis prevention measures by the resolution authority, provided that such stay does not affect the operation of a close-out netting provision that is triggered by an event not related to the entry of one of the parties into resolution or the exercise of resolution powers, including crisis prevention measures by the resolution authority.

**Explanatory Note**

We are of the opinion that the current wording of Principle 8 leaves too much discretion to stay the operation of close-out netting in resolution proceedings without framework or guidelines and is thus inconsistent with the intention of the Financial Stability Board Key Attributes for the Effective Resolution Regimes for Financial Institutions. The proposed wording for Principle 8 has been drafted to more closely track the wording of Key Attributes 4.2 and 4.3.

This new wording captures the ability to restrict the operation of close-out provisions in Key Attribute 4.2 but also captures the limited stays contemplated by Key Attribute 4.3. It also makes reference to the crisis prevention measures found in the last provisional Presidency compromise on the European Resolution Directive.