



**DIPLOMATIC CONFERENCE TO ADOPT A
CONVENTION ON SUBSTANTIVE RULES
REGARDING INTERMEDIATED SECURITIES
Final session**
Geneva, 5 to 7/9 October 2009

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Report of the meeting of the Filtering Committee

Rome, 18 and 19 September 2009

A. Introduction

1. In accordance with Resolution N°1 relating to the State of Work and Further Proceedings for the Adoption of the draft Convention on Substantive Rules regarding Intermediated Securities (CONF. 11 – Doc. 3, p. 6), a Committee was established in order to examine requests to amend the text of the draft Convention indicating significant problems capable of preventing the Convention from working properly, which were to be submitted by delegations and observers no later than six weeks prior to the opening of the final session of the diplomatic Conference. This so-called 'Filtering Committee' consisted of the Chairperson of the Drafting Committee, three members of the Drafting Committee appointed by him, the Chairperson of the Commission of the Whole, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems, working in close co-operation with the UNIDROIT Secretariat.

2. Except for the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, all members of the Filtering Committee were present at its meeting in Rome on Friday 18 September and Saturday 19 September. The Committee elected as its Chairperson the Chairperson of the Commission of the Whole of the first session of the diplomatic Conference.

3. The Filtering Committee examined the requests and the reasons given to amend the text of the draft Convention set out in CONF. 11/2 – Doc. 6 Corr. to CONF. 11/2 – Doc. 20 and worked to provide the Conference with recommendations as to whether the submissions requesting amendments meet the aforementioned test, it being understood that such recommendations are not binding. The Committee arrived at its conclusions by consensus, even if there was no unanimity in respect of every one of its recommendations. The recommendations of the Filtering Committee are set out below. They should not be understood as an endorsement by the Committee of any specific text or proposal included in any submission.

B. Substantive issues to be discussed by the diplomatic Conference

Insolvency

4. The Filtering Committee considered proposals by the Editors for amendment of Articles 7, 14 and 21 of the draft Convention and related proposals and comments set out in: Editors, CONF. 11/2 – Doc. 6 Corr., p. 1-4, s. 2; Editors, CONF. 11/2 – Doc. 6 Corr. 2; France, CONF. 11/2 – Doc. 8, p. 2, s. 2.2-2.3; Spain, CONF. 11/2 – Doc. 9, p. 1, s. 3; United Kingdom, CONF. 11/2 – Doc. 10, p. 2, s. 4-7 and p. 6, s. 23-25; Germany, CONF. 11/2 – Doc. 11, p. 1-2, s. 5-8; Luxembourg, CONF. 11/2 – Doc. 12, p. 2, s. 8-11; UNCITRAL, CONF. 11/2 – Doc. 15, p. 1-5, s. 1-25; UNCITRAL, CONF. 11/2 – Doc. 15 Add.; European Commission, CONF. 11/2 – Doc. 18, p. 1, s. 4.

5. The Filtering Committee was of the view that the proposals submitted by the Editors had shown that, if the relevant provisions were retained in their present form, there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6). The Filtering Committee recommends to the diplomatic Conference to consider the proposals as a matter of substance.

Regulated entities

6. The Filtering Committee considered proposals related to regulated entities submitted by France, CONF. 11/2 – Doc. 8, p. 2-3, s. 3.1; Spain, CONF. 11/2 – Doc. 9, p. 2, s. 4(c); Italy, CONF. 11/2 – Doc. 16, p. 2, s. 8.

7. No positive recommendation was made that the proposals had shown that there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6), if the relevant provisions were retained in their present form.

8. However, in the light of the importance of the issues raised, the Filtering Committee agreed to recommend to the diplomatic Conference to consider the proposals as a matter of substance.

Core duties of intermediaries

9. The Filtering Committee considered proposals relating to the core duties of intermediaries submitted by France, CONF. 11/2 – Doc. 8, p. 3-4, s. 3.2; Spain, CONF. 11/2 – Doc. 9, s. 4(a); EBF, CONF. 11/2 – Doc. 14, p. 2-3, s. 14-17, 20; Italy, CONF. 11/2 – Doc. 16, p. 2, s. 8.

10. The Filtering Committee was of the view that the proposals had shown that, if the relevant provisions were retained in their present form, there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6). The Filtering Committee recommends to the diplomatic Conference to consider the proposals as a matter of substance.

Articles 8, 29

11. The Filtering Committee considered a proposal relating to Articles 8 and 29 submitted by Germany, CONF. 11/2 – Doc. 11, p. 4, s. 16.

12. The Filtering Committee was of the view that the proposal indicated that there might be a contradiction or conflict between the explanations provided in the draft Official Commentary (in particular the first sentence of section 29-24 of the Commentary) and the meaning of a provision of the Convention as it might have been understood by the diplomatic Conference. The Filtering Committee recommends that the diplomatic Conference reconfirm the policy underlying the provision.

Article 24

13. The Filtering Committee considered proposals relating to Article 24 submitted by France, CONF. 11/2 – Doc. 8, p. 4, s. 3.4; Spain, CONF. 11/2 – Doc. 9, p. 1-2, s. 4(b); EBF, CONF. 11/2 – Doc. 14, p. 3, s. 18-19; Italy, CONF. 11/2 – Doc. 16, p. 2-3, s. 8; European Commission, CONF. 11/2 – Doc. 18, p. 1-3, s. 5-16; Austria, CONF. 11/2 – Doc. 19, p. 1, s. 3.

14. The Filtering Committee was of the view that the proposals had shown that, if the relevant provisions were retained in their present form, there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6). The Filtering Committee recommends to the diplomatic Conference to consider the proposals as a matter of substance.

Article 28

15. The Filtering Committee considered proposals relating to Article 28 submitted by France, CONF. 11/2 – Doc. 8, p. 4-5, s. 3.5; United Kingdom, CONF. 11/2, Doc. 10, p. 8, s. 32; Italy, CONF. 11/2 – Doc. 16, p. 3, s. 8; European Commission, CONF. 11/2 – Doc. 18, p. 1-3, s. 5-16; Austria, CONF. 11/2 – Doc. 19, p. 1, s. 1-2.

16. In respect of the proposals relating to *Article 28(1)*, the Filtering Committee was of the view that they indicated that there might be a contradiction or conflict between the explanations provided in the draft Official Commentary (see in particular sections 28-9 to 28-13 of the Commentary) and the meaning of a provision of the Convention as it might have been understood by the diplomatic Conference. The Filtering Committee recommends that the diplomatic Conference reconfirm the policy underlying the provision.

17. In respect of the proposals relating to *Article 28(2)* (apart from the request relating to 'professional diligence' set out in CONF. 11/2 – Doc. 16, p. 3, s. 8; see section C.19(b) below), the Filtering Committee was of the view that they failed to show that there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6), if the relevant provisions were retained in their present form. The Filtering Committee recommends, however, that the diplomatic Conference reconfirm the policy underlying the provision. For more information on the policy, see sections 28-14 and 28-15 of the draft Official Commentary.

C. Issues in respect of which the Filtering Committee recommends no further action

18. The Filtering Committee was of the view that the following proposals, which would be a reversal of a clearly established policy, failed to show that there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6), if the relevant provisions were retained in their present form. The Filtering Committee recommends that the diplomatic Conference need not consider these proposals.

- (a) Proposals relating to *Articles 1, 8, 9, 10 and 29* submitted by European Issuers, CONF. 11/2 – Doc. 7, p. 1-6 (apart from comments relating to Article 29(2); see section F.22(e) below).

(b) A proposal relating to *Article 12* submitted by Italy, CONF. 11/2 – Doc. 16, p. 3-4, s. 10-11.

19. The Filtering Committee was of the view that the following proposals failed to show that there might be significant problems that might prevent the Convention from working properly within the meaning of Resolution N°1 (CONF. 11 – Doc. 3, p. 6), if the relevant provisions were retained in their present form. The Filtering Committee recommends that the diplomatic Conference need not consider these proposals.

(a) A proposal relating to *Articles 17 and 18* submitted by Luxembourg, CONF. 11/2 – Doc. 12, p. 2, s. 12-14.

(b) A proposal relating to a *standard of 'professional diligence'* in *Article 28(2)* submitted by Italy, CONF. 11/2 – Doc. 16, p. 3, s. 8.

(c) A proposal relating to *Article 34* submitted by UNCITRAL, CONF. 11/2 – Doc. 15, p. 5, s. 29.

(d) A proposal relating to *Articles 36 and 37* submitted by the United Kingdom, CONF. 11/2 – Doc. 10, p. 11, s. 52.

(e) A proposal relating to *Article 38* submitted by the United Kingdom, CONF. 11/2 – Doc. 10, p. 12, s. 55-56.

D. Drafting issues

20. The Filtering Committee was of the view that the following proposals were only intended to clarify the meaning and/or improve the drafting of the provision. The Filtering Committee recommends to the diplomatic Conference to refer those proposals directly to the Drafting Committee, which may decide to refer them to the Official Commentary for clarification.

(a) A proposal relating to *Article 4* submitted by the Editors, CONF. 11/2 – Doc. 6 Corr., p. 1, s. 1 and supported by Poland, CONF. 11/2 – Doc. 13, p. 1, s. 4.

(b) A proposal relating to *Article 8* submitted by France, CONF. 11/2 – Doc. 8, p. 4, s. 3.3.

(c) A proposal relating to *Article 9* submitted by the Editors, CONF. 11/2 – Doc. 6 Corr., p. 4, s. 3 and supported by Poland, CONF. 11/2 – Doc. 13, p. 2, s. 5-6.

(d) A proposal relating to *Article 9* submitted by Italy, CONF. 11/2 – Doc. 16, p. 3, s. 9.

(e) A proposal relating to *Articles 11 and 12* submitted by the United Kingdom, CONF. 11/2 – Doc. 10, p. 3, s. 9-11.

(f) A proposal relating to *Article 15* submitted by the Editors, CONF. 11/2 – Doc. 6 Corr., p. 5, s. 4 and supported by Poland, CONF. 11/2 – Doc. 13, p. 2, s. 7.

(g) Proposals relating to *Article 18* submitted by the Editors, CONF. 11/2 – Doc. 6 Corr., p. 5-6, s. 5, 6.

(h) A proposal relating to *Article 19* submitted by Luxembourg, CONF. 11/2 – Doc. 12, p. 2, s. 15-16.

- (i) A proposal relating to *Article 33* submitted by the United Kingdom, CONF. 11/2 – Doc. 10, p. 9, s. 41.
- (j) A proposal relating to *Article 34* submitted by the European Commission, CONF. 11/2 – Doc. 18, p. 3, s. 17-19.
- (k) A proposal relating to *Article 35* submitted by the Editors, CONF. 11/2 – Doc. 6 Corr., p. 6, s. 7 and supported by the European Commission, CONF. 11/2 – Doc. 18, p. 3, s. 20.
- (l) A proposal relating to *Article 39* submitted by the Editors, CONF. 11/2 – Doc. 6 Corr., p. 6, s. 8.
- (m) A proposal relating to *Article 39* submitted by the European Commission, CONF. 11/2 – Doc. 18, p. 4, s. 24.

E. Issues in respect of the Final Clauses

21. The Filtering Committee considered a number of technical comments made by the Secretariat in respect of the wording of Articles 40, 43, 45, 46 and 47. The Filtering Committee agreed that it the diplomatic Conference should consider the issues raised by the Secretariat. The Filtering Committee requested the Secretariat to submit its comments in a separate document for the diplomatic Conference (see CONF. 11/2 – Doc. 21) and recommends to the diplomatic Conference to refer those proposals directly to the Final Clauses Committee.

F. Issues to be clarified in the Official Commentary

22. The Filtering Committee was of the view that the issues set out in the documents listed below should be dealt with in the Official Commentary in line with the procedures that the diplomatic Conference may wish to establish for the finalisation of the Official Commentary after the diplomatic Conference has concluded its work.

- (a) Comments relating to *Articles 9, 11, 16 and 18* submitted by Germany, CONF. 11/2 – Doc. 11, p. 2, s. 9-10.
- (b) Comments relating to *Article 11* submitted by Nigeria, CONF. 11/2 – Doc. 20, p. 1, s. 1.
- (c) Comments relating to *Articles 1 and 12* submitted by the EBF, CONF. 11/2 – Doc. 14, p. 3, s. 21.
- (d) Comments relating to *Article 27* submitted by the United Kingdom, CONF. 11/2 – Doc. 10, p. 7-8, s. 30.
- (e) Comments relating to *Article 29(2)* submitted by EuropeanIssuers, CONF. 11/2 – Doc. 7, p. 6.
- (f) Comments relating to *Article 34* submitted by Nigeria, CONF. 11/2 – Doc. 20, p. 1, s. 2.
- (g) Comments relating to *Article 35* submitted by the United Kingdom, CONF. 11/2 – Doc. 10, p. 10, s. 46.

(h) Comments relating to *Article 36* submitted by the European Commission, CONF. 11/2 – Doc. 18, p. 3-4, s. 21-23.

G. Proposed order of discussion at the diplomatic Conference

23. The Filtering Committee recommended the following order of discussion at the diplomatic Conference:

(a) Proposals for substantive amendment of articles of the draft Convention received before the diplomatic Conference recommended by the Filtering Committee for consideration by the Conference (cf. B above).

(b) Proposals for substantive amendment of articles of the draft Convention received before the diplomatic Conference not recommended by the Filtering Committee for consideration by the Conference (cf. C above), if States participating in the Conference might request them to be considered.

(c) Other issues considered by the Filtering Committee (cf. D, E and F above).

(d) Time permitting, proposals for substantive amendment of articles of the draft Convention not considered by the Filtering Committee, submitted in the six week period before and during the diplomatic Conference.

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