



**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 Government of Poland)*

**I. Article 1(n) - definition of “securities settlement system”**

A number of international organisations and bodies have undertaken an effort of defining the term “securities settlement system”. In 2001, CPSS- IOSCO finalised its work on *Recommendations for securities settlement systems*, international document of the crucial importance for functioning of those systems. CESR has prepared the draft *Standards for securities clearing and settlement system* based on CPSS- IOSCO Recommendations.

Under the aforementioned documents, securities settlement system consists of the full set of institutional and technical arrangements for registration and transfer of the securities by the system of the securities accounts. The existence of both internal and external institutional framework ensuring safety of that system has been recognised as the key condition for the operation of securities settlement systems.

In particular, under CPSS-IOSCO international standards (Recommendation 18), securities settlement systems should be subject to transparent and effective regulation and oversight by relevant authorities.

The securities settlement systems are managed across the world by central securities depositories. In the specific case when central bank is responsible for management of a securities depository it is obliged, by virtue of Recommendation 18 CPSS- IOSCO *Recommendations for securities settlement systems*, to meet all requirements related to safety and efficiency of the depository as well.

Furthermore, by virtue of Standard 18 of the CESR draft *Standards for securities clearing and settlement system*, entities providing securities clearing and settlement services should be subject to, as minimum, transparent, consistent and effective regulations and supervision.

It follows from the foregoing that the proper oversight and control system should be the crucial element of the UNIDROIT *Preliminary Draft Convention* definition of securities settlement system and securities clearing system. The character of the operating entity is not a pivotal issue. Therefore, in our view references to the subjective element in the Article 1(n) should be deleted. In the consequence, Poland suggests following amendments to the Article 1(n):

- (n) *“securities settlement system” means a system which-*
- (i) *settles, or clears and settles, securities transactions;*
  - (ii) ~~*is operated by a central bank or central banks or is subject to regulations, supervision or oversight by a governmental or public authority in respect of its rules; and*~~
  - (iii) *has been notified, on the ground of the reduction of risk to the stability of the financial system, as a securities settlement system in a declaration by the Contracting State the law of which governs the rules of the system;”*

## II. Article 1(o) - definition of “securities clearing system”

For the reasons explained in the preceding paragraph, Poland suggests following changes in the definition of “securities clearing system”:

- “(o) “securities clearing system” means a system which-*
- (i) *clears, but does not settle, securities transactions through a central counterparty or otherwise;*
  - (ii) ~~*is operated by a central bank or central banks or is subject to regulations, supervision or oversight by a governmental or public authority in respect of its rules; and*~~
  - (iii) *has been notified, on the ground of the reduction of risk to the stability of the financial system, as a securities clearing system in a declaration by the Contracting State the law of which governs the rules of the system;”.*

## III. Article 11 (1)

The possibility of making corrections of the security account by the intermediary which is not authorised by the holder of the security account (when the intermediary is at fault of improperly completed transaction) is not clear.

## IV. Article 18 (2e) Instructions

Poland renews the proposal put forward at the previous session of UNIDROIT Committee of Governmental Experts, to extend the scope of article 18 (2e). We believe its provision should also cover participants of a securities settlement system. The rules of that system may provide that its participants are bound by instructions transferred by the operator with respect to the securities on the account. Consequently, we suggest following wording:

- “(e) where the intermediary is the operator or a participant of the securities settlement system, the uniform rules of that system”.*

## V. Article 22 (2)

The issue of covering the shortfall by the holders of securities accounts if the number of securities allocated to their securities accounts is less than the aggregate number of securities which was available in the entity which was allocating the securities is unclear.

VI. At the final stage of the work, it would be desirable to review the *Preliminary draft Convention* from the editorial perspective in order to achieve consistency of the text.