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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

RESTRICTED EXPLORATORY WORKING GROUP OF THE GOVERNING COUNCIL

ON THE CONTRACT OF FACTORING

REPORT

on the session held in Rome  
on 13 and 14 February 1978

Rome, February 1978

CORRIGENDUM

p. 3, par. 10, second sentence, should read:

"It was also suggested in this context that guidance should be sought in the French Ordonnance of 1967 on protestable invoices ("factures protestables") and in the draft Belgian Law of 1958 on the endorsement of the invoice."

1. The Governing Council decided at its 56th session (Rome, 19 and 20 May 1977) to set up a restricted exploratory Working Group to report back to it at its 57th session (Rome, 5 to 7 April 1978) on the desirability of setting up a Study Group or a Committee of Governmental Experts to prepare uniform rules on the factoring contract. This Group met at the headquarters of UNIDROIT in Rome on 13 and 14 February 1978; its composition was the following:

Members of the Working Group

Mr. Royston Miles GOODE	Professor of Credit Law, Queen Mary College, University of London;
Mr. Jean LIMPENS	Director of the Centre interuniversitaire du Droit comparé in Brussels, member of the Governing Council of UNIDROIT, <u>Chairman of the Working Group;</u>
Mr. Tudor POPESCU	Professor in the Faculty of Law at Bucharest, member of the Governing Council of UNIDROIT;
Mr. Heinrich Johannes SOMMER	President of Factors Chain International (FCI), <u>consultant expert of the Working Group</u>

UNIDROIT Secretariat

Mr. Mario MATTEUCCI	President
Mr. Malcolm EVANS	Deputy Secretary General
Mr. Michael Joachim BONELL	Collaborator
Ms. Marie-Christine RAULT	Research officer, <u>Secretary to the Working Group</u>

2. The Working Group was seized of the following documents:

- (i) Report on the contract of factoring prepared by the Secretariat (Study LVIII - Doc. 1, UNIDROIT 1976);
- (ii) Questionnaire on the contract of factoring prepared by the Secretariat (Study LVIII - Doc. 2, UNIDROIT 1976);
- (iii) Analysis of the replies received by the Secretariat to the questionnaire on the contract of factoring (UNIDROIT 1977, Study LVIII - Doc. 3).

3. The session was devoted to a detailed examination of the replies received by the Secretariat to its questionnaire on the contract of factoring. The conclusions of the Group may be summarised as follows.

4. On the question of the necessity, or the usefulness, of proceeding to the preparation of uniform rules on the contract of factoring, the Group was unanimously of the opinion that it would be desirable to elaborate such rules. Stress was indeed laid on the fact that international trade is in need of new methods of financing, of which factoring is a particularly significant example, especially since it responds to needs which other financing techniques fail to meet to the same extent.

5. As to whether the uniform rules should be limited to international factoring or also include domestic factoring, it was decided, initially at least, to restrict them to international factoring. It was further noted that rules on international factoring would not fail to influence the various domestic laws. With regard to the criteria which should define international factoring, it was noted that in practice the concept of international factoring is dependant on a basic relationship of an international character. The future rules should therefore be limited to factoring relations concerning debts arising out of sales contracts or of contracts for the provision of services between parties whose places of business are situated in different States.

6. As regards the form of the future uniform rules, the Group was unanimously in favour of a uniform law.

7. From among the replies to the question of which stage or stages of factoring operations give rise to most problems in practice, the Group drew attention to a certain number of points.

8. The first concerned the subject matter of the factoring contract and in this connection the opinion was voiced that the transfer of future debts should be permitted provided that they arise out of a contract of sale or of a contract for the provision of services.

9. The view was also expressed that the formalities of transfer should be dealt with and here a distinction was drawn between the validity of the transfer vis-a-vis the debtor and its validity vis-a-vis third parties. As regards the former, no formalities should be required but vis-a-vis third parties it was suggested that one might adopt either the American model of the financing statement in the country of the seller or the usual techniques for the giving of notice of debts such as exist in the country of residence of the seller, that is to say the assignor.

10. Turning to the question of defences and their exclusion, the opinion was expressed that defences should be valid but that they may be excluded by contract. It was also suggested in this context that guidance should be sought in the French Ordonnance of 1967 and in the draft Belgian Law of 1958 on protestable invoices ("factures protestables").

11. With regard to other questions such as the set-off by the debtor of debts which arose prior to the giving of notice of the transfer, that of conflicts of priority between the factor and privileged creditors (in particular agents) and between him and distrainers, and the effects of the bankruptcy of the debtor or of his clients, the Group, while recognising their great importance, especially in the context of international factoring, nevertheless felt that these were problems of a general character and therefore not peculiar to international factoring. In consequence the future uniform law should not seek to deal with them directly but rather refer for this purpose to the various national laws whose applicability should be determined in accordance with uniform criteria. The same conclusion was reached in connection with another problem which causes some difficulty in practice, namely the stipulation by the seller or by his supplier of a retention of ownership clause.