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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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STUDY GROUP FOR THE PREPARATION OF UNIFORM RULES
ON CERTAIN INTERNATIONAL ASPECTS OF
SECURITY INTERESTS IN MOBILE EQUIPMENT

MEMORANDUM

(for the attention of the Study Group at its first session):

ADDENDUM

(Comments of the European Federation of Equipment Leasing Company
Associations (Leaseurope))

Rome, March 1993

Introductory note by the Unidroit Secretariat

1. - As reported in Study LXXII - Doc. 6 (cf. § 10), with a view to the first session of the study group, Unidroit, on 1 September 1992, invited its member Governments, the interested international Organisations and professional associations and respondents to its Questionnaire on an international regulation of aspects of security interests in mobile equipment (Study LXXII - Doc. 2) to submit any comments and proposals they might care to make on its projected unification of certain international aspects of the law governing security interests in mobile equipment. This addendum sets out the position of the European Federation of Equipment Leasing Company Associations (Leaseurope) in relation to the Report of the Restricted Exploratory Working Group to examine the feasibility of drawing up uniform rules on certain international aspects of security interests in mobile equipment (Study LXXII - Doc. 5). In communicating its position to Unidroit, by letter dated 9 March 1993, received subsequently to the first session of the study group, Leaseurope indicated that its Legal Committee and Executive Committee had only recently been able to settle their position in relation to Unidroit's project in this area of the law.

Position of the European Federation of Equipment Leasing Company Associations (Leaseurope)

2. - The Federation expressed its gratitude that Unidroit had seen fit to sound it on this subject.

3. - It noted that the report referred to non-possessory security interests in mobile equipment. It noted that Study LXXII - Doc. 4 (at p. 4, Section III) contained a non-exhaustive list of security interests intended to be encompassed by the proposed uniform rules. It noted that this list included a lease of equipment where, "under the applicable law", this would be "characterised as a security agreement and a contractual privilege in favour of an unpaid vendor". Leaseurope welcomed this "legal" approach to the question of characterisation of the transaction as opposed to the strictly economic approach.

4. - On the other hand, Leaseurope saw some problems arising out of the nature of the register intended to form part of the "international public notice system" (Study LXXII - Doc. 5, § 8). The right of ownership in an asset subject to a leasing contract remained vested in the lessor; this right should not be confused with a "security interest". Leaseurope was opposed to any assimilation, however unintentional, of these fundamentally opposed concepts.

5. - Some doubts were voiced as to:

(a) the feasibility of the proposed uniform rules (at the universal level), having regard to the fact that it is the problem of finding domestic equivalents for foreign security interests and/or the ranking of foreign security interests which currently provides the principal obstacle to the EEC's work on bankruptcy law (it was noted that the proposed uniform rules were not intended to address the question of the insolvency of the debtor in possession of/using the equipment subject to a security interest);

(b) the sphere of application of the proposed uniform rules, in particular as regards the concept of "mobile equipment" and whether this was intended to include motor cars and other motor vehicles used for professional or business purposes. If this was the intention, it would be necessary to take account of those national registers such as were already in place giving public notice of ownership rights as also of any registers (indirectly) covering security interests created for the benefit of creditors.

6.-Leaseurope asked to be kept informed of developments in Unidroit's work in this connection which it considered to be highly interesting and full of promise.