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Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:
SUB-COMMITTEE FOR THE PREPARATION OF A FIRST DRAFT

MEMORANDUM

prepared jointly by Airbus Industrie and The Boeing Company
on behalf of an aviation working group:

COMMENTS

(by members of the sub-committee and the international Organisations
and professional associations represented by observers thereon)

Rome, August 1995

INTRODUCTION

Subsequent to the comments to the Memorandum prepared jointly by Airbus Industrie and The Boeing Company on behalf of an aviation working group (Study LXXII - Doc. 16) reflected in Study LXXII - Doc. 17 and Study LXXII - Doc. 17 Add., the Unidroit Secretariat received additional comments from the European Federation of Equipment Leasing Company Associations (Leaseurope) represented by an observer on the Sub-committee of the Unidroit Study Group for the preparation of uniform rules on international interests in mobile equipment. This paper reproduces these comments, set out hereunder.



EUROPEAN FEDERATION OF EQUIPMENT LEASING COMPANY ASSOCIATIONS (LEASEUROPE)

Re: Draft Unidroit Convention on International Interests in Mobile Equipment. Summary report of 15 February 1995 and Study LXXII - Doc. 16: Position of the aviation industry.

We are pleased to acknowledge receipt of the aforementioned materials. We wish to make the following comments in this regard (you will recall that the Federation had already set forth its position on 20 September 1994). THE FEDERATION ONCE MORE SEEKS TO BRING OUT THE CONCEPT OF THE RIGHT OF OWNERSHIP WHICH IT INTENDS CLEARLY TO DISTINGUISH FROM THE CONCEPT OF THE SECURITY INTEREST.

1. *In the summary report :*

- It is to be noted that in § 10 (ii) the text refers to "*réserve de propriété*/ title reservation" in the context of leases. The same is true in § 10 (v), (vii), (x), (xvii), (xviii) and (xx): "title reservation agreements."

- The question of the attribution of the right of ownership is to be determined by national law; § 10 (xxiii).

- "In view of the conceptual differences involved", the report recognises that it will be necessary to deal separately with "security interests *stricto sensu*, sales under reservation of title and leases"; §10 (xii) and again at § 10 (xx).

- It is stated that the validity of registered international interests against third parties is to be based on the principle established in Article 7(1)(a) of the Unidroit Convention on International Financial Leasing.

2. *In the position paper of the aviation industry:*

Leaseurope wishes to express the following reservations:

If the aviation industry has voiced its support for the ideas developed by the Federation (see Study LXXII - Doc. 16, § 2.3), it nevertheless carries on by stating that "a clear (and thus formalistic) distinction must be made between strict security and title reservations for Convention classification purposes in order to avoid tax sensitivities." On this point, Leaseurope would note that the position taken by the aviation industry hardly seems in substance to reflect the distinction desired by the leasing industry. This is that "title reservation" is a matter which is only relevant in "sales under reservation of title". Leasing, on the other hand, is based on the right of ownership as such.

It is also to be noted that in the penultimate paragraph under § 2.4 the aviation industry suggests that interests should be fileable as "either a security interest or a title reservation" and this once again for fiscal reasons. Once more Leaseurope expresses its reservations regarding the expression "title reservation / *droit de réserve de propriété*" and regarding the reasons given which are purely fiscal in nature and not legal.

In its "recommendations" under § 3, the position of the aviation industry is that "all lease contracts ... shall be included [in the draft Convention] as title reservation agreements ..."; this statement is once more viewed as dangerous, all the more so as the aviation industry is already familiar, both for aircraft and the engines or reactors which power them, with registers covering both one and the other.

What is more, it is worth noting the concern expressed in the aviation industry paper that the notion of "real rights" should be made clearer. Furthermore, at pages 5 and 22 of its report, the aviation industry group expresses the desire to see the conditions of legal certainty maximised in favour of lessors and lessees. Along the same lines, at page 26 and in Annex 4B, Airbus and Boeing put forward an optional clause strengthening the rights of the lessor in the event of the lessee's insolvency.

The Federation shares these desires.