



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES**

UNIDROIT 2007
Study LXXVIII – Doc. 66
English only
March 2007

Working Group on so called Transparent Systems – Intersessional Work

Comments of the French Delegation on the draft Working Paper on Transparent Systems

(submitted by the Government of France)

One of the main issues studied was the application to transparent systems of the prohibition of upper-tier attachment ([Article 17](#) of the draft convention) and the question of who shall be considered as the relevant intermediary in this context. Different solutions are proposed by the group like an approach similar to the Hague convention (with a dedicated article specifying that a CSD can be considered as an intermediary) or with a new distinction between the CSD and the account operator. Regarding this latter solution, the group considered that the draft convention could either "broadly interpret that the account operator is acting on behalf of the CSD" or "recognise the role of the account operator explicitly for instance by providing that certain provisions concerning the relevant intermediary may have relevance to account operators".

We are not in favor of this last proposal since this explicit distinction between relevant intermediary and account operator could lead to legal uncertainties.

Therefore, we would prefer to opt for an approach similar to the Hague Convention which is the one already foreseen in the current draft convention. Indeed, an a contrario reading of [Article 3](#) on Central Securities Depositories implies that the CSD are subject to the convention when they are acting as intermediary which is possible according to the definition of intermediary, relevant intermediary and securities account ([Article 1](#)). Consequently, we think it is not necessary to modify Article 17, as admitted by the working paper (see comments under Article 1: "it is clear that the CSD can be regarded as an intermediary or relevant intermediary for the purposes of the draft convention").

However, if the representatives of the transparent systems feel that this combined reading of Article 1, 3 and 17 does not offer enough legal certainty and since the "article by article analysis" raises additional issues, we suggest to confirm this reading in the explanatory report and to include a clarified interpretation for the application of each article in transparent systems. An alternative (but that could be a supplementary) option would be a dedicated interpretative article in the convention regarding the application of the convention to transparent systems. This last option would imply a definition of transparent system in order to specify the scope of such interpretation. Such definition could be based on the functional one mentioned in Doc 44 ("Transparent systems are systems, where there are two or more entities involved in the holding chain and where at the top level holdings of all lower tier account holder's interest in intermediated securities are evidenced, in particular by means of maintaining accounts/sub-accounts for each of those lower tier account holders").