



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

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Observations on transitional rules

(submitted by the Delegation of Finland)

Priority of interests granted before the entry into force of the Convention

In our opinion, the priority of interests granted before the entry into force of the Convention should be protected. In addition, it is crucial that the adaptation to the future Convention could happen as smoothly and easily as possible.

Grandfathering clause

If one has to choose between the two solutions proposed, we would support the second approach based on a grandfathering clause. It is necessary for legal certainty that interests granted and made effective against third parties according to the law applicable at the time are respected. “The new law” should not have any unforeseeable and surprising effects on existing property rights. Therefore, we would take it as a natural starting point that the future Convention should not alter the position and rank of existing interests. This should apply to the priority between existing interests as well as their priority in relation to interests created later under the new law. Accordingly, Article 13 should not apply to the interests created and made effective against third parties before the entry into force of the Convention in that Contracting State.

In Finland there is no need for transitional rules or for further actions of the parties as concerns securities issued via the CSD and maintained in its accounts. The law currently in force fully complies with the requirements of the Convention.

The question, however, arises for non-domestic securities which a Finnish intermediary holds for its local clients. There are no specific proprietary rules for this holding so general property law rules and principles are applied. According to such rules and principles, it is not a credit or a debit of securities to books/accounts of an intermediary that is legally relevant but the time of a notification of the intermediary. Such a notification does not correspond to any perfection method defined in the Convention. In practice, intermediaries make entries to their books/accounts on the basis of notifications without delay, but at least in theory there can be legally relevant differences in time. In our view, interests in those securities should remain unaffected without any new formalities to ensure their effectiveness against third parties.

Grace period

According to Doc. 59, a grace period puts the emphasis on transparency: after a certain period of time parties should be able to rely solely on priority rules set out by the Convention. In principle, this aim can be seconded. However, we are not sure whether this result can be best achieved by the provisions of the Convention and whether the transparency justifies the costs and inconvenience of legal examination and “re-perfecting”. It is to note that there cannot be any internationally common point of time for all interests simply because the Convention enters into force in Contracting States at different times. More importantly, the need for a grace period and necessary measures vary in Contracting States depending on how well “the old law” corresponds to the perfection requirements of the Convention. In addition, legal traditions differ from one Contracting State to another to what extent it is possible to touch existing rights and what methods may be used.

Convention or non-Convention law

We think that the choice between the two solutions is not necessary to make by the Convention. It is more appropriate to leave the choice to the Contracting States. Thus, at this stage of the work, the Convention could, in our view, provide both solutions as options to Contracting States and, if seen as necessary, Contracting States could declare which of the solutions is adopted. (Perhaps, a possibility to declare both of the solutions could also be considered in case there are Contracting States that would internally need different transitional rules.) If a grace period were opted for, a Contracting State could make a declaration in respect of the duration of the period and the necessary steps for parties.