



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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**PREPARATORY COMMISSION FOR THE  
ESTABLISHMENT OF THE INTERNATIONAL REGISTRY  
FOR MAC EQUIPMENT PURSUANT TO THE MAC  
PROTOCOL**

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***Registrar Working Group  
First session (remote)  
4 November 2020***

**SUMMARY REPORT  
OF THE FIRST SESSION  
(Videoconference, 4 November 2020)**

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1. The first session of the Registrar Working Group established by the Preparatory Commission for the establishment of the International Registry for Mining Agricultural and Construction (MAC) equipment pursuant to the MAC Protocol took place via videoconference on 4 November 2020. The Commission was attended by 20 participants from five Member States of the Commission, one observing State, one observing organisations, and *ex officio* observers from the Diplomatic Conference (the List of Participants is available in Annex I).

2. This report summarises the discussion which took place at the first session of the Registrar Working Group, as well as the written comments received from participants following the first session.

### **Item No. 1 Opening of the session**

3. The *UNIDROIT Secretary-General* welcomed participants to the first session. He explained that the Registrar Working Group had been established by the MAC Protocol Preparatory Commission at its first session (hereafter "PC1") under Rule 6 of its Rules of Procedure. He then suggested that the first session of the Registrar Working Group should be dedicated to reaching policy consensus on open issues, and if possible also discuss different options for drafting the Request for Proposals (RFP) for the appointment of a registrar.

4. *The UNIDROIT Secretary-General declared the first session of the Registrar Working Group open.*

### **Item No. 2 Adoption of the order of business of the session**

5. *The Commission adopted the draft Order of Business (MACPC/Registrar/W.G./1/Doc. 1, available in Annex II).*

### **Item No. 3 Election of the Chair of the Registrar Working Group**

6. One participant nominated Mr Ole Böger (Participating as an Ex Officio Observer following his role as the Chair of the Working Group on HS Codes at the Diplomatic Conference for the adoption of the MAC Protocol) for the position of Chair of the Registrar Working Group. Another participant supported the nomination.

7. *Mr Ole Böger (Participating as an Ex Officio Observer following his role as the Chair of the Working Group on HS Codes at the Diplomatic Conference for the adoption of the MAC Protocol) was elected Chair of the Registrar Working Group.*

### **Item No. 4 Consideration of issues associated with draft Request for Proposals**

8. *The Chair* suggested that the Working Group consider the matters raised in the Issues Paper (MACPC – Registrar W.G.1 - Doc. 2) and invited participants to raise any additional issues as discussions progressed.

9. *The Secretariat* outlined the procedure for the appointment of a Registrar for the MAC International Registry, noting that a process similar to that followed by the Preparatory Commission for the Aircraft Protocol and the Luxembourg Rail Protocol was suggested to be followed. It was noted that the Registrar Working Group would prepare the draft RFP which would be approved and

published by the Preparatory Commission. The Preparatory Commission would then also evaluate all the bids received, based on an evaluation criterion, and following a timeline recommended by the Registrar Working Group.

## **1. Issues relating to the substantive content of the RFP**

### **(a) Nature of the registrar's activities**

10. The Secretariat introduced the issue relating to the nature of the registrar's activities, noting that the drafting of Article XVIII (2) of the MAC Protocol followed a similar approach to that taken by the Aircraft Protocol in Article XX(3), and the Space Protocol in Article XXXII(4), and in contrast with Article XVI(2) of the Luxembourg Rail Protocol, whereby it was not mentioned explicitly that the registrar may operate while obtaining a reasonable profit. It was noted that the RFP needed to indicate whether the registrar would be allowed to conduct activities not directly related to those it under the MAC Protocol, as such an indication would allow prospective bidders to accurately submit cost assessments with regard to setting up the registry and operating it. Moreover, it was noted that the business model of the registrar might also need to be considered, noting that the International Registry for the Aircraft Protocol, followed a two-tier model whereby the International Registry itself was established as a not-for-profit entity, keeping in mind Article XX(3) of the Aircraft Protocol, whereas the company which managed the International Registry (Aviareto) could engage in ancillary activities following approvals for those activities by the Supervisory Authority.

11. The nature of ancillary activities in general was discussed by the Working Group. It was noted that a similar discussion took place at the first session of the Regulations Working Group which discussed the possibility of 'additional filings' in the MAC International Registry. The MAC Protocol provided for the fees to be collected by the registry to cover for '*the reasonable costs of establishing, operating and regulating the International Registry, ...*'. As such, the collection of filings not directly relevant to the MAC Protocol may not fall outside the scope of activities relating to the operation of the Registry, however, activities such as aggregating data and using it for different purposes could be regarded as ancillary.

12. It was noted that ancillary activities could be subsidiary or auxiliary in nature. It was added that the ancillary activities being considered were additional income generating activities of a subsidiary nature, such that they were not related to the core activities of the registrar. Examples such as vehicle tracking and additional digital services were considered, for the sake of financial viability, consistent with the registries status as a not-for-profit entity. It was noted that it could be provided that fees collected from these services could allow the registrar to recover costs relating to establishment, operation, as well as ongoing maintenance and enhancement of the registry. It was noted that inclusion of a potential list of ancillary services a registrar could provide could foster innovation. Such provisions could especially be useful noting the rapid pace of technological advancements in the MAC sectors. One participant noted that a list should not be provided and that the registrars themselves could be allowed to propose the types of activities they may envisage performing as part of the RFP. *It was agreed that the RFP must seek to clarify what was meant by ancillary services, noting that these would be activities of a subsidiary nature, undertaken with the data collected by the registrar.*

13. *There was agreement that innovation should not to be stifled insofar as the breadth of activities that the registry would be allowed to conduct. It was also agreed that specific portions of the collected revenue from such any ancillary activities should go towards the establishment, operation and enhancement/development of the registry, in order to lower access costs of the registry for users.*

14. The Registrar Working Group discussed the presumption in Paragraph 106 of the Draft RFP which indicated that the Supervisor Authority would favourably consider a request from the registrar

to undertake ancillary activities. It was noted that the language being considered was taken from the RFP for the Luxembourg Rail Protocol for which the Supervisory Authority was closely involved in the process of selecting a registrar. It was also noted that for the Luxembourg Rail Protocol registry, ancillary activities were important to ensure the economic viability of the entity. The registry may also not engage in activities which create unreasonable financial risk. It was noted that many of these prohibitions would be drafted within the Regulations of the registry. *It was agreed that the language should be expanded to provide that any favourable treatment insofar as ancillary activities were concerned should consider the integrity of the system as a whole and that such ancillary activities may not intrude with or compromise the primary activities of the registrar.*

15. It was noted that the provision of legal or arbitration (or other dispute settlement mechanism) services, or advisory services might give rise to specific concerns and should not be allowed. *It was agreed that language in Paragraph 106 of the Draft RFP should be further expanded to mention legal or arbitration (or other dispute settlement mechanism) services, or advisory services, as specific examples of services whose provision should not be allowed in order to protect the integrity of the system.*

16. It was noted that in Paragraph 14 of the issues paper, reference was made to a two-tier model for the International Registry, while it appeared not to be immediately clear whether this structure was a necessary element of the Draft RFP. *The Registrar Working Group requested the Secretariat to prepare some background research on the reasoning behind the not-for-profit nature of the International Registry, and the two-tier structure adopted by Aviareto and the International Registry.*

#### **(b) Promotion and Industry Support**

17. The Secretariat introduced the issue noting that the RFP for the Luxembourg Rail Protocol indicated an amount of €25,000 per year which the registrar must allocate towards promotion of the Treaty. The importance and significance of having the registrar at promotional events and other engagements was also highlighted. It was noted that while the RFP for the Aircraft Protocol did not have a comparable provision, the promotional work for the Aircraft Protocol was largely led by the industry. Additionally, Aviareto paid €25,000 each year to acquire copies of the Official Commentary of the Cape Town Convention and its Aircraft Protocol which were used to promote the instruments.

18. *There was agreement on the importance of the registrar participating in promotional activities.* It was suggested that three options were available: i) to indicate an arbitrary sum of money which all bidders must allocate towards promotion; ii) to allow bidders to propose amounts for promotion and use this as part of the evaluation criteria for the bids received; or iii) to set a minimum amount, and allow bidders to compete for whatever maximum they may wish to allocate. A fourth option could be that the registrar may be obligated to spend a specific amount on promotion once it had fully recovered all costs relating to the establishment of the registry. One participant noted that it may be possible to obligate a registrar to utilise profits from ancillary activities towards promotional activities.

19. It was noted that promotional activities would be more important during the phase when the registry was being established, rather than at a later stage. It was noted that the resolutions of the Diplomatic Conference had invited States to contribute towards the promotion of the MAC Protocol and its registry. It was noted that from a commercial standpoint, the registry could be required to market itself to potential users.

20. *It was agreed to postpone the discussion on a later point, and to keep €25,000 in square brackets.* This decision would also depend on the final decision on the nature of the registrar's activities.

**(c) Indication of volume of work**

21. The Secretariat introduced the issue, noting that in order for bidders to submit standardised cost proposals, the RFP would need to indicate the anticipated baseline volume of transactions any registrar would have to execute on a yearly basis. Additionally, it would have to indicate the storage capacity which any registrar should account for as a minimum standard while submitting a proposal.

22. *It was agreed that the RFP should be drafted in a manner which ensured that bidders maintained flexibility, and had the capability to escalate/deescalate their capacity should the MAC Protocol generate more/less than the baseline number to transactions stipulated.* The baseline was only for the purposes of allowing bidders to submit proposals based on standardised cost estimates. Additional consideration needed to be given to whether the minimum capacity should be indicated in terms of registrations, transactions, or bytes of data. It was noted that standardisation of responses could be ensured by providing a template which bidders could use.

23. A participant noted the importance of having technical experts on the evaluation committee for the bids received, noting that all proposals would contain many technical elements such as storage capacity and volume of transactions.

24. *The Registrar Working Group requested the Secretariat to conduct additional research into estimating a baseline volume of transactions all bidders should be expected to account for, based on other RFP documents, as well as the economic assessment for the MAC Protocol.*

**(d) Technological Compatibility**

25. The Secretariat introduced the issue, noting that keeping in mind the comparatively lower level of sophistication of users of the future MAC international registry, as that of the Aircraft and Rail registries, backwards technological compatibility would need to be given greater consideration. Additionally, the RFP could consider obligating bidders to ensure that the registry could be used through a mobile phone, whether through an app, or a mobile browser.

26. *The Registrar Working Group agreed on the importance of compatibility with a large number of commonly used browsers for the future MAC registry.* It was suggested that a list of web browsers could be provided within the RFP to achieve this objective. Alternatively, a provision could be included where bidders could be asked to cover 90-95% of commonly used web browsers.

27. *The Registrar Working Group also agreed on the importance of ensuring that the MAC registry could be accessed using a mobile phone.* It was suggested that this could be achieved either through responsive web-design, whereby the registry website would be accessed through a mobile browser, or alternatively by the provision of a mobile phone app available on Android and IOS. There was no agreement on this matter. It was added that mobile phone verification options for consent and user verification could also be considered.

28. The Working Group explored what the purpose of an app would be, such that it might only be used for search, or could also be used for other services such as registration or verification. Additionally, the Working Group considered the usefulness of Application Programming Interfaces (APIs) in enabling users to access the registry. Some participants suggested that provisions should be added in the RFP to obligate the future registrar to build an API compatible registry. It was noted that should intermediaries become a norm in filing registrations to the MAC registry, they may wish to develop their own APIs, which should be possible.

29. It was considered that the use of APIs could allow third parties to profit from the services provided by the registrar. However, it was noted that APIs would only act as channels through which users would transact on the registry, which would not impact the profitability of the core registry

services itself. It was possible that ancillary services a registrar would want to provide could be undertaken by third parties, should API compatibility be mandatory – however, this would only incentivise competition and result in a better market for such services. It was noted that in the Australian PPSR, over 80% of transactions came through API channels, most of which were managed by intermediaries. Such intermediaries also provided legal services and advice to ensure appropriateness of a registration, giving rise to liability issues which were solely dealt with between the intermediary and the user, and did not involve the registrar. It was noted that in the case of an error in a registration processed through an intermediary, the registrar only had a direct relationship with the intermediary, and not the end user. As such, intermediaries would have to assume the liability for such mistakes and a knowledge campaign for such a process would be necessary.

30. *The Registrar Working Group agreed on the usefulness of APIs, as well as intermediaries in general in facilitating access to the MAC registry to a wide variety of users. The Working Group requested the Secretariat to further examine the liability regime pertaining to registrations and other access to the register through intermediaries and through third party APIs in various jurisdictions, noting that in the EU, in banking law, end users were shielded from liability in case a mistake was made on the intermediary level. While it was noted that the Cape Town Convention and its Protocols had specific references in their discharge provisions to the holders of rights, it would still be useful to examine how liability would flow under the Cape Town Convention system when registrations or any information obtained from the register (search results) were found to have errors which resonated from the acts of an intermediary or an API provider.*

#### **(e) Languages**

31. The Secretariat introduced the issue, noting that in order for bidders to submit adequate cost proposals to establish the MAC registry, it would be important for them to have knowledge of how many languages the registry would be expected to operate in during its setup phase and during its development.

32. The Registrar Working Group considered three different types of elements which a registrar would have to deliver insofar as multiple languages was concerned: i) helpdesk; ii) the registry website; iii) the information which users would submit to search and register in the registry. It was noted that the first two items were largely service related, and could easily, and at a low cost, be provided in several languages. *The Working Group agreed that these two items should be clearly separated in the RFP and the obligations upon the bidders to provide multilingual functionality should be limited to these two items at this stage.*

33. *With regard to the third item, noting the legal significance of such information, it was agreed that no translation should be available.* It was noted that national entry points could assist in providing language services to users. API channels could also act as facilitators in this regard.

34. *It was agreed that the Registry should be able to accept registration information in any language which the user may wish to provide, including the use diacritical marks. Furthermore, it was agreed that the fields requesting information from users should be available in different languages.*

35. It was noted that capacity in additional languages would depend upon ratifications of the MAC Protocol. As such, the helpdesk languages could be limited to the six UN languages. Additionally, the website should also be available in the six UN languages upon the launch of the Registry. It was proposed that in the future, the website of the registry should become available in languages of States which had ratified the MAC Protocol.

**(f) Currency of the operation + currency of indicated costs**

36. The Secretariat introduced the issue, noting that the RFP could indicate the currency in which a registrar could be expected to collect fees in, or allow bidders to put this information in their proposals. Additionally, the currency of the cost proposals submitted by the bidders should also be considered.

37. It was noted that the underlying question in this discussion related to which party bore the cost of currency conversion. Members of the Working Group expressed concern that should a limited list of currencies be specified in which the registrar would collect fees, this would increase the costs of transactions for users in developing countries.

38. *The Working Group agreed that bidders should be allowed to indicate the currency in which they would collect fees, noting that it would be in the interest of the registrar to facilitate transactions, rather than disincentivise them.* It was noted that the options available could be limited to a short list of currencies. It was added that payment methods available to users should also be considered as part of the RFP document, in order to facilitate users to pay in different currencies, or make their payment as a domestic transaction to an account held by the registrar in the Contracting State concerned.

39. *It was decided to postpone the discussion on which currency bidders would have to submit their proposals in to the second session of the Registrar Working Group.*

Note: the report on the following items (paras. 40 to 55) is based upon the written comments which participants to the Group were invited to share with the Secretariat following the videoconference on November 4<sup>th</sup>.

**(g) Governing law of contract with registrar**

40. *The written comments by participants of the Registrar Working Group indicated a general preference to postpone the discussion of selecting a governing law for the contract between the registrar and the Supervisory Authority to a later time when a Supervisory Authority was appointed.*

41. It was noted that one option could be to use the law of the seat of the Supervisory Authority.

**(h) Data Protection and Privacy**

42. *Several participants of the Registrar Working Group indicated that the provision in Paragraph 91 of the Draft RFP was not sufficient.* It was noted that any registrar would have to abide by domestic data protection and privacy legislation in all circumstances. Additionally, several data protection regimes (such as GDPR) did not exclusively apply on the basis of the location or the seat of the data collector. Not specifying a baseline standard for data protection and privacy would result in bidders submitting noncomparable proposals. Additionally, only obligating registrars to follow domestic rules could encourage forum shopping.

43. It was suggested that the RFP could indicate a set of baseline data protection and privacy rules which all bidders would be expected to adhere to, in addition to any rules which may be applicable to them based on their location. Such a standard should be a very high, as this was already accepted/common standard in a number of jurisdictions.

44. It was proposed that this issue should be explored further at the next meeting of the Working Group, in order to clarify to what extent the register involves personal data (such as for user accounts) or data referring to corporate entities (which might be subject to different standards of privacy and data protection).



**(i) Matters in the RFP dependent upon the Regulations Working Group**

45. *The written comments by participants of the Registrar Working Group agreed that the matters discussed in Paragraph 29 of the Issues Paper should be dealt with by the Registrar Working Group only once the underlying substantial issues had been clarified in the Regulations Working Group.*

**2. Issues relating to the technical content of the RFP**

46. The Secretariat noted its lack of technical expertise in designing registries of this nature, requesting the Members of the Working Group to invite input from the RFP document from technical experts in the field of registries within their domestic jurisdictions.

47. *The participants of the Registrar Working Group agreed in their written comments on the importance of obtaining expert advice on the technical aspects of the RFP, especially on Part 2 of the Draft RFP. The Working Group noted the importance of ensuring that advice was not sought from any parties which might consider applying for the role of the registrar in the future, in order to avoid a conflict of interest.*

**3. Issues of Procedure**

**(a) Who to invite**

48. The Registrar Working Group noted the options of either only allowing private entities to bid, or of allowing private entities which indicated that they had the support of the State in which they intended to be incorporated. There was no agreement on this matter.

49. The Registrar Working Group remarked on whether a sentence could be included in the RFP to suggest that it would be preferable for the Registry to be hosted in, and/or to maintain its computer back-up and storage systems in a Contracting State of the MAC Protocol in order to incentivise ratifications. It was suggested that a sentence could be included which would note that a bid by an entity which indicated that the registry would be hosted (including data storage) in one or more Contracting States of the MAC Protocol would be viewed favourably, with the evaluation criteria adjusted slightly accordingly.

**(b) How to distribute**

50. *The participants of the Registrar Working Group agreed in their written comments that the RFP should be distributed to States which were Contracting Parties to the Cape Town Convention and/or any of its Protocols, as well as States which attended Diplomatic Conferences for the Cape Town Convention and/or any of its Protocols, and to Member and Observer States of the Preparatory Commission, and to UNIDROIT Member States. Additionally, the RFP would also be posted on the UNIDROIT website.*

51. Keeping in mind that the audience of the RFP was largely the private sector, a participant raised a concern as to how the RFP would trickle down from States to the private sector, and it was suggested that some guidelines be developed for this accordingly.

**(c) Evaluation**

52. *The participants of the Registrar Working Group agreed in their written comments that the proposals received should be evaluated by the Preparatory Commission while consulting outside experts as appropriate. A middle-ground approach relying upon a rating system was supported. However, it was noted that the present system outlined in Paragraph 139 of the Draft RFP was not sufficiently developed to adequately evaluate the technical offer. One participant expressed their availability to provide examples of how technical offers were evaluated in other RFPs.*

53. *Regarding simultaneous negotiations with multiple bidders, it was agreed that while a possibility to do so should be retained in the RFP, there should be no obligation to do so, keeping in mind the limited resources available to the Preparatory Commission.*

**(d) Timeline**

54. The Registrar Working Group noted that the timeframes mentioned in Paragraph 145 (a)(b)(c)(d) were reasonable, whereas (e)(f)(g)(h)(i) were too short. *It was agreed that additional consideration should be given to this issue at the next session of the Working Group.*

**(e) Inclusion on critical performance factors**

55. *The participants of the Registrar Working Group agreed in their written comments that the critical performance factors identified in the project on Best Practices in the Field of Electronic Registry Design and Operation organised under the auspices of the Cape Town Convention Academic Project should be incorporated within individual parts of the RFP document.* It was also noted that bids could be scored against their capacity to adhere to the aforementioned critical performance factors.

**Item No. 5 Timetable and planning of further work**

56. *The Registrar Working Group noted that the date for its second session would be decided at the second meeting of the MAC Preparatory Commission on 10-11 December 2020.*

57. *The Secretariat noted that it would consult outside technical and procurement experts, update the draft MAC RFP and Issues Paper, and circulate the documents in advance of the second session.*

**Item No. 6 Any other business**

58. *No other business was raised under this item.*

**Item No. 7 Closing of the Session**

59. *The Chair thanked all the participants for their attendance and positive contributions to the discussion.*

60. *The Chair closed the first session of the Registrar Working Group.*

**ANNEX I****LIST OF PARTICIPANTS****REPRESENTATIVES****STATES****AUSTRALIA**

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**ANNEX II****ORDER OF BUSINESS**

1. Opening of the session
2. Adoption of the order of business of the session
3. Election of the Chair of the Registrar Working Group
4. Consideration of issues associated with draft Request for Proposals
5. Timetable and planning of further work
6. Any other business
7. Closing of the session