



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  
Second session (remote)  
26 February 2021***

**SUMMARY REPORT  
OF THE SECOND SESSION  
(Videoconference, 26 February 2021)**

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1. The second 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 took place via videoconference on 26 February 2021. The session was attended by 15 participants from four Member States of the Commission, two observing States, 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 second session of the Registrar Working Group.

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

3. *The Chair* welcomed the participants to the second session of the MAC Registrar Working Group.

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

4. *The Working Group adopted the draft Order of Business (MACPC/Registrar/W.G./2/Doc.1).*

### **Item No. 3 Approval of the Report of the First Session of the Registrar Working Group**

5. *The Working Group approved the Report of the first Session (MACPC/Registrar/W.G./1/Doc. 4). It was noted that this report also included a summary of the written remarks submitted by the participants after the first session.*

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

6. *The Chair* drew the attention of the Working Group to the Issues Paper (MACPC/Registrar/W.G./2/Doc.2) and invited the Secretariat to present a summary of the intersessional work which had been conducted.

7. *The Secretariat* thanked the members of the Working Group who had assisted in the collection of feedback with regard to technical aspects and procurement related practices found within the draft Request for Proposal (RFP). This feedback had been inputted into the RFP and was included in the Issues Paper. Additionally, it was noted that Annex 3 had been added to the RFP to showcase a list of functional requirements any prospective Registrar would be expected to meet.

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

##### **(a) General Approach to drafting the RFP**

8. *The Chair* introduced the issue noting that this was a new segment in the Issues Paper and also related to Annex 3 of the RFP.

9. *The Secretariat* noted that in the feedback collected intersessionally, several experts had recommended taking a functional approach to drafting the RFP, rather than a prescriptive one. Accordingly, several changes had been made to the draft RFP to reflect this. Additionally, Annex 3 to the RFP relating to a statement of functional requirements for the MAC Registry had also been added.

10. *One participant* noted that it highlighted all the requirements and actions any Registrar would be expected to perform. This included items such as complaints management, following relevant administrative law, and other day-to-day activities. It was noted that there were still some areas where the RFP required additional clarification. This included the issue of how to identify and verify users of the registry, as well as data retention and protection policies. Both these items could have significant cost implications for any bidder. It was added that Annex 3 was modelled off other tenders issued for registries by governments. Additionally, it was noted that providing a statement of requirements enabled innovation from bidders, as well as the ability to allow bidders to propose competitive solutions, rather than being restricted by the technologies noted in the RFP.

11. *A participant* queried if any parts of the RFP had been deleted to adopt a more functional approach. *The Secretariat* noted that specific changes had been made to the FAQ section of the RFP. Additionally, some generally functional references had also been added, in order to offer more functional guidelines to bidders. It was noted that should the functional approach be endorsed by the Working Group, more elements of the RFP would be amended accordingly.

12. *A participant* queried whether the statement of requirements in Annex 3 was prepared in line with the draft Regulations of the MAC Registry. *A participant* noted that while the draft Regulations had closely been followed, this would be expanded further ahead of the next session of the Working Group.

13. *A participant* noted that the prescriptive approach had worked well for the Aircraft Registry and the Rail Registry. As such, strong reasoning should be available in case the Working Group decided to deviate from it. *Several participants* noted that when the RFPs for the Aircraft Registry and the Rail Registry were published, the number of electronic registry providers was very small and technological advancements in this sector were very limited. This was no longer the case. Additionally, *one participant* also noted that the nature and number of users of the MAC Registry should also be kept in mind while making the decision of which approach to adopt.

14. *The Registrar Working Group endorsed the recommendation to follow a functional approach to drafting the RFP. The importance of ensuring that Annex 3 aligned with the draft MAC Regulations was emphasised.*

15. With regard to the specific issue of FAQs noted in Paragraph 15 of the Issues Paper, *the Secretariat* noted that it had been advised to include a functional requirement for answering questions, rather than a specific requirement for having an FAQ page, which was largely not recommended by governments and other practitioners. *Several participants* agreed with this approach and noted that having a functional requirement would allow bidders to propose several dynamic solutions, including possibly relying on automated chatbots, etc.

16. *The Working Group agreed on including more functional language on this matter in the RFP.*

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

17. *The Chair* introduced the issue and invited the Working Group to consider the general approach in this regard as well as the changes which had been made to Paragraphs 16, 107, 108, and 109 of the draft RFP.

18. It was acknowledged by *participants* that the MAC Registry would be allowed to offer ancillary services on a profit-making model, whereas as per the Cape Town Convention and the MAC Protocol, it would offer its core services on a purely cost recovery model. *The Working Group requested that the Secretariat reach out to Aviareto to understand why it had a two-tier company structure, whereby Aviareto and the International Registry were separate legal entities of different natures.*

19. With regard to paragraph 109 of the RFP, *one participant* was suggested that 40% of the revenue from ancillary services dependent upon the registry website should not only be used to recover costs of establishment of the registry, but also operation and development. *The Secretariat* noted that this paragraph had been taken from the RFP for the Rail Registry and could be amended as per the recommendations of the Working Group and the MAC Preparatory Commission. *One participant* noted that the registration fee was to be calculated to recover the establishment and operational costs of the Registry. As such, once the cost of establishment had been recovered, allocating 40% of the revenue collected through ancillary services also to operational costs might result in an excess of capital for the Registrar.

20. *One participant* noted that the Registrar would always be in a position to renegotiate its contract with the Supervisory Authority at the stage of renewal, should it find itself in a situation where it had excess capital. Additionally, should the Registrar be in a position where it was generating too much capital, it could reduce the fees of using the Registry.

21. *Several participants* noted that the distinction drawn in Paragraph 109 which referenced the Registry 'website' was not technologically adequate. The Registry was to be a platform, and a more apt distinction could purely reference ancillary activities reliant on core services and ancillary activities generally.

22. *One participant* suggested that the exclusions in Paragraph 108 should also include validation services. *Another participant* noted that this was already covered under the catch-all provision mentioned in Paragraph 107.

23. *Following deliberations, the Working Group agreed that Paragraph 109 should maintain the 40% threshold. However, it should be redrafted to follow a more flexible approach whereby these matters could be negotiated between the Registrar and the Supervisory Authority.*

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

24. *With regard to the issue of how much money a Registrar should commit to allocating for promotion and industry support, the Working Group agreed that this sum should be €35,000, keeping in mind the importance of promoting the MAC Protocol, as well as indications from industry that this amount was not very high.*

#### **(d) Indication of volume of work**

25. *The Chair* introduced the issue and noted that the Secretariat would provide additional research in this regard at the next session. It was noted that another metric that the Secretariat would need to provide research for related to search activity.

26. *The Working Group agreed that on this matter, while estimates were useful, the Registrar must be expected to be flexible and able to scale up or down, as necessary.*

#### **(e) Technological compatibility**

27. *The Chair* introduced issues relating to browser compatibility and Application Programme Interfaces (APIs). With regard to browsers, it was noted that Paragraphs 30 and 82 of the RFP had been amended to include a general list of browsers; an obligation to ensure the Registry was functional on mobile browsers; and an optional choice given to bidders to propose building a dedicated mobile application for the Registry. *The Working Group approved this redraft from Paragraphs 30 and 82.*

28. With regard to APIs, *the Secretariat* noted the Working Group and the Preparatory Commission had requested research relating to liability of the Registrar under the Cape Town

Convention in case it used an API, as well as issues relating to APIs impacting the commercial viability of the Registrar. Based on this research, it was noted that there were no unique liability issues related to using APIs under the Cape Town Convention, as it would operate under the same principles as a general intermediary. As such, the Registrar would simply be expected to follow best practice. With regard to impacting the commercial viability of the Registrar, it was noted that while this was not necessarily a concern, one option was to allow the Registrar to charge third party service providers a royalty fee or a license for using the Registry via an API.

29. *Some participants* noted that creating a licensing regime had risks related to unfair competition, etc. It was also noted that while providing for API compatibility was essential for any bidder, the RFP should not delve into the specifics of the technology or licensing, as this could be finalised at a later time with the Supervisory Authority.

30. *One participant* added that API channels could make the Registry more accessible and available to much larger audiences. *One participant* recognised that while APIs increased the reach and accessibility of the Registry, they could potentially allow third-party service providers to capture parts of the revenue the Registry could make, and that a balance needed to be struck in this regard.

31. *The Secretariat* noted that, while the Aircraft Registry presently did not have API compatibility, this was an ongoing consideration for the sake of providing a mobile application, as well as to augment quality control.

32. *The Working Group agreed that the RFP should contain an obligation for bidders to ensure that the MAC Registry was API compatible. Additionally, regarding the issue of licensing, functional language should be included in the RFP to allow this to be finalised in coordination with the Supervisory Authority, and to decide whether or not the Registrar would be allowed to accept/reject any third-party service providers.*

#### **(f) Languages**

33. *The Chair* introduced the issue noting that paragraph 57 of the RFP had been redrafted to reflect the agreements reached by the Working Group at its first session.

34. With regard to part (b) of paragraph 57, *participants* queried the rationale behind limiting the obligation to expand to another language for registration and searches to languages with a Latin script. *The Working Group agreed to remove this limitation, keeping in mind the global reach of the MAC Protocol and the importance of jurisdictions which did not have a Latin script.*

35. *One participant* noted that the ability to search for declarations made by States should be provided in multiple languages. It was proposed to examine how this functioned in the Aircraft Registry and to examine this issue further thereafter.

36. *The Working Group reaffirmed that in order to shield the Registrar from liability, and to ensure the accuracy of the Registry, information provided by users as part of a registration would never be translated into another language. It was noted that this would likely also not be necessary, as the information provided by users would be simplistic serial numbers and/or brand names.*

#### **(g) Currency of the operation and currency of indicated costs**

37. *The Chair* introduced the issues relating to currency of the operation of the Registry, and the currency of the cost proposal submitted by any bidder. It was noted that Paragraph 74 of the RFP had been redrafted to reflect the Working Group's view on the issue of currency of operation.

38. *One participant suggested that the reference to 'type' should be replaced with a reference to 'method'. Besides this, the Working Group approved the redrafting of Paragraph 74 of the draft RFP.*

39. With regard to the currency in which bidders should present their proposals in order to facilitate their assessment, it was noted that while Euros would be beneficial to use, considering they were the currency of the seat of UNIDROIT, and the currency of the operating costs of the Aircraft Registry, it would also be helpful for bidders to specify a date at which any exchange rates used were effective.

40. *It was agreed that the Secretariat would conduct some research on this matter and revert back with international best practices accordingly.*

#### **(h) Governing law of contract with registrar**

41. *The Chair introduced the issue. Noting that a Supervisory Authority had not been appointed yet, it was proposed that the RFP should note that the governing law of the contract between the Registrar and the Supervisory Authority would be decided by the Supervisory Authority. The Working Group agreed with this proposition.*

#### **(i) Data Protection and Privacy**

42. *The Chair introduced the issue and noted that it would be useful to have a minimum standard for data protection and privacy in the RFP in order to allow the bids to be evaluated on an even scale. It was added that data protection and privacy considerations needed to be examined in three primary areas: (i) the collection of personal data at the time of registration; (ii) the amount of time data would be stored for; and (iii) the international transfer of personal data due to the location of the Registry and the location of its users. The Working Group requested the Secretariat to consult best practices and experts in this regard and revert back with a functional draft on this matter for deliberation at the next session.*

#### **(j) Intellectual Property**

43. *The Chair introduced this issue and noted that some parts of it were already addressed in Paragraph 113 of the RFP which related to portability of software. The Secretariat confirmed that various parts of the RFP, including Paragraph 69, 113, and 122, referred to intellectual property rights, and that it was important to make them all consistent and correlated. It was also noted by a participant that there were various different types of intellectual property rights that needed to be considered, including which law would apply to them. As such, the RFP should take a functional approach to addressing these.*

44. *The Working Group agreed that consistency and correlation should be established between the various provisions relating to intellectual property rights in the RFP.*

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

45. *The Chair noted that while there were certain issues in the RFP which could not be finalised before the work of the Regulations Working Group had concluded, it was important for the Registrar Working Group to move towards finalising the RFP. As such, the Chair requested the Secretariat to produce functional versions of provisions relating to these matters for the Working Group's consideration ahead of its next session.*

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

46. With regard to technical content of the RFP, *the Secretariat* noted that advice had been collected from external experts and had already been implemented in the RFP, particularly with regard to technological elements. It was confirmed that the Secretariat would continue to receive advice on this, and would propose changes to the RFP accordingly.

## **3. Issues of Procedure**

### **(a) Who to invite**

47. *The Chair* introduced the issue noting that presently Paragraph 14 of the draft RFP stated that both public or private entities may participate in the bidding process, without making a reference to States. The Chair drew the Working Group's attention to Paragraph 56 of the Issues Paper which queried whether participation should be limited only to States, only to private entities, or if the language of Paragraph 14 should be changed to: 'Requests to participate may be made by public or private entities, including States.'

48. *The Secretariat* noted that for the Aircraft Registry, Aviareto received support from the Irish Government. It was added that during the time of the appointment of the Aircraft Registry, a model whereby a State would support a Registrar was preferred as there were risks relating to the Registrar's solvency. It was added that the issue of Hosting State was separate from the issue of a State being the Registrar. Lastly, it was also added that this issue did not exist for the Rail Registry, which was to be hosted in Luxembourg according to the treaty.

49. *Participants* noted that while it was unlikely for a State to apply to be the Registrar, this was not impossible, and that this provision should be drafted in the broadest and most inclusive manner possible. As such, *the Working Group approved the present drafting of Paragraph 14 of the RFP, noting that its mention of public entities did not preclude participation from a State-owned entity.*

50. With regard to the issue of the location of the Registry's servers, Part 2.a.26 of the RFP noted that 'It is preferable, though not required, that the International Registry's computer back-up and storage systems be located in the territory of a Contracting State to the Convention.' *The Working Group approved this drafting noting that it promoted inclusivity and allowed a larger number of candidates to bid for the position.*

### **(b) How to distribute**

51. *The Working Group approved the mechanisms listed in Paragraph 125 and 126 of the RFP with regard to distribution.*

### **(c) Process of submission of Proposals**

52. *With regard to the process of submission of proposals, the Working Group recognised that establishing an online portal would require too many resources and was not feasible for a one-off tender. It was noted that while the UNIDROIT Secretariat would prefer to receive proposals via email, it would consult procurement experts on this matter to ensure that this was a standard practice, and was in line with principles of confidentiality and data protection.*

### **(d) Evaluation**

53. *The Chair* introduced the issue and noted that the evaluation process for the technical offer was highly arbitrary and did not contain enough specificities. As such, it was suggested that additional intersessional work be done in this regard. *One participant* noted that an additional element to consider would be the human resource capabilities of any bidder.



54. *It was agreed that the Secretariat would consult procurement experts on this matter and report back to the Working Group at its next session.*

55. *Regarding simultaneous negotiations, the Working Group approved the updated draft of Paragraph 3 of the RFP, and noted that the same should be reflected in Paragraph 142.*

**(e) Timeline**

56. *It was recalled that the MAC Protocol Diplomatic Conference set a target of two years from the first meeting of the Preparatory Commission for the international infrastructure for the MAC Protocol's entry into force to be established. Several participants expressed caution while considering the timeline presently proposed in the RFP, suggesting that quality should not be compromised for the sake of speed.*

57. *The Working Group agreed to discuss this matter at its next session.*

**(f) Inclusion on Critical Performance Factors**

58. *The Working Group agreed that once the paper on Collateral Registries as part of the Best Practices of Electronic Registry Design and Operation project had been completed, consideration could be given as to how it should be incorporated into the RFP.*

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

59. *The Registrar Working Group noted that two more meetings of Working Group would be organised prior to the third session of the Preparatory Commission (3-4 June 2021) to finalise the RFP.*

60. *The Secretariat noted that it would continue to consult technical experts and procurement experts to get additional feedback on the draft RFP.*

**Item No. 6 Any other business**

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

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

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

63. *The Chair closed the second session of the Registrar Working Group.*

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

AUSTRALIA	Mr Dipen MITRA Director Australian Financial Security Authority
CHINA (People's Republic of)	Ms YANG Yuan Deputy General Manager Research & Strategy Department Credit Reference Center The People's Bank of China  Ms DING Zhitong Manager Research and Strategy Department Credit Reference Center The People's Bank of China
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CHAIRPERSON OF THE HS CODES WORKING GROUP	Mr Ole BÖGER Judge Hanseatic Court of Appeal in Bremen
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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW	Mr Ignacio TIRADO Secretary-General
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	Ms Dong YIWEI Legal Intern

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

1. Opening of the session
2. Adoption of the order of business of the session
3. Approval of the Report of the First Session 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