



Council of the  
European Union

Brussels, 8 January 2016  
(OR. en)

14838/05  
DCL 1

ECOFIN 367  
EF 53  
JUSTCIV 215

## DECLASSIFICATION

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of document:	ST 14838/05 RESTREINT UE
dated:	22 November 2005
new status:	Public
Subject:	Draft Mandate to the Commission to open negotiations within UNIDROIT for a future Convention on harmonised substantive rules regarding securities held with an intermediary

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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# RESTREINT UE



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THE EUROPEAN UNION**

**Brussels, 22 November 2005**

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## **COVER NOTE**

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from : Secretariat

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to : Delegations

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Subject : Draft Mandate to the Commission to open negotiations within UNIDROIT for a future Convention on harmonised substantive rules regarding securities held with an intermediary

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Delegations will find attached the Presidency proposal concerning the draft Mandate in reference.

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## DECISION

The Council decides that:

- The Commission is authorised to conduct negotiations **to the extent of Community competence** for the adoption of a future UNIDROIT Convention on harmonised substantive rules regarding securities held with an intermediary within the framework of the directives set out in the annex and in consultation with a special committee appointed by the Council to assist the Commission in this task.
- In so far as the draft UNIDROIT Convention falls partly within the competence of the Member States and partly within the Community's competence, the Commission and the Member States should co-operate closely during the negotiations with a view to achieving unity in the international representation of the Community.

## ANNEX

### NEGOTIATING DIRECTIVES

- (1) The Commission shall aim to reach agreement about a future UNIDROIT Convention on harmonised substantive rules regarding securities held with an intermediary, in such a manner as to ensure that the future UNIDROIT Convention is compatible with
  - (a) (...)
  - (b) Community rules, having regard to the possibility that the future UNIDROIT Convention might affect the application of those rules;

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- (c) Directive (2002/47/EC) on Financial Collateral Arrangements,<sup>1</sup> OJ L 168, 27 June 2002, p.43 ff, and Directive (98/26/EC) of 19 May 1998 on the Settlement Finality in Payment and Securities Settlement Systems, OJ L 166, 11 June 1998, p.45 ff, specifically:
- The concept of "finality" as established by the scheme set out in that directive<sup>2</sup>;
  - the definition of a 'system' in article 2(a)<sup>3</sup>
  - the definition of 'transfer order' in article 2(i),<sup>4</sup>
  - article 3 dealing with netting and transfer orders<sup>5</sup>, and
  - article 8 dealing with provisions concerning insolvency proceedings<sup>6</sup>;
- (d) Any future revisions made by amendment to the Directive on Settlement Finality in Payment and Securities Settlement Systems, OJ L 166, 11 June 1998, p.45 ff, resulting from the current review of its implementation **[and ongoing considerations in the Legal Certainty Group]. (...)**

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<sup>1</sup> Corresponds to UNIDROIT new articles 21 to 24, and 6 to the extent it overlaps with Directive (2002/47/EC).

<sup>2</sup> This is relevant to UNIDROIT new articles 4,5 as regards the effect of book-entry; article 7, especially articles 7 (4) and 7 (5), 8, 12, and 13.

<sup>3</sup> SFD article 2(a) – corresponds to UNIDROIT new article 1 (definitions) as and when definitions of securities settlement system and clearing house are added; and to articles 7(4), 7(5), 8 and 13.

<sup>4</sup> SFD article 2(a) – corresponds to UNIDROIT new article 1 (definitions) as and when a definition of transfer order is added; and to article 7 generally (in that authorisation may be established through a transfer order), 7(4) and 7(5) in particular, 8 and 13

<sup>5</sup> SFD article 3 – corresponds to UNIDROIT new articles 4 , 5 and 7 to the extent they effect the moment of entry of a transfer order into a system (which they might do by establishing rules as to the effectiveness of a subsequent credit made by book-entry in a way that could compromise the Community regime for the effectiveness of prior transfer orders - see especially new article 7(2)), and new article 13 dealing with effectiveness on insolvency of an operator of a securities settlement system or clearing house.

<sup>6</sup> SFD article 6 to 8 – corresponds to UNIDROIT new Chapter IV, especially new article 13.

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- (2) The Commission shall ensure that the draft UNIDROIT Convention on harmonised substantive rules regarding securities held with an intermediary contains appropriate provisions enabling the Community to be a Party thereto on a par basis with other Parties.
- (3) The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations

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