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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

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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NOTE

from : Secretariat
to : COREPER/Council

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

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 with respect to the outcome of the negotiations in accordance with Article 300 (1) of the Treaty.

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, or, where appropriate and after consultation with the special Council Committee, closely aligned to:

Community rules, having regard to the possibility that the future UNIDROIT Convention might affect the application of those rules, in particular, having regard to

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Directive (2002/47/EC) on Financial Collateral Arrangements,¹ 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 in the latter directive:

- The concept of "finality" in a system as established by the scheme set out in Directive 98/26/EC². The Commission shall not be empowered to negotiate an extension of this concept to other areas contrary to the objectives of that Directive;
- the definition of a 'system' in article 2(a)³
- the definition of 'transfer order' in article 2(i),⁴
- article 3 dealing with netting and transfer orders⁵, and
- article 8 dealing with provisions concerning insolvency proceedings⁶;

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

² 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.

³ 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.

⁴ 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

⁵ 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.

⁶ SFD article 6 to 8 – corresponds to UNIDROIT new Chapter IV, especially new article 13.

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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.

- (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 development and outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.
- (4) Without prejudice to Article 300 (1), the Commission may request at any point a revision to this Decision.

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