



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 October 2006

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LIMITE

**JUSTCIV 204
EF 36
ECOFIN 307**

NOTE

from: Presidency

to: Committee on Civil Law Matters (General Questions)

No. Cion prop. : 16292/03 JUSTCIV 273

Subject : Proposal for a Council Decision on the signing of the Hague Convention on the Law applicable to certain rights in respect of securities held with an intermediary

1. On 15 December 2003, the Commission adopted a proposal concerning the signing of the Hague Convention on the Law applicable to certain rights in respect of securities held with an intermediary (2002 Hague Convention).
2. This proposal has been examined at several occasions by the Committee on Civil Law Matters. The European Central Bank has given its views on the proposal on 17 March 2005 (see 7669/05 JUSTCIV 64). On 23 June 2005, the Council noted that a number of mainly legal issues raised in the discussions required further consultation, including the scope, the extent of third party rights, the implications for substantive and public law and the impact of the diversity of legislations on settlement and prudential supervision systems. The Council invited the Commission to undertake an appraisal of these issues. A report on these issues was presented on 5 July 2006 (see 10918/06 JUSTCIV 154).

3. The Presidency takes the view that the 2002 Hague Convention provides for the harmonization of conflict of law rules on a global level in an economic area where the relevant market is a global market. Therefore, the Presidency endeavours to find a solution on the issue of signing the 2002 Hague Convention the course of this semester.

4. The Presidency would like to submit the following guidelines for a possible compromise:

a) The Council will decide on signature of the 2002 Hague Securities Convention on the JHA Council in December 2006. The Community should sign the Convention in the course of the first semester of 2007.

b) The Commission will examine the best way to adapt the Community law so that it is compatible with the Convention along the lines of Option 2 of the Commission document SEC(2006) 910 (see 10918/06 JUSTCIV 154). In particular, the Commission will consider introducing a rule providing that, in order to benefit from the protection of the Settlement Finality Directive¹, the participants to the settlement system can choose only one law to govern the issues falling under the Convention. In this context, it will also be examined whether it is necessary and appropriate to require that the law chosen has to be the law of an EU Member State.

Before making the proposals for the adaptation of the Community law, the Commission will consult stakeholders. Economic and legal impacts of any proposals will be examined in order to ensure the stability of payment and settlement systems. In preparing the proposals, the Commission will take into account the views of Member States and of the ECB.

c) The Commission will submit the proposals for the adaptation of the Community law to the European Parliament and to the Council at the latest by the end of 2008.

¹ Directive 98/26/EC of the European Parliament and of the Council, of 19 May 1998, on settlement finality in payment and securities settlement systems, OJ L 166, p. 45.

d) The Commission will make the proposal for ratification of the Convention in due time, taking into account the necessary amendments to Community law, in order to make it possible that the Community ratifies the 2002 Hague Convention by the end of 2010.

7. The Presidency submits this proposal at this stage for examination and discussion at the next meeting of the Committee on Civil Law Matters (General Affairs) on 11 October 2006.
