

EUROPEAN FINANCIAL MARKETS LAWYERS GROUP

- CHAIRMAN -

11 March 2002

Mr Christophe Bernasconi
First Secretary
Hague Conference on Private International Law
Scheveningseweg 6
NL-2517 Den Haag
The Netherlands

Dear Mr. Bernasconi,

PRELIMINARY DRAFT CONVENTION ON THE LAW APPLICABLE TO CERTAIN RIGHTS IN RESPECT OF SECURITIES HELD WITH AN INTERMEDIARY

The EFMLG has paid great attention to transactions in securities since the group's inception in June 1999. There have since then been a number of significant, and highly welcome, legislative developments affecting transactions in securities across the EU. With the further progression of the proposed Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary, following the successful collaboration between the public and private sectors at a special Commission meeting in The Hague in January this year, and in the light of the forthcoming adoption (the EFMLG hopes) of the proposed EU Collateral Directive during this period of the Spanish Presidency, the EFMLG wishes to point out that it strongly supports the initiative of the Hague Convention and was grateful to be invited to send representative observers to the Special Commission meeting held in The Hague in January.

At its February 2002 meeting, the EFMLG agreed that it might be helpful to the further progress of the Convention to take up the invitation of the Secretariat of the Permanent Bureau to submit comments and queries to the Secretariat by March 11th in advance of the March meeting of the Drafting Committee in Frankfurt. In this letter we set out three key questions that were highlighted in the group's discussion and on which it was felt that it might be helpful to seek clarification. These issues are raised in the context of Preliminary Document 8 of the Special Commission.

1. The definition in Article 1 of the scope of securities to be covered by the Convention is different from the formulation used in the proposed EU Collateral Directive. What are the likely practical consequences of this difference and can it be assured that such difference will not lead to the existence of parallel legal regimes in those EU Member States adopting the Convention?
2. The formulation of the PRIMA rule set out in Article 4 of the Convention is worded differently from the formulation adopted for the proposed Collateral Directive, the Settlement Finality Directive, the Directive on the Winding-Up of Credit Institutions and the Insolvency Regulation. To what extent is this difference one of substance, and what will be the practical consequences for those EU Member States adopting the Convention?
3. The transitional rules set out in Article 17 open up the possibility that there may be an avoidance of validly established collateral arrangements due to an eventual retroactivity of the Convention. Is there any information about the likely practical consequences of this provision and its effects on the EU financial markets?

We look forward to hearing further on these issues and the EFMLG stands ready to assist as appropriate in the development of the draft Convention.

Yours sincerely,

[signed]

Antonio Sáinz de Vicuña