



Explanatory Report to the Convention relating to Stops on Bearer Securities in International Circulation

The Hague, 28.V.1970

I. The Convention relating to stops on bearer securities in international circulation and its Regulations were prepared, within the framework of the Council of Europe, by a committee of governmental experts which carried out its duties under the supervision of the European Committee on Legal Co-operation (CCJ). The Convention was opened for signature by member States of the Council of Europe on 28 May 1970.

II. The text of the explanatory report prepared by the Committee of Experts, as amended and completed by the Committee on Legal Co-operation and approved by the Committee of Ministers of the Council of Europe, does not constitute an instrument providing an authoritative interpretation of the Convention, although it might be of such a nature as to facilitate the application of the provisions therein contained.

General considerations

1. The number of bearer securities which circulate in many countries is steadily growing. It is accordingly becoming more and more difficult to protect people who have been involuntarily dispossessed of securities of this kind. The need has therefore been felt to institute at international level machinery to ensure such protection, having regard at the same time to the interests of those who have lawfully acquired such securities. Machinery of this kind is certain to make for greater confidence on the security market and is thus of considerable interest to professional intermediaries, who can thereby recognise suspect securities.

2. As early as 1962 this subject had been placed on the agenda of the Council of Europe's European Committee on Legal Co-operation (CCJ) for investigation (Resolution (63)29).

3. At that time, a draft Convention for adoption by the six Common Market countries was being prepared by the Banking Federation of the European Economic Community. When the Federation made the results of its work available to the Council of Europe, the CCJ asked the Committee of Ministers to set up a committee of experts with the task of drawing up a convention that would be acceptable in the larger framework of the eighteen countries of the Council. This recommendation was adopted by the Committee of Ministers at the 138th meeting of the Ministers' Deputies in January 1965. The EEC Banking Federation and the International Federation of Stock Exchanges were invited to send observers to the meetings of the committee of experts.

4. The Committee of Experts took due account of the draft Convention relating to the involuntary dispossession of bearer securities prepared by the EEC Banking Federation, whose purpose was to prevent a person who comes illegally into possession of a bearer security in international circulation from turning the offence to his advantage by negotiating the security on one of the stock exchanges of the European Economic Community. The system envisaged was, in essence, that a stop placed on a security in a Contracting State and published in the stop bulletin of that State would automatically be published as well in an

international stop bulletin ; such publication would have the effect of impeding the circulation of the security in question in the territories of all the other Contracting States.

5. This system encountered difficulties in the Council of Europe framework : in some countries the system of stops as such is unknown ; in others, where it is known, the stops are not published in an official bulletin ; or again, in some countries, there are other procedures with a similar aim, under a different form, such as application for the cancellation of the security. It accordingly became important to look for an arrangement which could be applied to all the Council of Europe countries. The ideal solution would, without doubt, have been to draw up a uniform law on stops, but that solution had appeared too ambitious even in the narrower framework of EEC. As was pointed out by the Banking Federation, the question of stops is bound up with such fundamental concepts as the transfer of property, and ownership, which can differ widely from country to country and which are difficult to harmonise. Furthermore, in countries which already have a system of stops, practices have grown up which it would be dangerous, not to say impossible, to do away with overnight.

6. The work of the Committee of Experts has resulted in the drawing up of a Convention relating to stops on bearer securities in international circulation, together with a set of implementing Regulations. The latter can be amended by the Committee of Ministers in accordance with a simplified procedure, if modifications should prove necessary after the Convention comes into force.

7. The chief characteristics of the Convention are as follows

(a) Stops can be placed only on securities regarded as being in international circulation. The list of such securities is to be drawn up and kept up to date by the Secretary General of the Council of Europe in consultation with the International Federation of Stock Exchanges.

(b) Stops placed in pursuance of the Convention are to be the subject of an international publication.

(c) The rules governing the publication and distribution of the list of securities in international circulation and the international publication of stops are laid down in Regulations. The Regulations provide for the setting up of a Central Office, to be designated by the Committee of Ministers of the Council of Europe, for the purpose of receiving information concerning international stops on bearer securities and communicating it to national authorities (see paragraph 47 below). The Regulations also prescribe that the national authority in each Contracting State shall publish the list of international stops in that State.

8. In addition, the Convention provides for a stop which is the subject of international publication to have certain legal effects and for some specific obligations set out in Articles 14 to 18, to be imposed on professional intermediaries.

9. Unlike other Conventions concluded in the framework of the Council of Europe, its title does not describe this Convention as " European ". This is because there ought to be ample scope for the accession of non-member countries, having regard to the purpose of the Convention and the collaboration for which it expressly provides between the Council of Europe and the International Federation of Stock Exchanges, which has non-European countries among its members.

10. The Convention's title reflects, in addition, its essential purpose, which is to institute a system of stops on bearer securities in international circulation in order to protect any person who has been deprived by loss or by an unlawful act of a security of this kind.

Commentary

Article 1

11. The cases in which a stop can be affected are listed. For the sake of avoiding argument and conflicting interpretations, this method of defining the scope of the Convention was preferred to the use of a general expression such as "involuntary dispossession".

12. In addition to loss, the convention envisages cases of theft, wrongful conversion and fraud as well as any other case where a person is deprived of a security by an unlawful act. By "unlawful act" is meant any act prohibited by law, however named.

13. Consideration was given to the question whether the Convention should not be confined to the cases of loss and theft ; but it was decided not to do so, in order to cover various kinds of fraud, because in such cases, too, a person is unlawfully deprived of his security. Moreover, the concept of theft is wider in some States than in others, so that if theft alone had been referred to, the Convention would have been regarded as covering wrongful conversion in some States but not in others. This explains why the words "wrongful conversion" were inserted in Article 1. In listing the cases to which the Convention applies, it was also intended to save national authorities from having to assess the merits of an application for a stop on the basis of a purely abstract concept.

14. Article 1 makes no reference to securities that have been destroyed. The Convention is to be regarded as applicable whenever it is not certain that the securities have been destroyed. In any event, a person wishing to stop a security will not, when applying for the stop, have to provide evidence of the security's existence. Besides, no purpose would be served by stopping in accordance with the Convention a security that is known to have been destroyed.

15. The Convention does not deal expressly with cases where a person has been dispossessed of a security as a result of an act by a public authority, such as nationalisation. It seemed preferable to leave it to the courts to decide whether such acts can, in certain cases, be regarded as unlawful. Indeed, no indisputable criterion can be laid down in this matter, especially in respect of acts by public authorities that might not be recognised by a Contracting State that was concerned.

Article 2

16. This article specifies what is meant, for the purposes of the Convention, by "bearer securities". It does not give a definition of such securities : the method followed is, once more, an essentially pragmatic one.

17. The Convention applies in the first place to bearer securities which are capable of being dealt in on a stock exchange. It covers for example stocks and shares issued by companies, bonds of any issuing body (company, association, government, public authority etc.) and of any description (bond, treasury certificate, cash note etc.), and units issued by investment funds as well as bearer certificates representing registered securities.

18. It does, however, treat as bearer securities two other categories of security : first, those securities which, under the rules governing their transferability, circulate as bearer securities and are also capable of being dealt in on a stock exchange. These include registered securities for which the company issues endorsable certificates. This type of security exists, for example, in Sweden and Germany. Such certificates may circulate as bearer securities when endorsed in blank.

19. Furthermore, the Convention treats as bearer securities sheets of coupons and separate coupons of such securities and of securities treated as bearer securities. It was considered essential to specify this in order to avoid any uncertainty resulting from their legal nature.

20. The Convention does not, however, apply to sheets of coupons which carry entitlement solely to an amount in cash. This is justified by the concern not to make the international publication of stopped securities too voluminous or to overburden intermediaries, and also because there is little real possibility of preventing such coupons from being negotiated.

21. It follows from the provisions in sub-paragraphs (a) and (b) :

(i) That when a stop is placed on a security, it applies both to the body of the security and to the attached coupons. However, where a coupon of such a security gives title to an amount in cash only and it is detached, the stop is without effect, since coupons of that kind are excluded from the scope of the Convention.

(ii) That if, exceptionally, the body of a security is negotiable on a stock exchange without the sheet of coupons whose numbers correspond to that of the body of the security, a stop can relate only to the body of the security.

(iii) That a sheet of coupons or single coupons, if lost or stolen separately, may be the subject of a stop whether they have fallen due or not, as long as they do, not carry entitlement to a cash amount only. As in the case mentioned under (i) above, a stop placed on a sheet of coupons, some of which, when due, give title to a cash amount Only, will be without effect on those coupons.

Article 3

22. In restricting the placing of stops to securities in international circulation, the committee was guided by the following considerations. The Convention, in order to protect people dispossessed of their securities, seeks to impede the negotiation of securities that can be negotiated easily on a market that is "foreign" in relation to the place of loss or theft. For the person placing a stop it is particularly important that the existence of the stop should be communicated rapidly to other countries. An international publication overloaded with information about securities for which it is sufficient in any case to institute the proceedings prescribed by domestic law would have been difficult to consult and scarcely compatible with the requirement of speed. In addition, its cost would also have been greater so that the expense of placing a stop would have been higher. Moreover, the Convention is concerned in a very large measure with professional intermediaries. So that they can do their work in reasonable conditions, it is important that they should know in advance on which securities an international stop is liable to be placed and also that the international bulletin of stopped securities they have to consult, when stops are being published, should not be too bulky or irrelevant owing to the inclusion of securities of purely local interest. The, restriction of the application of the Convention to securities in international circulation was justified in the interests both of persons placing stops (for whom it is important that a stop should have a prompt effect abroad) and of professional intermediaries (whose work must not be made too complicated).

23. Article 3 provides for the list of bearer securities in international circulation to be drawn up by the Secretary General of the Council of Europe in consultation with the International Federation of Stock Exchanges. This list must be absolutely conclusive, not only for persons placing stops and for professional intermediaries, but also for the national authorities which will have to make up their minds whether to accept applications for stops and for judicial authorities which receive requests for the removal of stops. That is why the inclusion of a security in the list carries *juris* and *de lure* the presumption that it is a security in international circulation.

24. On the other hand, there is no such presumption in respect of whether a security included in the list is indeed an actual bearer security, or whether it is a security which, in accordance with the rules governing its transferability, can circulate as a bearer security.

25. The list is naturally subject to alteration, as a security quoted now in one country only, but later admitted to quotation on a stock exchange in another country must be able to be included in it. It is important that it should be up to date, but only the Secretary General of the Council of Europe can amend it, in consultation with the International Federation of Stock Exchanges. Provision was made for consultation with the Federation because of the technical aspects of the subject. While such consultation is compulsory, the Secretary General is not bound to follow the Federation's opinion. He may also seek other advice.

26. Paragraph 2 of Article 3 lays down the principles to be followed by the Federation and the Secretary General in drawing up the list. The list must comprise bearer securities, as defined in Article 2 which :

(a) are quoted on at least one stock exchange in two States which are Members of the Council of Europe ; or in one member State and one non-member State which has acceded to the Convention; or in two non-member States which have acceded to the Convention ;

(b) although not quoted, have in those States a market whose prices are regularly published, i.e. securities which, in at least two of the said States, are dealt in regularly and whose prices are published.

27. These principles derive objectivity either from stock market quotation or from the publication of prices. They ensure that the list can be fairly easily drawn up and amended and that it will cover all securities which are actually in international circulation and hence of interest to persons placing stops.

28. In drawing up the list, the Secretary General is politically answerable to the Committee of Ministers of the Council of Europe ; but the Committee of Experts did not hold that his civil liability would be involved, as he would be acting in the performance of a duty imposed on him.

29. Should a person contend that the security of which he has been dispossessed is one in international circulation although not in the list, it would be up to him to make the necessary approach either to the controlling authority of the national stock exchange concerned, or directly to the Secretary General of the Council of Europe or the International Federation. If his contention proved justified, the list would be amended as prescribed by Article 3, i.e. by decision of the Secretary General in consultation with the International Federation.

30. It is also in order to provide as much protection as possible for persons placing stops that the principles of paragraph 2 of Article 3 refer not just to the Contracting States but to the member States of the Council of Europe and to States which have acceded to the Convention. Moreover, if reference were made to the Contracting States alone, the list would have to be supplemented whenever instruments of ratification were deposited subsequently to those required to bring the Convention into force. This would have given rise to further difficulties and increased the cost of publishing and distributing the list.

31. Relations between the Council of Europe and the International Federation of Stock Exchanges can be settled in a co-operation agreement to be concluded between the two organisations.

32. Arrangements for the publication and distribution of the list are specified in Chapter I of the Regulations appended to the Convention.

Article 4

33. This article simply lays down the essential principle of the international publication of stops effected pursuant to the Convention.

Article 5

34. This article consigns to Regulations the arrangements for the publication and distribution of the list of securities in international circulation and for the international publication of stops. It has been considered preferable to adopt this procedure rather than specify such arrangements in the actual Convention because, when the Convention was being drawn up, numerous factors were partly unknown. Which member States of the Council of Europe will be 'the first to ratify the Convention ? What therefore will the volume of stops be ? What will be the most suitable and effective method of communication at the time when the Convention comes into force, bearing in mind the progress which will have been made by then in, for instance, telecommunications ? Should there be a central office to publish the international bulletin ? etc.

35. Recourse to Regulations which are confined to the technical measures required for the implementation of the Convention appeared more flexible, as such measures can be adjusted whenever necessary, without revision of the Convention. The Regulations appended to the Convention reflect the measures as envisaged at the present stage.

36. It is possible that, between the time when the fourth instrument of ratification, required to bring the Convention into force, is deposited and the time when the Convention actually comes into force, the Committee of Ministers may see fit to convene a committee of technical experts to advise it on how the Regulations might be adjusted to allow for new techniques.

37. Similarly, once the Convention is in force, experience may show the need to modify this or that technical measure and again it is important to be able to make such changes without revising the Convention.

38. Paragraph 1 of Article 5 provides that the Regulations may prescribe the establishment of a Central Office, to be designated by the Committee of Ministers. According to the Regulations, this Office will have fairly limited functions : its principal task will be to receive information communicated to it by a national authority and to effect the distribution of such information to all the national authorities ; the latter will be responsible for the international publication of stops.

39. The Central Office will be designated by the Committee of Ministers composed of representatives of all the member States of the Council of Europe. For this purpose, the committee may either set up a new body or entrust an existing national authority with the functions of the Central Office. It is clear that, in the latter case, such designation would be made in agreement with the government concerned.

40. Paragraph 2 of Article 5 empowers the Committee of Ministers of the Council of Europe to amend the Regulations. For this purpose, the Committee of Ministers would be limited to the representatives of the member States which have ratified or accepted the Convention. In such cases, it would be for the Ministers, if they so desired, to set up first a committee of experts to submit proposals for the revision of the Regulations.

41. Hence, amendments to the Regulations will not require the approval of the representatives of member States which have not felt able to become parties to the Convention. If this had not been stipulated, the agreement of those States, would have been required under the present Rules in force in the Committee of Ministers, which prescribe that decisions must be taken by a two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the committee (Article 20 of the Statute of the Council of Europe).

42. Again with a view to enabling the Regulations to be adjusted to circumstances with flexibility and, at the same time, with adequate safeguards, paragraph 2 provides that the majority required in the Committee of Ministers in its limited form, as mentioned above, shall be two thirds of the votes cast, i.e. abstentions will not be counted in establishing the majority.

43. The States which have acceded, that is to say, States not Members of the Council of Europe which have become parties to the Convention, will be consulted as to whether the Regulations need amending and also on any amendments proposed.

Article 6

44. This article deals with expenditure of various kinds arising out of the implementation of the Convention.

45. As regards paragraph 1, it is understood that the Secretary General of the Council of Europe will supply the national authorities with the number of copies they require of the list of securities in international circulation.

46. The expenses specified in paragraph 3, for example those relating to the establishment and running of the Central Office, will be borne exclusively by the Contracting Parties to the Convention, who must adopt the budget unanimously. The financial contribution of States not Members of the Council of Europe will be fixed by the Committee of Ministers when deciding on their requests to accede (see Article 23 of the Convention).

Article 7

47. Article 7 requires each Contracting State to appoint an authority to carry out, in its territory, the functions assigned to it under the Convention. States are given complete freedom in appointing such an authority ; it may be a public authority, a private-law body, an authority already in existence or one yet to be established.

48. The national authorities have a wide variety of functions. They will have notably :

- to receive applications for the publication or lifting of stops ;
- to communicate ex officio, with a view to publication, all decisions taken as a result of proceedings for cancellation of a security and of demands for deletion of an entry from the list ;
- to be able to supply anyone at any time with the name and address of a person or persons having placed a stop.

In addition, they have certain powers to ask for the lifting of stops. Lastly, under the arrangements at present envisaged in the Regulations, they are to see to the international publication, in their countries, of stops of which they are notified by other national authorities through the Central Office (Chapter II, paragraph 11 of the Regulations). One of the national authorities may be entrusted with the functions of the Central Office (see in particular the commentary on Article 5).

49. It is essential for the operation of the Convention that each Contracting State – and, in particular, each national authority – should know the names and addresses of the other national authorities. This information will be supplied by the Secretary General of the Council of Europe (see Article 27).

50. It was agreed that it would be desirable for national authorities to be requested to send to the Secretary General, for example in the form of a progress report every two years, an account of any difficulties they may meet in applying the Convention. Such reports would form a useful working document for any future amendments to the Regulations.

51. The question whether the national authority is to be regarded as liable for failure to comply with the provisions of the Convention or for its faulty application is left to the discretion of each Contracting Party.

Article 8

52. Under this article, application may be made to any national authority for the international publication of a stop. At first sight, the freedom afforded by the Convention might seem surprising, in that it gives a person placing a stop a choice between the national authorities. One of the essential purposes of the Convention is to protect persons dispossessed of a security by loss or an unlawful act; it is therefore important that such persons be given every facility and that steps to verify the admissibility of applications be reduced to a minimum especially as the security must quickly be prevented from being negotiated.

53. Any regulations governing the territorial competence of national authorities would have been obliged to recognise several of them as competent :

- the authority of the country in which the person placing a stop has his domicile or his habitual residence (this would have left without remedy persons domiciled or resident outside the territories of the Contracting States) ;
- the authority of the country in which the security was lost (this might be difficult to establish, e.g. if the security was lost in the course of travel) ;
- the authority of the country where the company which issued the security has its office (as it may be in his interest to place a national stop in that country as well) ;
- the authority of the country where the security was deposited at the time of the loss or theft etc.

54. The list of competent authorities would therefore have had to be fairly long, and a person placing a stop would still have had to provide evidence of the territorial competence of the authority to which he had applied. These were regarded as unnecessary complications, particularly as a stop has the same effects regardless of where it is placed.

55. The first paragraph of Article 8 specifies the information to be included in the application for the international publication of a stop.

56. Sub-paragraph (b) provides that the application must contain the applicant's name and the address to which any notice may be sent. From the wording used, it can be seen that, although any notice sent to the address, given is valid, notification need not necessarily be made to that address. Indeed, it is for the applicable national law to determine to what other place notification may be addressed, as, for example, to the applicant's habitual residence. The text of sub-paragraph (b) does not imply that the applicant has "elected domicile" at the address given, that being, moreover, a procedure which is unknown in the legislation of several member States of the Council of Europe.

57. Sub-paragraph (c) leaves open the question of the capacity in which the person applying to place a stop must have held the security in order that his application may be accepted. In principle, any person may do so who has been dispossessed of a bearer security in international circulation in the conditions set out in Article 1 of the Convention. The question was asked whether a person dispossessed of securities he had received on deposit could place a stop. It was considered that the matter had to be settled in accordance with national legislation and that, in most countries, and in particular all those where machinery for stops (or cancellation) existed, he could do so. It might not be the case in other countries. However, it should be noted that a person placing a stop lays himself open to being cited as defendant in proceedings brought by the current holder of the security in accordance with Article 13 ; alternatively, he might find himself obliged to bring proceedings himself to make good his claim, in accordance with paragraph 1 (a) of Article 12.

58. Paragraph 2 confers on the national authority the right and duty to reject an application which does not fulfil the requirements of the Convention. This would be the case, for example, if the security concerned were not a bearer security as defined in Article 2 or did not appear in the list of securities in international circulation ; if the dispossession of the security was not the result of loss or an unlawful act ; or if the person wishing to stop the security was unable to supply the information specified in paragraph 1, in particular, all the details needed to identify the security (e.g. its number).

59. An application accompanied by false or erroneous information must also be rejected.

60. The word "manifestly" was included in paragraph 2 in order to establish that this paragraph shall apply only when it is clearly apparent that the application is not in accordance with the provisions of this Convention, or contains inaccuracies.

In this case the application shall be rejected, a more thorough enquiry being dispensed with.

61. Paragraph 3 allows a national authority to reject an application if, in its country, a charge is payable for publication of a stop and the applicant fails to pay it.

62. The Convention leaves to each of the national legislatures the responsibility of laying down the procedure to be followed for the lodging of applications (oral procedure, registered letter, service by a bailiff etc.).

Article 9

63. This article deals with the case where a stop is placed on a security that is already the subject of a stop listed in the international publication. The two stops can be assumed to have been placed by different persons, since a person would in fact gain no advantage from placing stops in different countries : he would not only render himself liable to the payment of more than one set of charges but would also be subject to all the conditions to be observed for the removal of stops according to the law of each of the countries concerned (Article 12 [4]) and could be summoned before the courts of any of those countries (Article 13).

64. Article 9 provides that the stops are to be treated as separate. Should the removal of only one of the stops be authorised, the security would continue to appear in the international publication of stops. In addition, the person who applied for the second stop would also be subject to the rules applicable to persons placing stops (communication of his name to anyone asking for this information (Article 11) ; notifications which must be addressed to him (Article 12) ; responsibility of the professional intermediary in regard to him (Article 18)). Provision is made for the international publication of the second stop so that it will be brought to the notice of the holder of the security. The procedure for its application is prescribed in the Regulations (see Chapter II, paragraph 8).

Article 10

65. Whereas Article 8 is concerned with the information which must accompany an application for a stop, Article 10 deals with the information which must be supplied by a national authority with a view to the international publication of the stop.

66. Under the system at present envisaged, which is set out in the Regulations, this information is to be supplied to the Central Office by the national authority which received the application. The Central Office will then effect the distribution of the information to the other national authorities which will be responsible for the publication of the international bulletin of stops in their countries.

67. The particulars which will be transmitted among national authorities and published in the international bulletin are those referred to in paragraph 1 (a) of Article 8 ; their purpose is to identify the security.

68. Accordingly, the other information which has to accompany an application, such as the name of the applicant, will not be transmitted nor, therefore, published internationally.

69. The arrangements for exchanging and publishing the information prescribed in paragraph 1 (a) of Article 8 are set out in the Regulations.

70. It is obvious that the national authority must take all the necessary steps to ensure that the information is communicated to the Central Office as soon as possible.

Article 11

71. This article first requires national authorities to furnish information speedily so that stops can be published internationally as soon as possible.

72. It goes on to prescribe that the international publication shall indicate the name of the authority from which the application came, so that any interested person can ask that authority for the name and address of the person who placed the stop. It may, at first sight, seem surprising that the Convention should authorise anybody to obtain such information, and not just the owner or holder of the security or any person with a legitimate interest. Such restrictions would, however, have raised difficulties, first for the person asking for the information, who would have to prove his status as owner or his legitimate interest, and, secondly, for the national authority which would have to assess the merits of such status or interest.

73. Article 11 contains yet another provision aimed at safeguarding the rights of the current holder of a security. This is that a national authority which receives a request for information in the interval between two applications for a stop on the same security is obliged to communicate (without a specific request to do so) the name and address of the person who has applied for the second stop to the person who requested information about the first stop. The holder of the security is enabled to secure the removal of both stops through one and the same procedure. This obligation to give information applies to a national authority only if it has itself received two applications for a stop. The rule does not apply in the case of stops placed with national authorities in different countries in order not to place too great a burden either on national authorities or on the Central Office. Whereas, in the former case, the national authority will naturally know that there has been a request for information, in the latter case the second authority will not normally be aware that the first authority has already supplied information.

Article 12

74. This article deals with the termination of the international publication of stops.

75. Sub-paragraph (a) does not require any comment.

Under sub-paragraph (b) of paragraph 1, this termination will take place on the request of the authority which asked for the publication when such authority, having notified the person who placed the stop of the name and address of the present holder, has not given proof within a period of two months from such notification that legal proceedings have been instituted. This expression refers to any proceedings founded on dispossession of the security, as, for example, a claim for restitution or an action for damages.

This provision thus establishes automatic machinery for the termination of the publication of stops. It may indeed be considered that, when the person who placed a stop has been informed of the name and address of the present holder, he has been put in a position to exercise his rights and that the international publication has thereupon achieved its purpose.

76. Under sub-paragraph (c) of paragraph 1, the authority which applied for the international publication of the stop must also apply for its termination when it concludes that the continuance of the publication is manifestly ill-founded. This could be the case, for example, if the holder of the security proves that he acquired it in good faith before the international publication.

77. Paragraph 2 provides that international publication of a stop must also be terminated at the request of the national authority of the State in whose territory the market where the present bearer acquired the security is situated.

78. Such a request cannot be lodged unless it is manifest that the present bearer acquired a good title to the security in good faith before the international publication of the stop. It was considered that the national authority of the State where the security was bought was particularly fitted to form an opinion on the question of knowing whether the security was acquired in good faith before the international publication of the stop, because it was in a good position to be well informed of the workings of the market or stock exchange in question, as well as of the reputation of professional intermediaries etc. A decision of this kind by a national authority concerns exclusively the termination of international publication, and in no way affects or prejudices the outcome of any civil law proceedings that might be brought.

79. Under certain legislations, the acquisition of good title to a security may depend on good faith, while under others, good faith is only one of the conditions to be satisfied if subsequent claim for restitution of the security is to be ruled out. The expression "good title" was inserted to show that in respect of the second group of legislations, the acquisition must be such as cannot give rise or can no longer give rise to any claim for restitution (see also the explanations given in regard to Article 17).

80. The large number of occasions on which bearer securities have to be handled (transport, detaching of coupons, etc.) has prompted some countries to institute a system for their transfer from one account to another. Thus, the French *Decree of 4 August 1949* and the two Belgian Royal Orders, one of 10 November 1967 (*Arrêté Royal de cadre*), the other of 1 April 1968 (*Arrêté Royal d'agrément*) provide that brokers, bankers and finance houses institutions may be affiliated to an interprofessional organisation, known in France as the *Société interprofessionnelle pour la Compensation des Valeurs mobilières* (SICOVAM) and in Belgium as the *Caisse interprofessionnelle de Dépôts et de Virements de Titres* (CIK). For convenience, these bodies are referred to hereunder as "interprofessional organisations".

81. In other countries, too, there are similar institutions, for example, in Austria and the Federal Republic of Germany (*Wertpapiersammelbanken*).

82. The essential purpose of these interprofessional organisations is to take on deposit negotiable securities that are handed in to them and to credit them to current accounts in the names of their members; a separate current account is opened for each category of security. The system implies that the securities must be "fungible", which means that, if a security is withdrawn, the interprofessional organisation is not obliged to hand over a security bearing the same number as the one which was deposited.

83. The first question that arises here is whether deposit with "fungibility" involves a change of ownership, whether the ownership of the security is transferred from the depositor to the interprofessional depository organisation or to all the depositors jointly. Even where this is so - which does not seem certain under the systems of all the countries concerned there is the second question of whether the methods of securing the lifting of the international publication of a stop that Articles 12 and 13 (excluding paragraph 3 of Article 12) offer to a person who

has acquired a security in good faith are sufficient to enable the interprofessional organisations to perform their function. It seemed advisable to give them the benefit of special rules which, however, do not run counter to the rights of the person placing the stop, whose protection is one of the most obvious aims of the Convention.

84. When the publication of a stop is effected before the securities are deposited, the rights of the person placing it are fully safeguarded, because the interprofessional organisation, in order to claim the rights provided by paragraph 3, must have checked that a security presented to it is not the subject of any stop which still has effect, and because it is also obliged to communicate the date of the deposit and the identity of the depositor. If it were to accept or deliver a security on which a stop had been placed, it would be liable for the consequences. On the other hand, where the publication of the stop is not effected until after the security has become fungible, the deposit with the interprofessional organisation has an interest in securing the lifting of the international publication of the stop speedily and simply, so that persons receiving securities from the interprofessional organisation may be certain of their being good delivery. However, a person who finds that a stop placed by him has been lifted in this way will be able to ascertain the name of the establishment or person that deposited the securities in dispute. Hence he has a remedy open to him although he cannot bring an action for restitution of the securities concerned.

85. The best way of ensuring the simple and speedy lifting of the international publication of a stop was to assimilate, in paragraph 3 of Article 12, the deposit of a security with an interprofessional organisation to its acquisition on a market, within the meaning of paragraph 2 of the same article. Thus the national authority of the State in whose territory the security has been deposited may and must, at the request of the interprofessional depository organisation, ask for the international publication to be lifted in the circumstances prescribed in the said paragraph 2.

86. There are two other considerations that should be noted

(a) The second sentence of paragraph 3 ensures the reliability of the organisations on which the privilege referred to in that paragraph is conferred.

(b) The exceptional nature of the provision should not be over-estimated. Paragraph 5, indeed, allows each Contracting Party to provide in its legislation that its national authority may or shall call for the termination of any international publication of a stop it has requested, on application by an interprofessional organisation of its country. Paragraph 3, then, is simply extending this possibility to the cases – in all likelihood rare – where a security which is the subject of an international publication of a stop requested by the national authority of country A is deposited with an interprofessional organisation in country B. In this case, it will be possible for the national authority of country B to request the lifting of the stop.

87. Some States might be of the opinion that the assessment of the rights of the present holder is rather a delicate matter which is outside the province of a national authority entrusted with essentially administrative functions. That is why paragraph 4 of Article 12 provides that the legislation of each Contracting State may prescribe that in the cases mentioned in sub-paragraph (b) of paragraph 1 and in paragraphs 2 and 3, a request for termination of a stop can be lodged by, the national authority only if it is based on a court decision. But if the State makes the right to ask for termination subject to a decision of the courts of the authority's country, it is essential that such a decision can be obtained rapidly. For this reason the present holder should be able to make an *ex parte* application to the courts of the State to which the authority belongs. If *ex parte* procedure is contrary to the rules in force in the State concerned, in particular if it is held to be contrary to the Constitution, the present holder of the security should be able to avail himself of the simplest and swiftest procedure open to him under the law of that State.

88. Paragraph 5 also leaves each Contracting State free to lay down other circumstances in which its national authority, when it has requested the international publication of a stop, may or shall request its termination. Because of the differences between national legislations, however, it did not seem practicable to try to standardise absolutely the circumstances in which the publication could be terminated. Several countries already have an internal stop system but, while the basic purpose is the same, the means employed differ. This is one reason why the international stop, as provided for in the Convention, is autonomous, that is to say, it is independent of national stops. There can be no doubt, however, that when a stop is placed in a country on the basis of national law, on the one hand, and on the basis of the Convention, on the other, this duality is bound to present difficulties. By leaving to national legislators the task of determining the cases in which the authority which requested the publication of the stop can ask for its termination, the Convention enables them to find remedies for the disadvantages of the dual system while allowing for the special features of their own legislation.

89. It was thought fair, moreover, that the person who placed the stop should be informed of the termination of its publication. Under paragraph 6, this information is communicated to him by the national authority which applied for the termination of publication. In the cases envisaged in paragraphs 2 and 3, the person who placed the stop will be informed through the authority which applied for the publication of the stop and to which he had therefore made his application for the publication of the stop.

Article 13

90. It might have been thought that only the authority which asked for the international publication of a stop should be competent to ask for its termination. However, paragraphs 2 and 3 of Article 12 also give this right to the authority of the State on whose territory the security was, in certain circumstances, acquired or deposited. These two possibilities alone, nevertheless, were not considered sufficient for the current holder of the security who, in certain cases, would have found himself forced to institute court proceedings abroad. It was therefore considered appropriate to give him a certain choice. Under the system instituted by Article 13, the current holder who wishes to secure the termination of international publication may apply not only to the court within whose jurisdiction the authority which applied for the publication is situated but also to other courts, whether in the territory of the State to which the said authority belongs or in the territory of another Contracting State, provided that they have territorial jurisdiction under the provisions of sub-paragraphs (b) to (e) of paragraph 1.

91. Under paragraph 2, if one of these courts has ruled that international publication of the stop shall be terminated, the national authority of the State of that court must see to it that the stop is no longer published. The national authority must accordingly notify the Central Office (see Chapter 11 of the Regulations) of the lifting of the stop, and this information is then distributed by the Central Office to all the other national authorities, which will take steps to ensure that the lifting of the stop is published as rapidly as possible.

92. This procedure may be illustrated by an example. If the French national authority has requested the international publication of a stop, and the current holder of the security is habitually resident in the Netherlands, the latter can apply to the Netherlands court of his place of residence (paragraph 1 (b) of Article 13) to request termination of the international publication of the stop. If the Netherlands court rules that the stop shall be lifted, the Netherlands national authority then notifies the Central Office, which in turn informs the other national authorities so that the lifting of the stop is published with all possible speed in all the Contracting States.

93. It will be for the national legislations to determine which courts are competent *ratione materiae* and to specify the procedure for making court decisions known to the national authorities.

94. The rules concerning competence laid down in paragraph 1 call for a few more comments.

95. According to sub-paragraph (a), the court within whose jurisdiction the authority which requested the international publication of the stop is situated is competent. This is an initial safeguard for the holder, in that it must be possible for him to find, in the State to which that authority belongs, a court which is competent to rule that the stop shall be lifted.

96. According to sub-paragraphs (b) and (c), the court within whose jurisdiction the holder has his habitual residence and the court within whose jurisdiction the person placing the stop has his habitual residence are also competent. This latter competence corresponds to the rule *actor sequitur forum rei*, which is recognised in international law. At first sight, however, the competence of the court of the place in which the holder has his habitual residence may appear unreasonable, as it corresponds to the jurisdiction of the plaintiff's court. In the case in point, it is warranted, however, because the holder, whose rights over the security are interfered with by the stop has been compelled, by the international publication of the stop, to defend himself. It is, therefore, appropriate to treat him as a defendant rather than as a plaintiff. Article 13 is clearly applicable when the person who placed the stop or the current holder is a company or corporate body. The question of the place which, in respect of such companies or corporate bodies, has to be assimilated to the habitual residence of a physical person must be settled by the applicable law.

97. According to sub-paragraph (d), the court within whose jurisdiction the issuing company has its registered office is also competent. This is justified because the security's main market is generally in the country to which that court belongs ; and also because the law applicable to securities is usually that of the place where the issuing company has its registered office, and there is accordingly advantage in linking the applicable law with the competence of the court.

98. Lastly, the current holder of the security may, according to sub-paragraph (e), apply to the court within whose jurisdiction the market where he acquired the security is situated. This may make it easier for good delivery of the security to be proved, and permit termination of publication to be expedited, as a security frequently remains deposited in the place where it has been acquired.

99. According to paragraph 2, when a competent court orders the lifting of a stop, only the national authority of that court's State may request international publication of the termination of the stop. The justification for this rule is the concern to avoid the difficulties involved in the recognition of foreign judgments. The only exception to this rule would be if a Contracting State were to avail itself of the possibility open to it under paragraph 5 of Article 12, whereby it is entitled to lay down in its legislation the circumstances in which its national authority, when it has requested the international publication of a stop, may ask for such publication to be terminated. This, State's legislation could thus make provision for 'the authority to be empowered to request international publication of the termination of the stop, even when this had been ordered by a court decision in another country.

100. Under paragraph 3 of Article 13, the courts to which a request for the termination of international publication is referred may not only order such termination, but may make the continuance or termination of such publication subject to certain conditions, for example by ordering its termination when the bearer has furnished adequate security, or by ordering its continuance where the person who placed the stop has furnished adequate security. The procedure in respect of termination of international publication is independent of any proceedings for restitution, the outcome of which may not be known for a considerable time. It must be possible for the judge to whom a request for lifting a stop is referred to take a decision rapidly so that unjustified stops shall not appear in the international bulletin for an indefinite period. As the decision is without prejudice to the decision to be taken later on the merits of the case, the Convention authorises the judge to rule that a guarantee be deposited, so as to safeguard the parties' rights.

Article 14

101. This article provides that professional intermediaries who in some countries have a monopoly, and who are thus bound to assist in the negotiation of bearer securities, may refuse to do so when the security appears in the international bulletin of stops.

The Convention does not include a definition of "professional intermediary" or "professional depository". It was not found practicable to formulate a definition which in all circumstances would be satisfactory, having regard to the different situations which exist in various countries in relation to the persons involved in the negotiation and deposit of securities.

Article 15

102. This provision obliges a professional intermediary who has delivered a security which is the subject of an international publication of a stop to make a good delivery in exchange for the stopped security. This duty is founded on the idea that the items delivered by the intermediary must conform to contract.

103. A professional intermediary who has delivered a security that is the subject of an international publication is placed under the aforesaid obligation regardless of the time when the publication reaches him. Reference must accordingly be made solely to the date appearing on the publication. If a stop is listed in a publication dated, for example, 20 October, the obligation to deliver another security in exchange exists in respect of any security delivered from that date onwards, that is to say from 00.01 hrs. on 20 October, since the security is actually to be regarded as ceasing to be good delivery at that moment. It is also to be understood that should the international publication not appear on the same day in all the Contracting States, the day to be taken into consideration for determining the moment at which the security ceases to be good delivery is the day on which the publication first appears.

104. The obligation exists whether or not the purchaser is a professional intermediary. Among such intermediaries it is based on the rule included in stock exchange regulations, to the effect that stopped securities are not good delivery among professional intermediaries. The application of this provision to professional intermediaries even in their relations with private individuals is in line with practice and with the law in force in most countries (see Article 48 of the French Decree of 7 October 1890).

105. The extension of the obligation to cases where the seller is not a professional intermediary was envisaged, but this suggestion could not be adopted in the Convention since it was considered that relations between private individuals should preferably be governed by the national law applicable to the contract.

106. Under paragraph 1, professional intermediaries are bound to deliver to the purchaser a security in exchange for the stopped one only when the latter has been delivered in execution of a sale of unspecified securities, that is to say, when it is in accordance with the intentions of the parties that the security delivered may be replaced by another one. In addition, a professional intermediary is bound to exchange the security if he is acting in his own name, whether for his own account or for the account of another. Where he is acting for the account of another, he may not evade his obligation by contending that it was his client who delivered a stopped security to him for sale.

107. To obviate differences in interpretation, paragraph 2 provides that the purchaser may assert vis-à-vis the seller all other rights accruing to him under the law applicable to the contract.

108. Where it is a matter of relations between professional intermediaries, the time-limit within which the purchaser may demand a new security from the seller will generally be fixed by stock exchange rules and practice. Otherwise, it can be considered that the time-limit applicable is that prescribed in respect of the failure to deliver the subject matter of a contract in accordance with its terms.

Article 16

109. Paragraph 1 of Article 16 provides that a professional intermediary or depositary to whom a stopped security has been handed can (subject to the exception referred to in paragraph 110 (c)) only accept it if he communicates to the authority which had requested the publication of the stop the name and address of the person who had handed the security to him. The professional intermediary or depositary to whom a security has been handed may take it, without becoming subject to the duty to supply information, in order to carry out the necessary checking procedures. But in this case, the check must be carried out speedily, and he must return the security as soon as possible, to the person who had handed it to him.

If the professional intermediary or depositary refuses the security, the person to whom it has been returned, being thus informed that the security figures in the international publication, is then able to pursue the procedure laid down in Articles 12 and 13 for having the publication terminated. The position of the person placing the stop could only have been fully protected if the professional intermediary had been obliged to check the identity of 'the holder. A rule of this kind would have been liable to involve professional intermediaries in investigations which, in the end, would have clearly been excessive. Another possibility would have been to require the professional intermediary to impound the security. Some legislations which already practise a stop system have adopted this solution, but this has not been followed because it would have conflicted with the rules in force in certain other countries. However, each Contracting Party has the power, in accordance with Article 19, to impose additional responsibilities on its professional intermediaries, and could thus impose on them the obligation to seize the security or not to return it.

110. The obligation to supply information is subject to the following conditions :

(a) The security must have been handed to the professional intermediary or depositary in person or to his employees, i.e. they themselves must have received the actual security. Thus, there is no obligation where the security has been received by a third party for the account of the professional intermediary and the latter has received only a voucher setting out the numbers of the securities, as is often the case among professional intermediaries. It was decided not to extend the clause to cover such contingencies since it would impose a considerably greater burden on professional intermediaries.

(b) The professional intermediary must have received the security after the day on which the international bulletin of stops reached him. The solution adopted here in Article 16 is different from that adopted in Article 15, which regards a security which is the subject of an international publication of a stop as not being good delivery. Once listed in this publication, the security must, in fact, be regarded as not fulfilling the contract. In Article 16, on the other hand, the obligation is to supply information, and it is independent of contractual relations. Professional intermediaries can be responsible for providing information only if they have been given the means to do so, in other words, if they have been able to take cognisance of the international publication listing the stopped security. The Convention could have provided that an obligation in this respect should exist for professional intermediaries where they had known of, or received, the international publication at the time when the security was handed over. Such a rule would have led to difficulties, however, when it came to establishing proof. Assuming, for instance, that the international publication reached a professional intermediary at 10 a.m. on 1 June, and that a security was presented to him on the same day, it might be difficult to prove that the security had been presented to him before 10 a.m. (in which case he would be under no obligation) or

after 10 a.m. (in which case he would be under an obligation). Although the system adopted in the Convention brings in a somewhat arbitrary element, it is far simpler to enforce and more reliable. Under this system, and pursuing the example already given, if the international publication reaches the professional intermediary on 1 June, he is under an obligation to supply information only in respect of securities referred to in that publication which are presented to him from 2 June onwards. The solution incorporated in the Convention also makes allowance for the possibility of the international publication in fact reaching professional intermediaries in the various Contracting States on different dates. In paragraph 1, the day on which the international publication could have reached the professional intermediary is assimilated to the day on which it did reach him. This concept, based on the French Decree of 11 January 1956 regarding the procedure to be followed in respect of dispossession of bearer securities or coupons (Article 9), covers the case of a professional intermediary who could have received the publication if he had been a subscriber to it. Where the publication has not been able to reach the professional intermediary on the usual date, in particular for reasons of *force majeure*, the only date to be taken into consideration is that of the day following that on which he actually did receive it.

(c) The professional intermediary must have received the security following an order to him to buy or sell or must have purchased it on his own account. The obligation exists likewise when a security has been received by way of a pledge or on deposit, except where such deposit involves the mere safe custody of the security. The obligation arises in accordance with sub-paragraph 1 (d) of Article 16 if, for example, the depositary is instructed to carry out the encashment of the relative coupons.

111. Paragraph 2 of Article 16 establishes the liability of a professional intermediary who does not fulfil the obligations laid on him by paragraph 1, that is to say, an intermediary who accepts a security without informing the person who placed the stop of the name and address of the person who handed the security to him. The professional intermediary is liable for any loss or damage resulting not only from failure to supply information but also from failure to supply it within a reasonable time.

112. Subject to the exception mentioned in paragraph 110 (c) above, the provisions of paragraph 1 of Article 16 put professional intermediaries under an obligation to consult the international bulletin of stops whenever a bearer security in international circulation is presented to them. Here it was pointed out that in the Netherlands, in particular, the current regulations oblige stockbrokers to consult the national list of stops only when a bearer security is presented by a person who is not a member of one of the three Netherlands stockbrokers' associations. Paragraph 3 covers situations of this kind by providing that each Contracting Party may declare that the international list of stops need not be consulted for the negotiation of securities in international circulation between professional intermediaries established on its territory. If use is made of this facility professional intermediaries will be relieved from the need to set up a checking system whose cost might prove disproportionate to the advantage gained. It can indeed be considered that in cases of loss or theft it is for the first professional intermediary to whom the security is presented to check it against the list in accordance with the provisions of paragraph 1. In any event, paragraph 3 provides that professional intermediaries shall nevertheless still be liable for any consequences resulting from failure to consult the international publication. It is for them to introduce any regulations they deem necessary to cover the case of one of their number being liable for loss or damage resulting from an omission on the part of another professional intermediary.

113. Paragraph 4 of Article 16 permits each Contracting Party to provide in its law that the information referred to in paragraph 1 can be given only with the consent of the person who handed the security to the professional intermediary concerned; this is intended to take account of national law concerning banking secrecy.

Article 17

114. The Convention is designed initially to impede the circulation of a security in order to enable the dispossessed bearer to trace it and make good his claim to it. To fulfil its purpose effectively, the Convention would have had to contain some rules to facilitate the settling of disputes between the person placing the stop and the current holder. Simply to refer the matter to the various national legislations would not, in fact, necessarily have bettered the situation of the person placing the stop. Not only do national legislations differ, but, in many cases, it would have been enough for the purchaser to invoke his good faith in order to block the claim of the person placing the stop. However, it was not found possible to include in the Convention a provision applicable to all disputes between dispossessed persons and current holders. Besides, a uniform law on the acquisition in good faith of moveable property is clearly outside the scope of the Convention. By settling the question of good faith where the actions of a professional intermediary are concerned, however, the Convention offers a pragmatic solution likely to find frequent application.

115. The system introduced by Article 17 leaves it in the first place to national legislations to determine rights over stopped securities. When hearing a case brought by a person having placed a stop against the current bearer, the judge may need to apply his country's rules of private international law to determine the applicable law. To have framed a uniform rule on conflicts of laws would likewise have been beyond the scope of the Convention and would have made its adoption more difficult.

116. The Convention does not settle the question whether good faith is a necessary condition for acquiring a good title to a security, but, where the applicable national law makes good faith one of the requisites in establishing the rights of a purchaser over a security, there is under Article 17 an irrefutable presumption that a professional intermediary has not acted in good faith if the time at which he is required to have acted in good faith is subsequent to the day on which the international publication of the stop reached him, or could have reached him.

117. It is also left to national law to decide the question whether, if one person is acting for another, the principal or the agent, or both, must have acted in good faith at the decisive moment.

118. Article 17 refers to the "time" at which, according to the applicable law, the professional intermediary is required to have acted in good faith, for example the time of the conclusion of the contract or of the taking over of the security. This solution likewise makes allowance for differences on this point between the various legal systems.

119. The time at which the presumption of bad faith on the part of the professional intermediary begins is the day following that on which the international publication of the stop reached him, or could have reached him. The considerations justifying this rule are the same as those underlying Article 16 (see the commentary on that article). The establishment of good or bad faith during any period prior to that day will be determined exclusively by the ordinary applicable law.

120. The inclusion in Article 17 of the words "who obtained the security from a person who was not entitled to dispose of it" is intended to prevent the presumption referred to in paragraph 115 from applying, under certain legal systems, as against a professional intermediary who has acquired a security from a person entitled to dispose of it.

121. As already pointed out, Article 17 is applicable only where a professional intermediary is involved. The person who had placed the stop would of course have been more fully protected if its application had been extended to the case of a security delivered to a private individual subsequent to the publication of a stop. The Presumption that can be established in respect of professional intermediaries depends on the proposition that they are obliged to consult the international publication, a proposition which does not apply to private individuals

under the Convention. It should be stressed, too, that most negotiations of securities are effected through professional intermediaries.

Article 18

122. Article 18 lays down a general rule concerning the liability of professional intermediaries or depositaries towards the person who placed the stop. Their liability to their clients is not governed by the Convention, since this is governed by contract.

123. Under Article 16, a professional intermediary may accept a security appearing in the international publication of stops provided he supplies the information required by that article. The main purpose of Article 18 is to prevent a professional intermediary, after giving the required information, from acting in any way that might make it impossible or more difficult for the person who placed the stop to claim the security. The article is also applicable where the professional intermediary accepts the security without supplying the required information.

124. Under paragraph 1, a professional intermediary or depositary may incur liability when he has received a security in the circumstances stated in paragraph 1 of Article 16, namely :

- (a) if the security has been handed to him personally or to his employees,
- (b) if the security has been received following a purchase or with a view to sale, as a pledge, or on deposit (as specified in the second sentence of paragraph 1 of Article 16), and
- (c) if the security has been received after the day on which the international publication reached the professional intermediary or depositary.

125. Exceptions to the rule set out in the first paragraph are provided for in the second paragraph of Article 18. Under sub-paragraph (a), the intermediary or depositary is not liable when he returns the security to the person who handed it to him. This is the case if the security is handed to him after the day on which the international publication reached him, and he refuses it, or returns it after making the necessary checks ; or again, if he delivers another security of the same kind in exchange for the stopped security, in accordance with Article 15. This exception is warranted by the fact that under the Convention the professional intermediary is not called on to impound the stopped security. Thus it would have been strange if he were to incur liability only because a stopped security was handed to him or simply presented to him. There is a second exception in paragraph 2 (b), which provides that the professional intermediary or depositary is not liable by reason of simple acts of administration, for example, the encashment of coupons. This exception enables intermediaries or depositaries to administer the securities pending a judicial settlement of the divergent claims of the holder of the security and the person who placed the stop.

Article 19

126. Article 16 provides that professional intermediaries or depositaries must in certain circumstances either refuse to accept stopped securities or supply information to the national authority which requested the international publication of the stop, failing which they are liable for any resulting loss or damage. Article 18, on the other hand, makes professional intermediaries or depositaries who have accepted a stopped security liable for the consequences of any subsequent acts of theirs which can make it more difficult for the person who placed the stop to make good his claim - this refers to the act of putting the security back into circulation.

127. Stricter rules governing the actions of professional intermediaries or depositaries could have been envisaged. For instance, national legislation might make it incumbent upon them to impound the security, as already happens under certain national systems for the placing of stops. It would also be possible to demand that the information referred to in paragraph 2 of Article 16 must be supplied whenever a security that is the subject of an international stop is presented to a professional intermediary, that is to say even when it is refused and even without the consent of the person presenting it. In the latter case it is a matter of discretion in defining banking secrecy which must be left to each Contracting Party.

In connection with Article 18, an obligation to impound the security could also be brought into play. National criminal law might, in some cases, prevent a professional intermediary or depositary from returning the security to the person who had handed it to him, notably where it has manifestly been stolen. However, it was pointed out that in other countries this would be a breach of the civil law rule that a depositary is bound to return the article deposited at the demand of the depositor. It is clearly not possible to indicate the full range of measures that are open to the legislator in this field.

128. The Convention can only afford the person who has placed a stop a minimum of protection. Article 19 states expressly that national legislation may impose on professional intermediaries or depositaries, in the cases envisaged in Articles 16 and 18, obligations or responsibilities heavier than, or different from, those imposed by the aforesaid articles.

Article 20

129. The Convention establishes an autonomous system of stops. It does not encroach on the preserve of national legislations which have already established procedures, whether by means of stops or of cancellation, for the protection of persons dispossessed of bearer securities. Nor does it forbid the Contracting

Parties to introduce such procedures or to retain or modify existing procedures. These principles emerge from the provisions of paragraph 1.

130. Paragraph 2 extends the above provision by providing that international publication must be requested *ex officio* by a national authority when in its country a stop, a cancellation, or proceedings with a view to cancellation in respect of bearer securities in international circulation have been published either in an official gazette, or in a publication designed for the information of professional intermediaries, and the person placing the stop or requesting the cancellation has not applied for international publication. This rule is prompted by the following considerations. First, it is a question of ensuring the protection of the market. Professional intermediaries will in this way be informed, through the international publication, of all securities in international circulation which can be regarded as suspect in the territories of the Contracting States. The rule will also facilitate their work because they will not need to consult both the international publication and national bulletins. Lastly, it allows for the special features of the legislative systems involved. In countries where there is already a stop system, it is reasonable to expect that a person dispossessed of a security in international circulation will at the same time place a stop under national law and an international stop. It is possible in other countries that a dispossessed bearer may merely apply for cancellation and not see any immediate advantage in placing an international stop. In Switzerland, for instance, a judge dealing with an application for cancellation summons the current holder to produce the security, and this summons is published in the *Feuille officielle suisse du Commerce*. If after a given period the holder of the security has not appeared to the summons, the judge makes an order of cancellation which is also published. With a system of this kind, it is conceivable that the dispossessed holder will merely institute cancellation proceedings, enabling him to obtain a new security after a specified time, and so will not place an international stop.

131. According to paragraph 2, international publication following an *ex officio* request by the authority in the country concerned is informative only. Intended above all to attract the notice of professional intermediaries, such international publication does not produce the legal effects specified by the Convention (Articles 14 to 18). Where a dispossessed person has not placed an international stop, there is no reason why he should be granted the advantages conferred by the Convention.

132. The Regulations appended to the Convention lay down the conditions for the international publication provided for in Article 20. As they stand at present they prescribe the same procedure as in the case of an international stop. Provision is also made in the Regulations for the conditions in which the publication is to be distributed. Lastly, the Regulations specify the extent to which publications prior to the Convention's entry into force are to be the subject of an international publication (see Chapter II, Section 11 of the Regulations).

133. In the context of Article 20, the question of any liability on the part of national authorities may assume special importance, but the Convention leaves this point to the legislation of each Contracting Party (see commentary on Article 7).

Article 21

134. As at present worded the Regulations provide that national authorities shall be responsible for the international publication of stops. They are required to take the necessary steps to see that the information transmitted to them by the Central Office is published either in the national bulletin of stops, if such bulletins exist in their country, or in other gazettes, digests or bulletins of their choice (Regulations, Chapter 11).

135. In principle information relating to all securities in international circulation should be so published. However, paragraph 1 of Article 21 permits any Contracting State to restrict publication by its authority to securities in international circulation which are quoted on its stock exchanges or have a market in its territory with regularly published prices, that is to say to securities which are regularly negotiated in its territory. This provision is designed to avoid national bulletins being overburdened with information of no practical interest.

136. Where advantage is taken of this provision, paragraph 2 protects the rights of the person placing a stop. Professional intermediaries remain liable if they negotiate securities which could be the subject of an international stop, even when the stop has not been published. In addition, the date taken into consideration will be that on which the request for publication reached the national authority. It will thus be for professional intermediaries to whom securities not usually negotiated in their country are presented to make enquiries from the national authority in their country to ascertain whether such securities are the subject of an international stop (see Regulations, Chapter 11). Paragraph 3 points out that, when States avail themselves of the facility provided by Article 21, the restriction shall apply equally to information supplied in accordance with Article 20.

Articles 22 to 27

137. The provisions of Articles 22 to 27 conform to those decided by the Committee of Ministers of the Council of Europe.

138. It should be noted, however, that the Convention will not come into force until six months after the deposit of the fourth instrument of ratification or acceptance, in order to enable the Contracting States to take the implementing measures required by the Convention.

Commentary on the Regulations relating to the Convention

139. Chapter I of the Regulations deals with the list of securities in international circulation. It provides that this list is to be communicated to the national authorities and the Central Office within four months from the date of deposit of the fourth instrument of ratification or acceptance. Under its Article 22, the Convention will enter into force six months after the deposit of the fourth instrument. National authorities and the Central Office will thus have two months in which to arrange for the distribution of the list and to make the necessary practical arrangements : establishment of a card index etc.

140. Chapter II is concerned with the publication of international stops and the termination of such publication. Various arrangements were considered with regard to the communication of information. Possible alternatives might have been : direct communication between national authorities, or else the issue of an international bulletin of stops prepared by a Central Office and distributed directly by it to professional intermediaries. The first solution encountered a serious objection, i.e. the large number of communications that would have been involved. The second, which is perhaps a desirable solution for the future, seemed too ambitious and too costly in present circumstances. It would have meant the establishment of an office with a fairly large staff for printing, mailing, keeping up an addressograph etc. The solution finally falls between these two extremes. It indeed provides for the establishment of a Central Office, but this, however, does in fact no more than constitute a link between national authorities.

141. The machinery adopted is as follows : a national authority to whom application has been made for a stop informs the Central Office by telex. The Central Office then distributes to all national authorities, again by telex, the information it has received. These authorities arrange for the publication of the information by inserting it either in the national bulletin or in other periodicals. Telex, to which both the national authorities and the Central Office will need to be connected, appeared to be a means of communication at once rapid, inexpensive and reliable. It should be noted that the functions allotted to the Central Office could be undertaken by one of the national authorities.