

**Harmonisation of
Securities Law**

**Custody and Transfer of Securities
in European Private Law**

Matthias Haentjens

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Part One

Introductory Chapters

*because a man's entire life requires the
graces of rhythm and harmony*

PLATO¹

1. PLATO, *Protagoras*, 326b.

Chapter 1

Introduction

1.1 GLOBAL CONVERGENCE, LEGAL RESPONSES

As securities markets gradually merge and expand both in the European Union and world-wide, the volume of securities transactions increases enormously every year.¹ Yet the settlement of these transactions, i.e. the payment of funds and the delivery of the securities, proves to be significantly costlier in the case of cross-border settlements than in the case of domestic transactions being settled.² It is generally believed that this discrepancy has its cause for a large part in the legal diversity that currently exists, both with regard to the conflict of laws rules and the substantive laws that concern securities transfer and custody.

In addition to the said diversity of laws, the mismatch between a reality in which dramatic innovations have revolutionised the techniques of securities custody and transfer, and the relevant, yet inflexible legal underpinnings on the other hand, contributes to an extremely undesirable situation of legal uncertainty. Fortunately, various institutions have acknowledged that as a vital element in the functioning of modern economies of scale, the securities settlements infrastructure does not allow for such legal uncertainty, and initiatives have accordingly been undertaken, so as to harmonise and modernise current securities custody and transfer laws.

1. See, e.g. G30 2003 Plan of Action, 1.

2. Although the exact figures differ, all economic research concludes that cross-border settlement is substantially more expensive than domestic settlement. See G30 2003 Plan of Action, 4-5; SCOTT (2006), Ch. 10, 26; EC Economic Impact Study (2006), 18. The additional costs incurred when securities transactions are settled cross-border consist of direct costs due to higher fees, indirect costs due to extra back-office facilities and opportunity costs due to inefficient use of collateral, a higher incidence of failed trades and a higher incidence of foregone trades; Giovannini Group 2001 Report, ii.