

Securities Law Reform / Securities Law Directive (SLD)

Executive summary

Securities law reform is urgently required to reflect fundamental changes that occurred over the past decades, for example, certificated securities have in most cases been replaced by dematerialised (book entry) securities. To this end the Geneva Securities Convention of 2009, initiated by the International Institute for the Unification of Private Law (Unidroit), provides substantive rules for intermediated securities at an international level.

In Europe, the newly proposed Securities Law Directive (SLD) aims at removing the legal barriers defined in the Giovannini Reports 2001/2003, in particular Giovannini Barrier 13 (see Further information) that deals with the absence of an EU-wide legal framework regarding the treatment of 'book entry securities'.

Overview

Scope of the Securities Law Directive

Securities law reform needs to provide legal certainty in respect of:

- the legal effects of acquisition, holding and disposition of dematerialised securities, as change of ownership no longer takes place by the physical transfer of certificated securities, but by the click of a mouse;
- investor protection in the event of an insolvency of the securities account provider, as investors no longer possess certificated securities but securities that are held in book entry form in a securities account with an account provider, e.g. a bank;
- the determination of applicable law ('conflict of laws' rules).

Moreover, the SLD includes legal rules in the context of corporate actions (Giovannini Barrier 3) for the recognition of holding patterns (omnibus accounts, nominees) and the end-to-end communication to enable investors to exercise rights attached to securities.

Drafting of the Securities Law Directive

The SLD has been drafted with detailed guidance from the Legal Certainty Group - from 2005 to 2008 a group of 36 legal experts from 23 EU Member States worked out a detailed advice to the European Commission embodied in 15 recommendations.

Consequently, the European Commission launched public consultations on the subject in 2009 and 2010.

Required public sector action

The reform of securities laws is long overdue and necessary to reflect the transition from certificated securities to dematerialised / book entry securities and to provide related legal certainty.

The harmonisation of securities laws in Europe – compatible with the Geneva Securities Convention with global reach – is an indispensable element needed to create a single integrated European capital market.

AFME's position on the proposed Securities Law Directive

- This **highly welcome law reform**, the Securities Law Directive, should be as compatible as possible with the Geneva Securities Convention. However, in Europe, AFME believes that a more ambitious form of harmonisation is required that goes beyond mere compatibility between European legal systems.
- In regard of the **conflict-of-laws** regime, account providers should have the option to have all property rights of book-entry held securities governed by a single relevant law, namely the law of the location of their register or system, irrespective of the fact that they may enter through their branches in an account relationship with their account holders.
- A functional system should be designed that clearly separates the two methods of acquisition and disposition (crediting and debiting), which lead to a **transfer of ownership**, from the four methods of evidencing limitations to securities credits, which are used for **taking collateral**.
- The recognition of different **holding structures** (including nominee and omnibus accounts) is indispensable to the comprehensive removal of the legal barriers and to achieving increased efficiency and cost effectiveness. However, further steps of harmonisation will be required to enable the unhindered exercise of rights attached to securities, for example within the area of company laws.
- AFME believes that the European Commission should consider choosing a **Regulation rather than Directive** for those parts of the legislation that must not suffer from incoherent transposition into national laws.
- The proposed regulation of **charges levied by an account provider** is misguided as the comparison with the payment area is inappropriate given the continued fragmentation e.g. in the fields of company law and fiscal regimes.

Further information

For the full text of the response to the public consultation on the Securities Law Directive see: www.afme.eu

For further information on the Giovannini Barriers, please see:
http://europa.eu/legislation_summaries/internal_market/single_market_services/financial_services_transactions_in_securities/132002_en.htm

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