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International Initiatives towards legal harmonisation in the field of Funds transfers, payments and payment systems - Annotated Bibliography

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2006

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MPRA Paper No. 47419, posted 5 June 2013 13:28 UTC

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INTERNATIONAL INITIATIVES
TOWARDS HARMONISATION

IN THE FIELD OF

**FUNDS TRANSFERS, PAYMENTS,
PAYMENT SYSTEMS, and SECURITIES
SETTLEMENTS**

Annotated Bibliography

v. 06.11.1

Basel, December 2001 [partially revised and updated to November 2006]

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Last complete update of this text: December 2001 (and later partial revisions up to March 2006; online version available via <http://www.bis.org/forum/amresearch.htm>; an earlier version is available from the websites of the [World Bank](#) and [the World Bank/CEMLA Western Hemisphere Initiative](#). The latest hardcopy publication of the paper is an article last published by the author in Hadding/Schneider (eds.), *Transboundary Payment Transactions in the European Single Market/Grenzüberschreitender Zahlungsverkehr im Europäischen Binnenmarkt*, Köln : Bundesanzeiger, 1997, p.193-247.

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Foreword:

This main sections of this annotated bibliography were prepared by the author between 1998 and 2002. The revisions undertaken until January 2006 are selective and do not claim to be complete. The paper has no official character and merely reflects the views of the author.

Its purpose is to foster awareness of efforts of international harmonisation in areas that are of interest to central banks, commercial banks and researchers, with a particular emphasis on issues relating to payments and payment systems. The elaboration of this publication is an ongoing project, and any suggestion with regard to additional initiatives or bibliographic references that may be included in future updated publications is appreciated.¹

A. INTRODUCTION**1. The Issue : The need for harmonisation**

It is not without reason that the new "Core principles for systemically important payment systems", published by the Committee on Payment and Settlement Systems (CPSS) under the auspices of the Bank for International Settlements (BIS), have been identified by the Financial Stability Forum (FSF) as being one of twelve "key" international standards to strengthen financial stability worldwide.² Payment systems that ensure timely, efficient, safe and final payment for its participants are of essence to a well functioning economy. In particular those systems identified as "systemically important" need to fulfil these standards, in order to prevent the transmission of problems pertaining to any one participant in the system to other participants and in order to reduce the likelihood of such systems to transmit domestic financial shocks to financial markets.

Settlement risk - meaning all the risks that can arise when settling transactions and making payments - is a major concern for central banks. The most obvious way to tackle settlement risk is to improve the market infrastructure used to settle transactions. In recent years, there have been significant improvements in many countries, including the introduction of RTGS systems for payments and delivery-versus-payment arrangements for settling securities.

It thus appears natural that the growing interest in the "know how" of developing systems that will allow market participants (banks, systems providers, central banks) to better manage risks resulted in the CPSS elaborating "General guidance for payment system development".³

Securities settlement systems, too, have become a critical component of the infrastructure of global financial markets, and for which the CPSS/IOSCO Recommendations for Securities Settlement Systems have produced, in 2001, a set of universal minimum standards. In recent years, trading and settlement volumes have soared, as securities markets have become an increasingly important channel for intermediating flows of funds between borrowers and lenders. Volumes of cross-border trades and settlements have grown especially rapidly, reflecting the increasing integration of global markets. In the second half of the 1990s, central banks, too, started to devote more attention to the consequences of this increase in securities trading. They have an interest in ensuring the smooth

¹ Please send suggestions for reference in this bibliography, together with a copy of the publication (in English, German, French, Italian, Spanish or Portuguese) to Gregor C. Heinrich, Chief Representative, BIS Representative Office for the Americas, Bank for International Settlements (BIS), 4002 Basel, Switzerland. Tel. (+52-55) 91380290; Fax: (+52-55) 91380299; e-mail: gregor.c.heinrich@bis.org.

² <http://www.bis.org> and <http://www.fsforum.org>

³ Published January 2006, <http://www.bis.org/publ/cpss70.htm>; *infra*, p. 45

functioning of securities clearing and settlement because of the potential impact a major disruption may have on two of their key responsibilities: the smooth implementation of monetary policy and the smooth functioning of payment systems. It thus comes as no surprise that the CPSS/IOSCO Recommendations for Securities Settlements are now also one of the "key international standards" identified by the FSF and used by the IMF and the World Bank in their joint "Financial Sector Assessment Programme".⁴

Hand-in-hand with this development, recent years have seen substantial growth and development of cross-border banking activities in general. On the one hand, banks are increasingly seeking to establish subsidiaries, or at least branches, in countries other than their own. On the other hand, the commercial activities of banks have expanded tremendously.⁵ These developments have resulted in greater uncertainty as regards the applicable rules or standards, and they have also contributed to a greater awareness of risk. Even though there is a clear trend towards a "globalisation" of markets and commerce, there is a real lack in harmony of the applicable rules in different jurisdictions (i.e. fragmentation of legal rules).

As regards contract law, a multitude of legal rules are potentially applicable to any international commercial transaction. With regard to public law, it is not always clear which supervisory authority is primarily responsible for overseeing each individual bank or any banking (or payment) system as a whole, or for determining where responsibility for effecting settlements in domestic currency lies, or for ensuring cooperation among all relevant supervisory authorities, if there are more than one.⁶

The increase in cross-border banking activities is evident in particular with regard to payments and funds transfers. This growth has occurred in terms of both the total number of individual payments as well as of the total amounts "involved in payments.

For instance:

- a. S.W.I.F.T. was considered very successful in 1978 when it linked about 500 banks in 16 countries and had achieved an annual traffic volume of almost 25 million financial messages. Today S.W.I.F.T. handles the same number of messages in a few weeks, and its users (who now exceed 7800 financial institutions in number) are located in roughly 200 countries; average daily traffic in 2005 was almost 10 million messages⁷.
- b. Within the European Union (EU) the volume of cross-border payments is bound to increase as the internal market establishes itself and develops towards full economic and monetary union⁸. The European Central Bank is promoting the "Single euro payments area" (SEPA), a euro-area wide integrated infrastructure, and as regards retail payments, the Eurosystem has urged the providers of payment services to develop an infrastructure that allows payments from one EU country to another to be made as fast and cheaply as within any given national/domestic framework.⁹

⁴ On the Hague Conference Convention that would increase legal certainty on the law applicable to securities held with intermediaries, see *infra*, p. 72.

⁵ For a quantitative overview of the use of payment instruments and payment systems in various countries, see the [regular statistical updates](#) elaborated by the Committee on Payment and Settlement Systems (CPSS); for the latest international financial statistics, see the respective [statistical reports](#), all available on the BIS website.

⁶ See the "Lamfalussy Report" (to which reference is made *infra* in Section IV, 6 below), at paragraphs (Part A) 3.7 to 3.10 and (Part D) 1.1 to 5.1.

⁷ S.W.I.F.T. – <http://www.swift.com>. As a systems operator for the private ECU Clearing and Settlement System, S.W.I.F.T. started in 1986 with 7 clearing banks and about 1700 daily transactions (average), and terminated these services in December 1998 with 62 clearing banks and on average 7308 daily transactions (Information provided by the BIS as – former - Agent for the Private ECU Clearing and Settlement System, 4th January 1999).

⁸ In March 1992 the volume of retail payments below ECU 2,500 was estimated at 200 million transactions: "Payment systems in Europe", opening address by Commissioner D'ARCHIRAFI at the European Finance Convention, 3rd December 1993. In the EU the Commission typically focuses on retail payments, whereas work on large-value payment systems has been undertaken by central banks; see *infra*, Sections B.III and B.IV.

⁹ An overview of [SEPA and related background information](#) is at www.ecb.int.

- c. By now, it is estimated that in the G10 countries alone the turnover of the main payment systems is the equivalent of about US\$ 6 trillion each day.¹⁰ Many of these payments are for the settlement of financial market transactions between the banks themselves, such as interbank loans or foreign exchange deals; other payments are made by banks on behalf of their customers. In either case, the payment systems are essential to the smooth functioning of financial markets and the economy as a whole.
- d. CHIPS, the New York Clearing House's net settlement system, and, besides the European Central Bank's TARGET system, the system with the largest turnover, is a good example for the volumes settled in one single system, and for its cross-border impact: 75 Financial institutions from 25 countries create an average daily volume of 239000 payments valued a total of US\$1.2 trillion; its peak day, so far, was 28 November 1997, when 457012 payments were settled, with a total value of US\$ 2.236 trillion.¹¹

Transnational payments within TARGET reached a daily average of 350 billion euro in July 1999.

An increase in the volume of payments and securities trades and settlements brings with it an increase in risk. This applies not only at the consumer level, where, *inter alia*, the lack of transparency in conditions and techniques, the quality of performance of funds transfers and "double-charging" by intermediary and beneficiary banks appear to be an ongoing issue.

It will be many years before the entire infrastructure has been upgraded to the necessary standards. Moreover, system reforms are only part of the story: typically, improved systems can improve most principal risk but leave at least some liquidity risk. These residual risks may be significant for individual institutions and, in some cases, for the system as a whole. Central banks will thus continue to have a key role in overseeing the soundness of payment and settlement systems.¹² Also, as infrastructure improvements are made, it becomes increasingly clear that payment system oversight needs to be accompanied by a better management of settlement risk by individual banks. Finally, the overall framework by which and in which payments are made should enhance the predictability of a transaction on the basis of a sound legal - not necessarily statutory - framework.

Self-regulation would theoretically be an ideal solution for eradicating problems encountered in funds transfers. However, whenever a transaction is connected to more than one jurisdiction, additional uncertainties may exist as to specifically which rules may be applicable.

2. Harmonisation of rules and minimum standards.

As regards laws and regulations, one way of solving potential conflicts is to harmonise applicable rules.¹³ Harmonisation reduces the necessity to resort to domestic rules of private international law. At the same time, harmonisation of rules reduces the risk that an issue be treated or resolved differently in other jurisdictions, thus also curtailing "forum shopping". As regards technical standards, harmonisation will facilitate day-to-day operations and in particular cross-system and cross-border communications.

Harmonisation can be accomplished on several levels of rules:

- Harmonisation of private contractual rules. By choosing a common set of contractual clauses, partners to a contract can reduce risks arising from misunderstanding of terms

¹⁰ **BANK FOR INTERNATIONAL SETTLEMENTS**, *Statistics on Payment Systems in the Group of Ten Countries* (Figures for 1998), Basel, 2000.

¹¹ **NELSON**, "Proposed changes to CHIPS", *Int'l PaySys*, London : ibc, 1999.

¹² This is confirmed by the "Core Principles for Systemically Important Payment Systems", *infra* p. 44, as well the recent CPSS Report on Payment System Oversight.

¹³ For an in-depth analysis, see **DAVID**, "The international unification of private law", in *International Encyclopedia of Comparative Law, Vol. II: The Legal Systems of the World - Their Comparison and Unification*; Ch. 5 (1971), Tübingen/Paris/New York.

by applying common principles. Such harmonisation is common in specific areas of commercial law. Harmonised contractual rules are developed both on a national level as well as on an international level, usually by various sorts of trade organisations. Such organisations can represent either specific market participants or represent the interests of commerce more generally.

- Harmonisation of statutory rules. Such harmonisation is usually achieved through international conventions by which States agree to introduce specific rules into their national legislation. However, since many international conventions are never fully applied, harmonisation is also sought by means of so-called "model rules" or "model statutory provisions" which are suggested to national legislators for adoption.
- Finally, harmonisation, and use of, technical standards may contribute to increasing the ease of communication and reducing conflicts even in those instances where there may otherwise be a conflict of laws. Standardisation of formats is also a prerequisite for interoperability of systems, and essential to any genuine "straight-through-processing" (STP).

International conventions and model rules were formerly prepared by specific conferences that convened for the purpose.¹⁴ Now, however, the main harmonising work is performed through permanent bodies or international organisations that are entrusted with the task.

Often, the result of this work are not "conventions" in the strict sense used in public international law, but agreed market practices, minimum standards, or core principles. While these texts do not have the power of law, the process that leads to a high-level international consensus among the representatives should result in agreed standards that ideally by the sheer power of conviction result in a "buy-in" from a wide range of countries and institutions. Furthermore, inclusion of at least key standards¹⁵ in financial stability assessments performed jointly by the IMF and the World Bank on request of a country, as well as voluntary publications of the country's "Report on Standards and Codes" (ROSC),¹⁶ should create a certain dynamics in favour of reform, where needed; self-assessments and discussions at national level on the adequacy of existing laws, regulations and procedures should will be a natural first step, and ongoing process, with a view to making a country's, or region's, framework better prepared to face the challenges of a globalised world.

Some of the more important internationally active private as well as public institutions are listed below. Their efforts with regard to achieving harmonisation are listed *infra*, in Section B., as they might, for instance, have an impact on rules governing payments, payment systems and related fields of law, such as, increasingly, insolvency regulation and private international law.

At the same time, initiatives taken at an international level may serve as model or as "check list" for national rule-makers when addressing issues relating to payments and payment systems.

3. Private institutions

a) *International Chamber of Commerce*

The International Chamber of Commerce (ICC) was founded in Atlantic City in 1919; its headquarters (ICC Secretariat) are based in Paris. It is a non-governmental organisation of thousands of companies and business organisations in more than 130 countries; ICC national committees present

¹⁴ E.g. the Latin American conference which prepared the "Codigo Bustamante" of 1928 on Private International Law [see SAMTLEBEN, *Derecho internacional privado en america latina - Teoria y practica del codigo Bustamante Vol. 1 Parte general*, Buenos Aires : Ed. Depalma, 1983; *Idem*, *Internationales Privatrecht in Lateinamerika - Der Codigo Bustamante in Theorie und Praxis, Bd. 1, Allgemeiner Teil*, Tübingen : J.C.B. Mohr (Paul Siebeck), 1979] or the Geneva Conventions of 1930/1931 (Cheques and Bills of Exchange)..

¹⁵ See in particular the "Compendium of standards" published by the Financial Stability Forum, <http://www.fsforum.org>.

¹⁶ A complete list of available ROSC is at <http://www.worldbank.org/ifa/rosc.html> ; the list of published FSAP reports is at <http://www.imf.org/external/np/fsap/fsap.asp>.

ICC views to the respective governments and name permanent delegates to the ICC Council. The Council approves the work of the more than 20 ICC commissions.¹⁷ One of its main objectives is to harmonise trade practices¹⁸ and to promote trade, investment and the free market; it also draws up voluntary codes, which set ethical standards and offers a number of practical services to businesses.¹⁹ In the international financial services sector, the ICC Commission on Financial Services aims to monitor, report on and make policy recommendations, especially as regards deposit banking and investment banking, and their implications for businesses; a Working Party within this Commission is in particular concerned with international aspects of payment systems.

b) International Law Association (ILA) – Monetary Committee (MOCOMILA)

The MOCOMILA regularly discusses matters regarding international monetary systems²⁰ and has also studied certain topics regarding payments, in particular the discharge of "underlying obligations" (*Infra*, Section III), and, most recently, legal issues relating to "electronic money".

The International Law Association (ILA) is a private organisation whose objects are "the study, elucidation and advancement of international law, public and private, the study of comparative law, the making of proposals for the solution of conflicts of law, and for the unification of law, and for the furthering of international goodwill and understanding".²¹ The ILA was founded in Brussels (under the original name Association for the Reform and Codification of the Law of Nations) at a conference held in 1873. The ILA has its headquarters in London. Its academic work is performed by international committees on particular topics. Committee reports may take the form of a restatement of law, a draft treaty or convention, a review of recent developments of current law and practice, the elaboration of rules or principles of international law, etc.²²

(c) S.W.I.F.T.

The "Society for Worldwide Interbank Financial Telecommunications" is a commercial organisation established for the benefit of banks and financial institutions throughout the world.²³ It operates a network of communications allowing for transmission of financial messages (in a specific S.W.I.F.T. standard). It is neither a bank, nor a payment system, but a message carrier. The system can be used by banks and other financial institutions for money transfers, for opening letters of credit, netting operations and the exchange of general, "free format" messages.

17 ICC Factsheet, 1993. See also STÖDTER, "International Chamber of Commerce", in: *Encyclopedia of Public International Law* (Berhardt, ed.), Vol.II, Amsterdam/Lausanne, etc. : North-Holland, 1995, p.1066-1069. A WWW "home page" of the ICC is to be found at <http://www1.usa1.com/~ibnet/icchp.html>.

18 Most widely known are the ICC Rules on Documentary Credits, and "Incoterms" - international commercial terms defined by the ICC and applied by importers and exporters of goods worldwide. In this connection, see for instance a recent official commentary by the ICC on its *ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits* (URR 525), Paris : ICC, December 1995. The ICC also publishes texts by individual authors of general relevance to international commerce, for instance DOUCH, *Managing foreign exchange risks*, Paris : ICC, 1996.

19 E.g.. Institute for International Business Law (research and training), ICC International Court of Arbitration.

20 GIOVANOLI, "[Fifty years of contributions on international monetary law](#)", in: *International Monetary Law – Issues for the New Millennium*, London : Oxford Univ. Press, 2000, "Le Comité de droit monétaire de l'International Law Association", in: *International Law and Economic Order - Essays in honour of F.A. Mann* (70th birthday), München : Beck, 1977, p. 719-730. The Chairman of the MOCOMILA is currently William Blair QC, who succeeded Prof. M. Giovanoli, former General Counsel of the BIS, in 2005.

21 Article 2 of its Constitution; see STÖDTER, "International Law Association", in: *Encyclopedia of Public International Law* (Berhardt, ed.), Vol.II, Amsterdam/Lausanne, etc. : North-Holland, 1995, p.1207-1208. On the history and work of the Association: INTERNATIONAL LAW ASSOCIATION, *Report of the sixty-sixth Conference, Buenos Aires, Argentina*, London/Buenos Aires 1994, p. 46-59 (ILA Constitution, Standing Orders, and Procedures Establishing International Committees: p. 60-67); CRAWFORD, J. "The International Law Association from 1873 to the present", *ULR/RDU* 2(1997)68-87.

22 Among the draft conventions are those on International Commercial Arbitration (1950) and Recognition and Enforcement of Foreign Money Judgments (1964); the recent *UNIDROIT Principles of International Commercial Contracts* (1994) have met wide interest and served as a source of inspiration in some of the more recent Civil Code codifications (Netherlands, Russia, Québec).

23 <http://www.swift.com>.

S.W.I.F.T. was founded in 1973 by a group of banks from some fifteen countries. It is a "société coopérative", co-operative company, incorporated in Belgium, therefore governed by Belgian law. Its seat is in La Hulpe, which is near Brussels. In 2005, S.W.I.F.T. had more than 7800 users (in 1995, 5000), mostly banks. It operates in around 200 countries.

S.W.I.F.T. has not limited its activity to payments. It has expanded it to Forex and money markets, to securities and trade finance. Relations between S.W.I.F.T. and S.W.I.F.T. users are governed by contractual agreements, as laid out *inter alia* in the General Terms and Conditions and the Users' Handbook. These contractual documents stipulate binding rules concerning allocation of duties, responsibilities in case of non-execution or mis-execution of messages, limitations of liability (maximum ceilings, flow limits), SWIFT rules are incorporated into the correspondent banking contractual relationships. SWIFT rules implicitly require an adequate technology both from user banks and from telecommunication infrastructures.

S.W.I.F.T. is not directly active in legal harmonisation. However, since all participants in the system need to adhere to the rules contained in the Users' Handbook, the impact of S.W.I.F.T. on the banking industry with regard to standardised rules and procedures cannot be underestimated.

c) Other organisations

Private international organisations of specific market participants in the banking sector include, for instance, the International Swap Dealers Association (ISDA).

A private initiative for the technical standardisation in the field of payment systems is the *European Committee for Banking Standards* (ECBS).²⁴ The ECBS was established in December 1992 by the three European Credit Sector Associations; it develops technical solutions for the banking infrastructure, in specific payment systems, to support the European single market. It has "technical committees" (e.g. on plastic cards and related devices; on automated cross border payments, including file and message formats, technical access to domestic ACHs, regulatory reporting, cross-border direct debit, cross-border securities for collateral; on security, including digital signatures, biometrics, certification authorities, key escrow, etc.) and a "working group" on electronic banking. The ECBS Secretariat is located in Brussels.

As a more recent organisation, *the International Organisation of Securities Commissions* (IOSCO), based in Madrid, currently groups securities market regulators from over 80 countries which have resolved to cooperate to promote high standards of regulation in order to maintain efficient and sound domestic and international securities markets.²⁵

The *Group of Thirty* (G30), established in 1978, is a private, non-profit, international body composed of senior representatives of the private and public sectors and academia, and is funded by contributions from private sources such as foundations, banks, central banks and non-bank corporations and individuals.²⁶ It aims to deepen understanding of international economic and financial issues, to explore the international repercussions of decisions taken in the public and private sectors, and to examine the choices available to market practitioners and policymakers. The members meet twice a year with special guests. The Group may also establish study groups or committees when it considers that its objectives would be furthered by more detailed work.

In addition, specific *national organisations* have been active in harmonisation efforts. In particular, in countries such as the USA, with its multitude of State legislatures, trade organisations can play an important role; its initiatives may also have some influence at the international level.²⁷ Also, private

²⁴ <http://www.ecbs.org>.

²⁵ IOSCO has published a number of reports concerning securities settlement, including *Clearing and Settlement in Emerging Markets - a Blueprint* (1992) and *Cooperation between Market Authorities and Default Procedures* (1996). IOSCO's Web site is at <http://www.iosco.org>.

²⁶ <http://www.group30.org/about.php>. The G30 was based originally in New York and London and since 1992 exclusively in Washington, D.C. The G30 reach out to a wider audience by publishing papers. The first occasional papers were published in 1980.

²⁷ One example is the Council on International Banking (C.I.B.), possibly no longer in existence. In 1993, the C.I.B. trade association - consisting of three regional C.I.B.s - had more than 365 member institutions; see *infra* Section III.

or commercial national organisations from countries with different legal background have at times cooperated in order to elaborate uniform rules to be applied in an international context. Often such cooperation relates to standards,²⁸ but may also result in harmonised contractual agreements.²⁹

4. International organisations / institutions

A number of *international organisations* or "*international institutions*" are active in the field of harmonising legal rules.³⁰ In an overview published yearly by the United Nations Commission on International Trade Law (UNCITRAL), roughly 30 international institutions were listed as currently working on about 100 projects of aspects of harmonisation of trade law.³¹ The best known institutions are (i) the Hague Conference on Private International Law, (ii) the United Nations, including UNCITRAL, (iii) the European Union, (iv) the Council of Europe and (v) UNIDROIT.

(i) Hague Conference

The Hague Conference on Private International Law³² is an intergovernmental organisation with 64 member countries,³³ established over 100 years ago. Its purpose is "to work for the progressive unification of rules of private international law" (Statute, Article 1). The current Statute entered into force on 15th July 1955.³⁴

The Conference achieves its purposes by negotiating and preparing draft international treaties or conventions, for instance in the field of conflict of laws for contracts, jurisdiction and enforcement of foreign judgements, family law, etc.³⁵ As regards International and financial and commercial law, its recent work on securities is relevant for payment and settlement systems.

At present, 65 states from around the world are members.

28 Such as in the field of EDI (see *infra*, section B.V).

29 E.g. The ISDA standard contract forms for swap-arrangements, PSA-repurchase agreement forms or, most recently, the IFEMA - International Foreign Exchange Master Agreement, a cooperative effort by the British Bankers' Association (BBA) and the [US] Foreign Exchange Committee (FXC), finalised in 1993; for spot and forward foreign exchange transactions.

30 Standardisation on a more technical level is above all promoted at the *International Organization for Standardization* (ISO). Founded in Geneva in 1947, its goals are to promote the development of standardisation and related activities in the world with a view to facilitating international exchange of goods and services and to developing cooperation in the sphere of intellectual, scientific, technological and economic activity

31 NELL, (ed.), *The Solomon Brothers Directory of International Financial Institutions*, London. Central Banking Publications, 1996, provides a brief guide to those institutions that, i.a., coordinate policy and provide information and analysis. On international legal initiatives in general, see BERAUDO, "Activité des organisations internationales en matière de droit du commerce international", *D.P.C.I.* 20(1994)613-622; UNIDROIT, *Digest of Legal Activities of International Organisations and Other Institutions*, 9th ed., November 1990; UNCITRAL, "Current activities of international organizations related to the harmonization and unification of international trade law", Report of the Secretary-General, UN Doc. A/CN.9/324, 22nd March 1989 (published yearly in connection with UNCITRAL's annual sessions); WHITE, *International Agreements in the area of banking and finance: Accomplishments and outstanding issues*, (BIS Working Paper No. 38), Basel : BIS, October 1996.

32 http://www.hcch.net/index_en.php

33 http://www.hcch.net/index_en.php?act=states.listing. The NILR regularly publishes information on the status of the Hague Conventions (signatures, accessions, ratifications, entry into force).

34 The first session of the Hague Conference was convened in 1893 by the Netherlands Government. The draft of the present Statute, that made the Conference a permanent intergovernmental organisation, was prepared at the 7th Session in 1951. See HAGUE CONFERENCE, *Information on the Hague Conference*....., 15th June 1994; VAN LOON, "Hague Conference on Private International Law: Work in 1995", in: *Hague Yearbook of international law* No.8 - 1995 (1996)209-212. On the history of the Hague Conference, see LIPSTEIN, "One Hundred Years of Hague Conferences on Private International Law", *I.C.L.Q.* 42(1993)553-653; VON OVERBECK, "Les cent ans de la Conférence de La Haye de droit international privé", *SZIER/RSDIE* 3(1993)137-153; *Idem*, "La contribution de la Conférence de La Haye au développement du droit international privé", *RCDAl* (1992-II)9-98.

35 The Conventions prepared since 1951 appear in the *Collection of Conventions*, preliminary documents, minutes of discussions, etc. in the *Proceedings* edited after each Session. They are published by the Permanent Bureau of the Hague Conference on private international law, The Hague, the Netherlands.

(ii) UNCITRAL

One of the most prominent bodies active in the field of the harmonisation of various aspects of commercial law is UNCITRAL, the United Nations Commission for International Trade Law, which is based in Vienna.³⁶

It was established by the General Assembly in 1966. It had been recognised that disparities in the national laws governing international trade created obstacles to the flow of trade. By establishing UNCITRAL, the UN pursues the goal of playing an active role in reducing or removing these obstacles to trade, and UNCITRAL is now the core legal body of the UN system in the field of international trade law.³⁷

UNCITRAL is made up of 36 member States elected by the General Assembly. As with all UN Commissions, not all UN member States are permanent members. Rather, the delegates come from the group of countries with a permanent seat on the Security Council plus countries from among other UN member states. Membership is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems.

In addition, a number of organisations may send observers to the sessions of UNCITRAL itself and of its "Working Groups". The Working Groups perform the substantive preparatory work on the current topics of discussion. Each working group typically holds one or two sessions a year, alternating between Vienna and New York.³⁸

UNCITRAL has consistently played an active and constructive role in the unification of international banking law.³⁹ Its most important initiative in the field of payments is the Model Law on International Credit Transfers (see *infra*, Section B).

(iii) European Union

The *European Union* (EU)⁴⁰ as an international organisation with supra-national powers, is obviously constantly striving to harmonise rules within its member States, including in the field of banking, payments and related topics.⁴¹

36 <http://www.uncitral.org>.

37 The **United Nations** periodically publishes a *bibliography* on recent writings related to the work of UNCITRAL, not only on sale of goods but also on international arbitration and conciliation, transport, payments, and construction contracts; cf. A/CN.9/402 of 11.05.1994; in addition, abstracts of *case law* on UNCITRAL texts (CLOUT) are published on a regular basis: e.g. A/CN.9/SER.C/ABSTRACTS/8 of 21.12.1995 and CLOUT User Guide: A/CN.9/SER.C/GUIDE/1 of 19.05.1993. UNCITRAL's WWW homepage is located at: <http://www.un.or.at/uncitral/>. It provides electronic access to legal texts, Working Papers and CLOUT documents.

38 See **ESTRELLA FARIA**, "The work of the United Nations Commission on International Trade Law (UNCITRAL) in 1996", *ULR/RDU* 1(1996)476-493; **BISCHOFF**, "Allgemeine Erfahrungen bei der Rechtsvereinheitlichung in der UNCITRAL", *SZIER* (1993)623-638.

39 See **CHENG**, "UNCITRAL developments and banking operations", in: *International Banking Operations and Practices: Current Developments*" (ed. J. **Norton/Cheng/Fletcher**), London/Dordrecht/Boston : Graham & Trotman/Martinus Nijhoff, 1994, p. 261-281.

40 As from entry into force of the "Treaty on European Union" [also known as the *Maastricht Treaty*] on 1st November 1993, the terms "European Community" (EC) or "European Economic Community" (EEC) [but not necessarily the institutions themselves] were replaced in general public usage by "European Union" (EU). Initiatives by EC institutions which were published before 1st November 1993 are mentioned under the respective old headings.

41 See **SCHNEIDER**, "Harmonisierung des Bankrechts in der Europäischen Gemeinschaft: Notwendigkeit, Reichweite, System", in *Deutsches und europäisches Bank- und Börsenrecht, Bankrechtstag 1993* (ed. Hadding/Hopt/Schimansky), Berlin/New York, 1994, pp. 3-29; **Idem**, "Europäische und internationale Rechtsangleichung und ihre Bedeutung für die Kreditwirtschaft", in *Rechtsfragen bei Bankleistungen im Europäischen Binnenmarkt/Legal Issues Involved in Banking Services in the Single European Market/Problèmes juridiques des services bancaires au sein du Marché Interieur européen* (ed. by Hadding/Welter), Köln : Bundesanzeiger, 1994.

EUROPA, the WWW server offering information on the EU's goals and policies is located at: <http://www.cec.lu/>. On-line information on the EU and links to various EU-institutions are also to be found *inter alia* at: <http://www.chemie.fu-berlin.de/adressen/eu.html>.

The *European Documentation Centre*, an information network comprising over 600 documentation centres, can be accessed at: <http://www.uni-mannheim.de/users/ddz/edz/eedz.html> or <http://europa.eu.int/en/comm/opoce/g-edc.html>.

As regards credit transfers from one EU-country to the other, the Commission of the EU has incorporated some of the concepts from the UNCITRAL Model Law in international credit transfers in its Directive of 1997.⁴²

Even though its powers are limited to the member States of the European Union, the influence of its harmonisation efforts extends beyond the European Union's boundaries. On the one hand, any common, harmonised rule is a compromise between the various interests represented by different legal systems (e.g. common law and civil law) or factual backgrounds (e.g. more or less advanced technological level of economic transactions). On the other hand, any non-EU country dealing closely with the European Union or any of its individual member states will need to know about the EU rules and may possibly also have an interest in adapting its own legislation to the EU rules in order to reduce friction in trade, due to divergence of legal rules, as far as possible.

In the field of banking and payments, the *European Central Bank* (ECB)⁴³, and its predecessor, the *European Monetary Institute* (EMI) is of course of importance. The *European Commission* is particular concerned with regard to creating a uniform market place for financial transactions, and also with consumer protection issues.⁴⁴

(iv) Council of Europe

The Statute of the *Council of Europe* (CE) was signed by ten countries on 5th May 1949.⁴⁵ In the meantime, 40 states are member of the Council.⁴⁶ Its aims, according to Article of the Statute, are to achieve a "greater unity between its Members for the purposes of safeguarding and realising the ideals and principles that are their common heritage and facilitating their economic and social progress". This unity is achieved through voluntary co-operation between the member states of the Council, e.g. through discussions and agreement in the organs of the Council, in particular the Council of Ministers⁴⁷ and the Consultative Assembly, also referred to as Parliamentary Assembly.⁴⁸ However, the Committee of Ministers can merely recommend matters to governments. Such matters can include issues of an economic, social, legal or administrative nature.

More than 100 conventions, agreements and protocols have come into being. To a large extent they cover cultural and political matters, but some of the legal issues addressed in the Council are also relevant to payments and payment systems (*infra*, Section B).

ECHO (EC Host Organisation), set up by DG XIII in 1980 to develop and promote understanding of information services in Europe, is located at: <http://www2.echo.lu/en/menuecho.html>.

42 See *infra* Section III 5, and, on the preparatory work, **COMMISSION DES COMMUNAUTÉS EUROPÉENNES (DG XVI/1)**, *Rapport du groupe de développement technique des systèmes de paiement*, 20th February 1992, pp. 14-17.

43 See <http://www.ecb.int>.

44 For instance, in 2001 the Commission launched an initiative, Fin-Net, that links alternative dispute resolution (ADR) bodies for the out-of-court settlement of cross-border consumer complaints for financial transactions : http://europa.eu.int/comm/internal_market/en/finances/consumer/adr.htm.

45 *UNTS* 87(1951)103-129. The text has subsequently been amended (articles 23, 25, 26, 27, 34 and 38). See **ROBERTSON**[and addendum by **HARREMOES**], "Council of Europe", in: *Encyclopedia of Public International Law* (Bernhardt, ed.), Vol.I, Amsterdam : North-Holland, 1992, p. 843-850.

46 Apart from the member States of the EU, the following States are also members of the Council (in brackets: year of accession): Albania (1995), Bulgaria (1992), Croatia (1996), Czech Republic (1993), Cyprus (1961), Estonia (1993), Finland (1989), Hungary (1990), Iceland (1950), Latvia (1995), Liechtenstein (1978), Lithuania (1993), Malta (1965), Moldova (1995), Norway (1949), Poland (1991), Romania (1993), Russia (1996), San Marino (1988), Slovak Republic (1993), Sweden (1949), Switzerland (1963), Turkey (1950), Ukraine (1995), "former Yugoslav Republic of Macedonia" (1995)

The Council of Europe's WWW homepage is located at <http://www.coe.int>.

47 Information on the Committee of Ministers is to be found at http://www.coe.int/t/cm/home_en.asp

48 The Parliamentary Assembly's WWW homepage is located at: <http://assembly.coe.int/default.asp>

(v) UNIDROIT

The International Institute for the Unification of Private Law (UNIDROIT) is an international organisation, based in Rome, funded by governments.⁴⁹ The participants in the working groups which elaborate uniform texts usually come from academic circles as well as from private law practice and often represent specialised trade associations. UNIDROIT's work is not specifically aimed at payments, but their recent efforts are very much concerned with certain legal uncertainties existing in international commercial activities.⁵⁰

(vi) Other institutions

In addition, *other international organisations* are active in the field of harmonisation, perhaps more indirectly.

(a) The Bank for International Settlements (BIS).

The functions of the BIS⁵¹ are: to promote the co-operation of central banks and to provide facilities for international financial operations; and to act as trustee or agent in regard to international financial settlements entrusted to it. The Bank's registered offices in Basel, Switzerland, are a regular meeting place for central bank governors from the major industrialised countries and emerging economies. The purpose of these meetings is to achieve a high degree of mutual understanding and, when practicable, to co-ordinate monetary policy internationally and thus help to ensure orderly conditions on the international financial markets.

In addition, the BIS organises regular meetings of central bank experts on economic, technical and legal matters of mutual interest. By providing a forum for regular meetings and discussions for international experts, knowledge is shared, emphasis put on certain issues and suggestions are formulated which can have an impact on national institutions and lawmakers. Of specific importance on the topic of this paper are the Committee on Payments and Settlement Systems (CPSS) established by the central banks of the Group of Ten (G10)⁵² countries, and the Basel Committee on Banking Supervision (BCBS) (*infra*, Section B).

The Committee on Payment and Settlement Systems:

In 1980 the Governors of the central banks of the G10 countries set up a Group of Experts on Payment Systems. The purpose of this group was to take forward the work on payment system issues which had been identified at that time by the G10 Group of Computer Experts - for example,

49 The official UNIDROIT Web-site can be accessed at <http://www.unidroit.org>.

50 For instance, "Convention on International Interests in Mobile Equipment", Cape Town, 2001, at <http://www.unidroit.org/english/conventions/mobile-equipment/main.htm>. For earlier drafts: (Study LXXII-Doc.27, July 1996; French version of Study: September 1996); or the UNIDROIT "Convention on International Factoring" (Ottawa, 28th May 1988) at <http://www.unidroit.org/english/conventions/1988factoring/main.htm>. UNIDROIT also publishes a legal journal, the *Uniform Law Review/Revue de droit uniforme*, succeeding *Unification of Law*.

A comprehensive on-line overview of UNIDROIT, including links to international Conventions drawn up by UNIDROIT and adopted at diplomatic conferences is available at: http://ra.irv.uit.no/trade_law/nav/unidroit.html.

51 <http://www.bis.org>. GIOVANOLI, "The role of the BIS in international monetary cooperation and its tasks relating to the ECU", in *Current Legal Issues Affecting Central Banks* (R. Effros, ed.), Washington D.C. : IMF, May 1992.; TONIOLO, *Central Bank Cooperation at the Bank for International Settlements, 1930-1973*, Cambridge : Cambridge Univ. Pres, 2005.

52 The G10 comprises 11 industrial countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States) and facilitates consultation and cooperation on economic, monetary and financial matters. The Finance Ministers and Central Bank Governors of the Group of Ten usually meet twice a year in conjunction with the spring and autumn meetings of the Interim Committee of the International Monetary Fund. The Central Bank Governors of the Group of Ten normally meet eight times a year. Finance Ministry and Central Bank Deputies of the Group of Ten meet on a regular basis, usually four times a year. Various committees and working parties of the Group of Ten are also convened as needed to analyse issues of common interest to member countries. Countries from outside the G-10 sometimes also participate in the work.

In recent years, the Group of Ten has issued reports on the macroeconomic and financial implications of ageing populations, electronic money and the resolution of sovereign liquidity crises. These reports, as well as communiqués of the Group of Ten, can be obtained from the BIS, the IMF (<http://www.imf.org>) and the OECD (<http://www.oecd.org>).

issues concerning the development of electronic funds transfer systems and the question of competition vs. cooperation in payment systems. One of the Group's first projects was a detailed analytical review of payment system developments in the G10 countries. The result of this work was published by the BIS in 1985 in the first of a series that has become known as "Red Books".

As a follow-up to the work of the Committee on Interbank Netting Schemes ("Lamfalussy Report", 1990), and more generally to take over and extend the activities of the Group of Experts on Payment Systems, in 1990 the G10 Governors established the Committee on Payment and Settlement Systems. The CPSS is one of the permanent central bank committees reporting to the G10 central bank Governors. In addition to the G10 central banks, the Monetary Authorities of Singapore and Hong as well as the European Central Bank (ECB) are also members of the Committee. Central banks from other countries are represented from time to time in the Committee's working groups and task forces.

The CPSS serves as a forum to monitor and analyse developments in domestic payment, settlement and clearing systems as well as in cross-border and multicurrency netting schemes. It also provides a means of coordinating the oversight functions to be assumed by the G10 central banks with respect to these private netting schemes. In addition to addressing general concerns regarding the efficiency and stability of payment, clearing, settlement and related arrangements, the Committee pays attention to the relationships between payment and settlement arrangements, central bank payment and settlement services and the major financial markets which are relevant for the conduct of monetary policy.

The CPSS undertakes specific studies in the field of payment and settlement systems at its own discretion or at the request of the G10 Governors. Working groups are set up as required. Efforts are made to ensure that a wide range of expertise is brought to bear on the issues of concern to members of the Committee. The Committee, under the auspices of the BIS, has published various reports in recent years⁵³ covering large-value funds transfer systems, securities settlement systems, settlement mechanisms for foreign exchange transactions, clearing arrangements for exchange-traded derivatives and electronic money. The "Red Book" on payment systems in the G10 countries is periodically revised and a statistical update of the data it contains is published every year. This CPSS methodology is also used by the World Bank to describe and assess developments in payments and securities settlements in developing countries⁵⁴ and has inspired the creation of, for instance, a regional payments forum for Latin America.

The CPSS has long been at the forefront of efforts to reduce risks in payment and settlement systems. This has been motivated by concerns that the credit and liquidity risks inherent in payment and settlement systems have the potential to contribute to systemic problems if not properly managed and controlled. In this connection, the CPSS has considered it important to cooperate with other groups, including the International Organization of Securities Commissions (IOSCO), the Basel Committee on Banking Supervision and the G10 Deputies, to address issues of common concern. In the context of its activities the Committee maintains contact with many global payment system providers, industry associations and other regulatory authorities.

Through their collective efforts to analyse and promote awareness of risks and to develop minimum standards or best practices, the G10 central banks and the CPSS have played leading roles in promoting efficient and robust payment and settlement arrangements. Their continuing work in this area, with the increasing involvement of central banks outside the Group of Ten, reflects the need to continuously monitor and improve risk management in these systems, which are essential to the stability of financial markets and the global economy.⁵⁵

53 Most reports are available online via <http://www.bis.org/cpss> or can be ordered from the Secretariat at the BIS.

54 For instance, **CIRASINO/GUADAMILLAS/GARCÍA/MONTES-NEGRET**, *Reforming Payment and Securities Settlement Systems in Latin America and the Caribbean*, advance edition, Washington, D.C. : The World Bank, 2007.

55 For instance, payment system information provided by central banks worldwide can be directly accessed via <http://www.bis.org/cpss/paysysinfo.htm>.

The Basel Committee on Banking Supervision

While the BIS is an organisation of central banks, the Basel Committee on Banking Supervision (BCBS; a.k.a. "Basel Committee") coordinates specific efforts of national banking supervisory authorities, many - but not all - of which also the respective central bank. The Secretariat for the Basel Committee is provided by the BIS in Basel (hence its name). The Basel Committee, established by the central-bank Governors of the G10 countries at the end of 1974, meets regularly four times a year. It has about thirty technical working groups and task forces that also meet regularly. The work of the Committee encompasses three main areas: firstly, it provides a forum for discussion on the handling of specific supervisory problems; secondly, it coordinates the sharing of supervisory responsibilities among national authorities in respect of banks' foreign establishments with the aim of ensuring effective supervision of banks' activities world-wide; thirdly, it seeks to enhance standards of supervision, notably in relation to solvency.⁵⁶ The Committee does not possess any formal supranational supervisory authority, and its conclusions do not, and were never intended to, have legal force. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements - statutory or otherwise - which are best suited to their own national systems. In this way, the Committee encourages convergence towards common approaches and common standards without attempting detailed harmonisation of member countries' supervisory techniques.

The Electronic Banking Group (EBG) is comprised of 17 central banks and bank supervisory agencies from the Basel Committee membership, along with observers representing the European Central Bank, the European Commission and, beginning in February 2001, the bank supervisors in Australia, Hong Kong and Singapore. Although e-banking was an exceedingly negligible presence in the overall financial marketplace in 1998, the fundamental characteristics of the Internet, particularly its open trans-national network, the speed of change, the complex operational and security risk, the increasing reliance on third parties, as well as a recognition of its future promise, led the Basel Committee to conduct a preliminary study the risk management implications of e-banking and e-money.⁵⁷ The EBG, which first met in November 1999, has focused on: developing and sharing sound supervisory guidance and risk management principles for e-banking⁵⁸; and enhancing cross-border coordination among bank supervisors for e-banking activities.

(c) International Organization for Standardization (ISO)

The International Organization for Standardization, established in 1947, is a worldwide federation of national standards bodies from about 130 countries, one from each country.⁵⁹ Its mission is to promote the development of standardisation with the view to facilitate the international exchange of goods and services, and to develop cooperation in the sphere of intellectual, scientific, technological and economic activity. ISO covers all standardisation fields, except electrical and electronic engineering. The technical work of ISO is decentralised in a large number of technical committees, subcommittees and working groups. In these committees, representatives of industry, research institutes government authorities, consumer bodies and international organisations from around the world come together to resolve problems of global standardisation.

(d) Universal Postal Union (UPU)

The Universal Postal Union⁶⁰ was founded in 1874 and was brought into relationship with the United Nations in 1948. The UPU unites member countries into a single postal territory and fixes international postal rates. As Specialised Agency of the United Nations, the UPU aims to organise

56 Publications of the Basel Committee are available at the BIS's website at <http://www.bis.org/forum/research.htm>

57 "Risk Management for Electronic Banking and Electronic Money Activities" was released in October 1998

58 *Risk Management Principles for Electronic Banking* available at <http://www.bis.org>

59 <http://www.iso.org>

60 <http://www.upu.int>.

and improve postal services throughout the world and to ensure international collaboration in this area. Among the principles governing its operations as set forth in the Universal Postal Convention and the General Regulations, two of the most important were the formation of a single territory by all signatory nations for the purposes of postal communication and uniformity of rates and units of weights.

5. Major legal initiatives in the field of payments

In the field of payments, three major legal initiatives received a fair amount of international attention since they pioneered the harmonisation of rules governing credit transfers, especially cross-border credit transfers:

- a US initiative to harmonise domestic rules governing wholesale wire credit transfers. This initiative resulted in the drafting of a new instrument, Article 4-A "Funds Transfers", to be incorporated into the Uniform Commercial Code (UCC).⁶¹ The new rules contained therein were subsequently adopted by a large number of US states, most importantly New York⁶²,
- an initiative by the UNCITRAL resulting in the adoption and publication of Model Rules on International Credit Transfers in May 1992,⁶³ and
- a Directive of the European Parliament and of the Council on Cross-Border Credit Transfers of 27th January 1997.⁶⁴

UNCITRAL's Model Law and Article 4A UCC are not the first and only instruments which aim to standardise certain issues arising in the context of international payments. Particularly in light of rapid technological changes in the banking world and the increasing automation of payment transactions, there is an ever greater need for information and harmonisation at an international level,⁶⁵ at which the discussions on cross-border credit transfers will not end with the publication of the UNCITRAL Model Law. In fact, the European Directive of January 1997 was partially influenced by the UNCTRAL Model Law and has incorporated some of the concepts mentioned therein.

Still, several years after its adoption of the Model Law, no country appears to have introduced the Model Law as an integral text in its body of laws. In fact, there are still only few countries have legislation aimed specifically at regulating payments or payment systems, but the number seems to be growing in recent years.⁶⁶

⁶¹ Reproduced at <http://www.law.cornell.edu/ucc/4A/overview.html>. For instance, the rules of Article 4A may also have an impact on international payments involving the United States, since, under Article 4A-507 (Choice of law), parties are allowed to make a choice-of-law agreement, funds transfer systems are allowed to select the law of a particular jurisdiction to govern funds transfers carried out by means of the system, and, if no choice of law has occurred, rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located. See also **BALLEN/DIANA**, "Walking a high wire", *Banking Technology*, July/August 1991, pp. 38-40.

⁶² On applicability of Article 4A to various aspects of payments in New York, see various statements by the Federal Reserve Bank of New York at <http://search.newyorkfed.org/search/frbny.jsp?querybox=Article+4A>; The draft was finalised in August 1989. Article 4A was designed to be state, not federal, law. As of 1st January 1993, 42 US states had made Article 4A part of their UCC (Alabama, Alaska, New Jersey, South Carolina and also Puerto Rico are considering adopting it). The text also constitutes an Appendix to the Federal Reserve System's "Regulation J" applicable to funds transfers through "Fedwire", as amended with effect from 1st January 1991: 12 *C.F.R.* § 210, Subpart B. Article 4A is explicitly designated as the law governing Fedwire. In the United States, Fedwire, CHIPS, S.W.I.F.T., telex and book transfers are covered by Article 4A. On the pre-Article 4A discussions regarding payment and settlement finality, see **MENGLE**, *infra*, p.38.

⁶³ See *infra*, Section III.

⁶⁴ See *infra*, Section III.

⁶⁵ See **U.H. SCHNEIDER**, "European and global harmonisation of the law of banking transactions", in *European Banking Law* (Ross **Cranston**, ed.), London, New York etc, 1993, pp. 267-288; **Idem**, "Europäische und internationale Harmonisierung des Bankvertragsrechts", *Neue Juristische Wochenschrift [NJW]* 44(1991)1985-1993.

⁶⁶ In addition to the US-American Article 4-A UCC and US Stage legislation following the UCC, see for instance: **AUSTRALIA**: [Payment Systems \(Regulation\) Act](#), 1998 [with [Amendment Bill](#), 1995]; and [Payment Systems and Netting Act](#), 1998;

The Model Law is at least useful since it might promote further discussion on payment issues. For instance, each State wishing to adopt all or part of the Model Law, will start looking into the compatibility of new concepts with old conventions and regulations. Also, issues originally discussed within the UNCITRAL Working Group but not incorporated in the final version of the Model Law - such as conflict-of-law rules or the discharge of underlying obligations - might be re-examined in the future. In addition, new issues might be raised during future discussion and may result in a desire to supplement or amend the Model Law.⁶⁷

In this context, it appears useful to mention a number of further initiatives that exist in this field. Some initiatives were conceived with a view to harmonising rules that directly address such issues as payments or funds transfers: others, such as those regarding bankruptcy or consumer protection, have a more indirect effect on payment issues. Some have culminated in inter-governmental conventions, others in the form of standard contractual clauses, recommendations or guidelines suggested by trade groups.

Not all of the initiatives have been equally successful and many have not been adopted as national laws. However, some of the draft conventions have had an important indirect impact insofar as they have served as models for a number of rules laid down in other conventions or national statutes.

The following list, which does not claim to be exhaustive, is meant to serve as a quick reference for such - mostly statutory - initiatives. Initiatives relating to debt instruments - in particular cheques - are, however, not included.⁶⁸ The presentation is systematic, providing information - where available - on (a) the name or title of the initiative, (b) where and when the resulting instrument was adopted or published, (c/d/e) the entry into force of a convention, ratifications or accessions, (f) the initiative's contents, (g) bibliography for the source of the initiative, and (h) a selection of essential secondary bibliographical references for each initiative. Bibliographical references of general interest with regard

CANADA: *Payment Clearing and Settlement Act, 1996*; **MEXICO:** [Ley de sistemas de pagos, 2002](#); **SOUTH AFRICA:** *National Payment System Act, 1998*, Government Gazette No. 19402, 28th October 1998;

⁶⁷ For instance, at the UNCITRAL Congress held in New York in May 1993 a suggestion was made to supplement the UNCITRAL *Legal Guide on Electronic Funds Transfers*, *supra* n. 65, to deal with cases of capital flight and tax evasion, UN Doc. A/CN.9/378, 23rd June 1993, p.4.

⁶⁸ The most widely known are the six *Geneva Conventions* of 1930-31 on bills of exchange and notes, cheques, and related issues. The United Kingdom *Bills of Exchange Act 1882* is domestic legislation, but formed the basis for the legislation of many other common law countries throughout the world. The UNCITRAL *UN Convention on International Bills of Exchange and International Promissory Notes* has so far (as of June 1996) been ratified by Guinea and Mexico and needs ten ratifications in order to come into effect.

On the origin of current harmonisation initiatives with regard to negotiable instruments, documentary credits and guarantees, see **MEZNERICS**, "Endeavours to facilitate international payments", in: *International Law and Economic Order*, *supra* fn. 20, p. 771-793.

On cross-border payments by cheques in ECU across the European Union, see **EUROPEAN COMMISSION**, *Cheque Payments in ECU*, (Economic Papers No. 112) Bruxelles, July 1995.

to the issues addressed by the initiatives, which are grouped into relevant sections, are to be found at the outset of each section.

B. INTERNATIONAL INITIATIVES

SECTION I: PLACE OF PAYMENT / TIME OF PAYMENT / TIME LIMITS

General bibliography:

RENNPFERDT, Die internationale Harmonisierung des Erfüllungsrechts für Geldschulden, Baden-Baden : Nomos, 1993; SCHÖNLE, "Ort und Zeit bargeldloser Zahlung", in: Festschrift für Winfried Werner zum 65. Geburtstag, Berlin/New York 1984, pp. 817-839; VON CAEMMERER, "Zahlungsort", in International Law and Economic Order, supra fn. 20, p. 3-19; VROEGOP, "The time of payment in paper-based and electronic funds transfer systems", Lloyd's Marit. Com.L.Q. (1990)64-87.

1. Council of Europe

(a) European Convention on the Place of Payment of Money Liabilities / Convention Européenne relative au lieu de paiement des obligations monétaires.

- (b) Basel, 16th May 1972.
- (c) Not in force; requirement: 5 ratifications. However, the clauses were incorporated into other Conventions, such as the UNCITRAL and Hague Conventions on sale of goods.
- (e) A, D, NL.
- (f) The Convention consists of five articles. Payment shall be made at the creditor's habitual residence at the time of payment (art. 2.1); where payment is to be made at a different place, any increase in the expenses or any financial loss resulting from the change in the place of payment shall be borne by the creditor (art. 4).
- (g) European treaty series, no. 75, Strasbourg 1972; [weblink to the Covention](#)
- (h) COUNCIL OF EUROPE, *Explanatory Report on the European Convention on the Place of Payment of Money Liabilities*, Strasbourg 1972; KLINGSPORN, "Das Europäische Übereinkommen über den Ort der Zahlung von Geldschulden", *WM* (1972)1262-1274 (German translation of Convention at p. 1274). German translation of Convention and Explanatory Report also in RENNPFERDT, *supra* p. 16, at p. 229-251.

2. Council of Europe

(a) European Convention on the Calculation of Time Limits / Convention européenne sur la computation des délais.

- (b) Basel, 16th May 1972.
- (c) In force: 28.4.1983 (requirement: 3 ratifications).
- (d) A = 11.8.1977; FL = 27.1.1983; LUX = 10.10.84 (in force on 11.1.85); P = 20.11.1979; CH = 20.5.1980.
- (e) B, F, D, I, P, S.
- (f) The Convention consists of seven articles. Time limits expressed in days, weeks, months or years shall run from the *dies a quo* at midnight to the *dies ad quem* at midnight (art. 3.1).
- (g) European treaty series, no. 76, Strasbourg 1972; [weblink to the Convention](#).
- (h) COUNCIL OF EUROPE, *Explanatory report on the European Convention on the Calculation of Time Limits*, Strasbourg 1973.

3. *European Union*

- (a) **European Parliament and Council Directive combating late payment in commercial transactions**
- (b) 8 August 2000.
- (c) 8 August 2002.
- (g) Directive 2000/35/EC, see: http://europa.eu.int/comm/enterprise/regulation/late_payments/index.htm. Earlier Proposal at: Off.J.EC, No. C 168/13 (3.6.1998), (COM (98) 126 final - 98/0099(COD)).

4. *Hague Diplomatic Conference*

- (a) **Convention relating to a Uniform Law on the International Sale of Goods / Convention portant loi uniforme sur la vente internationale des objets mobiliers corporels.**
- (b) The Hague, 1st July 1964.
- (c) In force 23.08.1972, after ratification by five States:
- (d) B, GB, Israel, NL, San Marino.
- (e) Further signatures, ratifications or adhesions: D, Gambia, I (Italy notified the denunciation on 11.12.1986 but declared that the Convention was to remain valid until 31.12.1987; also in Germany, the Act by which it acceded to the UN-Sales Convention, repealed the Hague Conventions of 1964 as from 1.1.1990; see *infra* Section I 5 c).
- (f) The purpose of the Uniform Law (104 articles) - that was elaborated together with a Convention and uniform law on the formation of contracts for the international sale of goods - was to eliminate as far as possible the application of rules of private international law (art. 2). The law applies to contracts of sale of goods entered into by parties whose places of business are in the territories of different States, independent of the nationality of the parties (art. 1). The application of the law may, however, be excluded by express or implied agreement (art. 3). With regard to the **place of payment**, the buyer shall in principle pay at the seller's place of business / habitual residence, "or, where payment is to be made against the handing over of the goods or of documents, at the place where such handing over takes place" (art. 59.1). "Where, in consequence of a change in the place of business or habitual residence of the seller subsequent to the conclusion of the contract, the expenses incidental to payment are increased, such increase shall be borne by the seller" (art. 59.2). Where the parties have agreed upon a **date for the payment** or where such date is fixed by usage, the buyer shall, without need for any other formality, pay at that date (art. 60).

The 1964 Hague Conventions were not accepted on a global level; due to this fact a new convention was prepared that proved to be more successful (UN Sales Convention, *infra*, p. 18).

- (g) *UNTS*, Vol. 834 (1972), p. 107; [weblink to the Convention at Unidroit](#).
- (h) **DÖLLE**, *Kommentar zum Einheitlichen Kaufrecht*, München 1976 (with a reprint of the Convention and Uniform Law in English, French, and German on pp. 771-803); **GRAVESON/COHN/GRAVESON**, *The Uniform Laws on International Sales Act 1967*, London 1968; **HONNOLD**, "The 1964 Hague Conventions and Uniform Laws on the International Sale of Goods", *Am.J.Comp.L.* 13(1964)326 ff.; **NDULO**, "The Vienna Sales Convention 1980 and the Hague Uniform Laws on International Sale of Goods 1964: A comparative analysis", *I.C.L.Q.* 38(1989)1-25; **NICOLI**, "E.D.I. Evidence and the Vienna Convention", *J.Bus.L. (January 1995)*21-35; **PADOVINI**, "La vendita internazionale dalle convenzioni dell'Aja alla convenzione di Vienna", *Riv.dir.int.priv.proc.* 23(1987)47-58.

5. *International Law Association (ILA) (Committee on International Monetary Law - MOCOMILA)*

(a) **Model rules on the time of payment of monetary obligations.**

(b) Seoul, August 1986/Warsaw, August 1988.

(f) Four rules were laid down

Rule 1: Payment is deemed to be made at the moment when the amount due is effectively put at the disposal of the creditor.

Rule 2: Payment by bank or giro transfer, including electronic funds transfer, is deemed to be made at the moment when the amount due has been unconditionally credited to the creditor's account.

Rule 3: concerns payment by cheque.

Rule 4: payment by unconditionally guaranteed instrument of payment.

(g) **International Law Association (ILA)**, *Report of the 62nd Conference held at Seoul, August 24th to August 30th 1986*, ILA, London 1987, pp. 24-25 (explanatory notes to draft model rules: 497-510, minutes of working session: pp. 511-514); **ILA**, *Report of the 63rd Conference held at Warsaw, August 21st to August 27th 1988*, ILA, London 1988, p. 457 (remarks, definition and notes by **BOECHOTEN/SMITS**: pp. 440-453.

(h) The model rules draw heavily upon the Report by Prof. **SCHÖNLE** of Geneva University, which MOCOMILA presented to the 1984 ILA Conference: *ILA, Report of the Sixty-first Conference, Paris, 1984*, London 1985, pp. 162-168; see also *supra*, general bibliography, and **GIOVANOLI**, *supra*, p.5.

6. *United Nations - UNCITRAL*

(a) **United Nations Convention on Contracts for the International Sale of Goods / Convention des Nations Unies sur les contrats de vente internationale de marchandises.**

(b) Vienna, 11th April 1980.

(c) In force 1.01.1988, following ratification by ten States: Argentina, China, Egypt, F, H, I, Lesotho, Syria, USA, YU and Zambia. For details on the state of signatures, ratifications, accessions and approvals [as of 12th July 1993], see **UNITED NATIONS**, "Status of Conventions", Document A/CN.9/381 (14th July 1993). Updated versions are published at regular intervals.

(d) Further ratifications, accessions or approvals (as of 12th July 1993) by: Australia, Austria, Belarus, BG, CDN, CH, Chile, (former) CSFR [The federal State ceased to exist on 1st January 1993], D, DK, E, Ecuador, Finland, Guinea, Iraq, MEX, N, NL, ROM, Russian Federation, S, Slovakia, Uganda, Ukraine.

(e) Signatures only: Ghana = 11.04.1980; PL = 28.09.1981, Singapore = 11.04.80; Venezuela = 28.09.1981.

(f) The Convention (101 articles) applies to contracts of sale of goods between parties whose places of business are in different States and either both of these States are Contracting States or the rules of Private International Law lead to the law of a Contracting State. The rules do not override domestic law that outlaws certain transactions and invalidates proscribed contracts. It deals with two basic aspects of the sales transaction: formation of the contract and obligations of the parties under the contract.

The **place for payment** is in principle at the "seller's place of business; or if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place" (art. 57.1). "The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract" (art. 57.2).

With regard to the **time of payment**, article 58 (1) specifies: "If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the Contract and this Convention ..."

- (g) United Nations, *Final Act of the UN Conference on Contracts for the International Sale of Goods*, UN. Doc. A/CONF.97/18, 10 April 1980, Annex I. The text is also retrievable on-line at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html.
- (h) *On articles 57 and 58 in particular:*

STAUDINGER(-MAGNUS), *Kommentar zum Bürgerlichen Gesetzbuch (- Wiener UN-Kaufrecht)*, 13. Bearb. Berlin : Sellier/de Gruyter, 1994, Art. 57, 58 CISG (p. 453-468).

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7. UNIDROIT

- (a) **Principles of international commercial contracts / Principes relatifs aux contrats du commerce international.**
- (b) Rome, 1994
- (c) final
- (f) The principles are laid out in 7 chapters: General provisions; Formation; Validity; Interpretation; Content; Performance; Non-performance.

They reflect a common understanding of the delegates to UNIDROIT on the essence of commercial contracts. The principles shall be applied between parties if so agreed, they may apply whenever parties to a contract agreed that the contract should be governed by general principles of law, *lex*

mercatoria, or the like; the principles may also help provide a solution to an issue raised when it proves impossible to establish the relevant rule of the applicable law, they may be used to interpret or supplement international uniform law instruments, and finally, they may serve as a model for national and international legislators.

With regard to **payment by funds transfer**, Article 6.1.8. provides: "(1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account. (2) In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective." With regard to the **currency of payment**, Article 6.1.9. (1) contains the principle that if a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for payment (a number of exceptions are also mentioned in that article).

- (g) *I.L.M.* 34(1995)1067-1979. The integral edition of the English, French, German, Italian and Spanish versions, including a commentary, is accessible online at <http://www.unidroit.org/english/principles/contracts/main.htm>.
- (h) **GIARDINA**, "Les principes UNIDROIT sur les contrats internationaux", *J.D.I.* 122(1995)547-558 (French text of the "Principes" on pp.559-584); **LARROUMET**, "La valeur des principes d'Unidroit applicables aux contrats du commerce international", *Sem. juridique*, 71(1997)147-152 (no.4011).

SECTION II: FOREIGN MONEY LIABILITIES

1. Council of Europe

- (a) **European Convention on Foreign Money Liabilities / Convention européenne relative aux obligations en monnaie étrangère.**
- (b) Paris, 11th December 1967.
- (c) Not in force; requirement: 3 ratifications.
- (d) LUX-9.2.1981.
- (e) A, F, D.
- (f) The rules, laid down in nine articles, confer upon the debtor the right to pay in local money a sum due in a **currency** other than that of the **place of payment**, unless a different intention of the parties appears, or a different usage is applicable (art.1). They allow the creditor to recover damages in case of **delay** of payment if, during the period of such delay, the currency to which the creditor is entitled depreciates in relation to the currency of the place of payment. They enable the creditor to claim in proceedings the money to which he is entitled so as to avoid the risk of a loss which may result from conversion into the currency of the country of the forum.
- (g) European treaty series, no. 60, Strasbourg 1967. [Weblink to Convention and related information](#); Convention also available at <http://www1.umn.edu/humanrts/euro/ets60.html>.
- (h) **COUNCIL OF EUROPE**, *Explanatory Report on the European Convention on Foreign Money Liabilities*, Strasbourg 1968; **KÜNG**, *Zahlung und Zahlungsort im IPR : Ein Beitrag zur Vereinheitlichung des Geldrechts*, Freiburg (Schweiz), 1970, p. 7-22, 126-130. Text of Convention also reprinted in the 4th edition of **MANN**, *Legal Aspects of Money*, Oxford 1982, p. 576-580; **VON HOFFMANN**, "Deliktischer Schadenersatz im internationalen Währungsrecht - Zugleich ein Beitrag im internationalen Währungsrecht", in: *Festschrift für Karl Firsching* (zum 70.), München : Beck, 1985, p. 125-141 (126).

SECTION III: FUNDS TRANSFER / PAYMENTS - General Issues

Note: For questions relating to "e-money", "internet" or "electronic commerce", see separate section, *infra*.

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- USA:** **AMERICAN BANKERS ASSOCIATION** (ed.), UCC Article 4A - A practical guide for bankers and bank counsel, 1991; **BERGER/HUMPHREY**, *The role of interstate banking in the diffusion of electronic payments technology*, (Research Paper in Banking and Financial Economics), Washington : Board of Governors Fed.Res.System, July 1985; **BHALA**, "The inverted pyramid of wire transfer law", in: Cross-border electronic banking - Challenges and opportunities (ed. by J. Norton), London : Lloyd's of London, 1995, p. 153-189; **BHALA**, "Legal foundations of large-value transfer systems", *The Payment System* (ed. by Bruce Summers), *supra* ("General problems"), p. 53-72; **COMPTROLLER OF THE CURRENCY**, *supra*, p.22; **PATRIKIS/BAXTER/BHALA**, *Wire transfers - A Guide to U.S. and International Laws Governing Funds Transfers*, Chicago, Cambridge 1993; **PATRIKIS**, "Developments in the Law of Large Dollar Electronic Payment in the United States", RDAI/IBLJ (1987)639-648; (various authors), Special issue on the UCC (in particular Article 4A, EDI, financial services): *Bus. Lawyer* 45(1990)1389-2052; **BALLEN/DIANA**, "Walking a high wire", *Banking Technology*, July/August 1991, pp. 38-40 (on a recent case involving Security Pacific and UCC Article 4A); **KWAW**, "The statutory law of international funds transfers", in: *Kwaw, supra*, p. 23, Ch. 5, p. 83-100; **LEWIS**, "Allocation of loss due to fraudulent wholesale wire transfers: Is there a negligence action against a beneficiary's bank after Article 4A of the Uniform Commercial Code?", *Michigan L.Rev.* 90(1992)2565-2611; **LINGL**, "Risk Allocation in International Interbank Electronic Funds Transfers: CHIPS & SWIFT", *Harvard Int'l L.J.* 22(1981)621-660; **MCCARTY**, "U.C.C. Article 4A - Wire or wire not? Consequential damages under Article 4A and a critical analysis of *Evra v. Swiss Bank*", *Computer Law J.*, 11(1991)341-369; **MURRAY**, "Aktuelle Rechtsfragen des internationalen Zahlungsverkehrs - Vereinigte Staaten von Amerika", in: Blaurock, *supra* p.22,97-123; **SHAH**, "Riding out the storm of daylight overdraft pricing", *Corporate Cashflow*, November 1993; **WELLS**, "Are checks overused?", *Fed.Res.Bk. of Minneapolis Quarterly Review* (Fall 1996)2-12.

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1. **European Banking Federation / European Savings Bank Group / European Association of Cooperative Banks**

(a) **European Interbank Compensation Guidelines (EICG)**

(b) Brussels, 1 January 2001

(c) 2 April 2001

(f) The European banking industry represented by the three European credit associations has developed the EICG. They form a basis for the settlement of claims for compensation arising from interbank euro-denominated payments directed through any euro payment system located in the European Union. The intention is to create a market standard in the euro area, equally applicable to all parties, with fair compensation and for all euro-denominated payments between banks. The Guidelines will apply without prejudice to existing mandatory EU and domestic law.

The Guidelines cover banks connected as a direct or indirect member to an euro clearing system and with EUR settlement account with one of the ESCB central banks. The Guidelines do not cover the relationship between banks and their [non-bank] customers, be it on the remitting or receiving side. Compensation for errors (eg forward or back valuation, overpays, duplication etc) should be based on EONIA including an administration charge to compensate the affected party for the risk and effort required to resolve the issue.

The Guidelines replace the "Interest Rate Compensation Guidelines", introduced by the "Heathrow Group" in 1998, as well as any domestic recommendations, where they exist.

(g) Available online from [FBE-Federation Bancaire de l'Union Européenne](#) and also from, for instance, British Bankers' Association ([weblink](#)).

(h) See, for comparison, the [TARGET Compensation Rules](#) in the ECB Guidelines of 4 April 2003.

2. **National Council for Uniform Interest Compensation, Inc. (N.C.U.I.C.)**

(a) **Rules on interbank compensation.**

(b) Washington, D.C., 1st March 1993.

(c) The rules govern the settlement of claims for compensation between banks of various [U.S.] Clearing Houses or Regional Associations that have agreed to be bound by the rules - including their overseas branches - arising from interbank funds payments (other than ACH payments) or the transfer of securities in United States dollars (art. 1.1). The claims may exist regardless of the source or ultimate beneficiary of any payment, whether foreign or domestic, or the nature of the underlying obligation (e.g. securities transaction, foreign exchange).

The rules do not replace the compensation rules or guidelines that may govern the settlement of claims between members of a single Clearing House, regional association or national association (e.g. C.I.B. Rules, *supra*). They are intended to serve as a basis for the development of local or regional rules where none exist, and are intended to create (i) an incentive for the prompt return of mis-sent funds; (ii) the timely submission of claims; (iii) the orderly solution of claims; (iv) a general mechanism for settling of disputes (art. 1.1).

The N.C.U.I.C. arose initially from a task force initiated by the American Bankers Association (1980-1985) and an ad-hoc committee (1985) that, in 1986, approved the first nationally harmonised "Funds Transfer Rules". The N.C.U.I.C. was incorporated as a formal industry group in 1989.

- (g) Text available from N.C.U.I.C. (1120 Connecticut Ave. N.W., Washington, D.C. 20036).
- (h) **MCENTEE**, "[Implementation of the Check Clearing for the 21st Century Act](#)", Statement before the Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, US House of Representatives, 20.4.2005; **FERRIS**, "New Council adopts rules for settling wire transfer disputes", in *American Banker*, July 24, 1985, p. 10.

3. Council on International Banking (C.I.B.)

(a) Interbank Compensation Rules.

- (b) New York, first effective 1st November 1977; latest version, incorporating all amendments and effective interpretations, effective 1st January 1983.
- (c) To be incorporated by contract, e.g. reference in CHIPS rules. As an example, see CHIPS, [Rules on Interbank Compensation](#), Part 1, Art 3, para c), effective 19.10.2005.
- (f) The purpose is to establish rules for settling claims for compensation between C.I.B. member banks when such claims are the result of interbank payment errors. Three types of errors are covered: erroneous or duplicate payment, late payment, and payment to the correct bank but incorrect beneficiary. The rules govern compensation for lost availability of funds and do not apply to recovery of lost principal. The rules apply to all payments, to and from, foreign customers in U.S. dollars, whether made by check, CHIPS, book transfer of Federal Funds Transfer.

The C.I.B is now part of the IFSA ([International Financial Services Association](#))

- (g) Council on International Banking, Approved Rules, (09A-069G), 23.09.1982.
- (h) **GARRISON**, "Interbank Standards Set for Misdirected Wire Transfers", in *American Banker*, March 23, 1983, p. 10; **LINGL**, *supra*, *general bibliography* "USA", pp. 639-640 nn. 103-110.; **PRESTON**, "Banks now have rules on international transfer errors", in *American Banker*, April 6, 1983, p.14; **SCOTT**, "Corporate wire transfers and the Uniform New Payments Code", *Col.LRrev.* 83(1983) 1664-1715 (nn. 47 and 60).

See also *infra*, at Section III 9 (N.C.U.I.C.).

4. European Union

(a) Commission Recommendation on a European Code of Conduct relating to electronic payment / Recommandation de la Commission portant sur un code européen de bonne conduite en matière de paiement électronique.

- (b) Brussels, 8th December 1987.
- (f) The Recommendation (4 sections) addresses "all economic partners concerned" in the relations between financial institutions, traders and service establishments, and consumers. They are limited, however, to card payment systems or POS terminals and cover: contracts, interoperability, equipment, data protection and security, fair access, relations between issuers / traders / consumers.
- (g) Official Journal of the EC (1987), No. L 365/72 (Recommendation 87/598) ; available online from the European Commission; ([weblink to versions in various languages](#))
- (h) **COMMISSION EC**, *infra*, Section III.5; **FAVRE-BULLE**, *infra*, Section III.5; **SCHAUSS/THUNIS**, "Quelques réflexions à propos du Code européen de bonne conduite en matière de paiement électronique", *DIT* (1988)54-56; **THOUVENEL**, *Les aspects juridiques des moyens de paiement français et le contexte européen*, Paris 1990.

5. *European Union*

- (a) **Commission Recommendation concerning payment systems, and in particular the relationship between card holder and card issuer / Recommandation de la Commission concernant les systèmes de paiement et en particulier les relations entre titulaires et émetteurs de cartes.**
- (b) Bruxelles, 17th November 1988.
- (f) The Recommendation contains an Annex (8 paragraphs) that regards financial consumer protection and is, inter alia, aimed at harmonising terms of contract and achieving the irrevocability of payment instructions communicated electronically. Issuers of payment cards and similar devices as well as system providers should conduct their activities in accordance with the provisions of the Recommendation.
- (g) Official Journal of the EC, No. L 317/55 (24.11.1988) (Recommendation 88/590); available online from European Commission ([weblink to versions in several languages](#)).
- (h) **COMMISSION EC**, *infra*, Section III.5; **FAVRE-BULLE**, *infra*, Section III.5, "European Community"; **KNOBBOUT-BETHLEM**, "La recommandation européenne du 17 novembre 1988 - les systèmes de paiement", *Rev.europ.dr. de la consommation*, No.4, (1990)241-254; **NICOLAS**, "La recommandation de la Commission des Communautés européennes du 17 novembre 1988 concernant les systèmes de paiement", *Banque et Droit* (1989)67-71; **SOUSI-ROUBI**, "Les dispositions communautaires en matière de cartes", *Rev.dr.bancaire et de la bourse*, n°13 (1989)87-91; **THOUVENEL**, *supra* at Section III 2 h); **THUNIS**, "The second European Recommendation concerning payment systems: New obligations for card issuers?", *JIBL* 7(1992)101-110; **TRINQUET**, "Relations entre organismes financiers et consommateurs dans un système de paiement étendu a l'ensemble de la Communauté", *Rev.Banque* (1989)423-431, 435.

6. *European Union*

- (a) **Commission Recommendation on the transparency of banking conditions applicable to cross-border financial transactions / Recommandation de la Commission concernant la transparence des conditions de banque applicables aux transactions financières transfrontalières.**
- (b) Brussels, 14th February 1990.
- (f) The objective of the recommendations (laid down in 6 "principles") is to increase the transparency of the information and invoicing regulations which the institutions (credit institutions and postal services) shall observe.
- (g) Official Journal of the EC, No. L 67/1 (15.03.1990) (Recommendation 90/109). [Also available online.](#)
- (h) **COMMISSION EC**, *infra*, Section III.5; **HADDING**, Grenzüberschreitender Zahlungsverkehr im Europäischen Binnenmarkt", in *Rechtsfragen bei Bankleistungen...*, *supra* fn. 41, pp. 95-99 (Text of Commission recommendation: pp. 100-103).

7. *European Union*

- (a) **Directive 97/5/EC of the European Parliament and of the Council on cross-border credit transfers / Directive 97/5/CE du Parlement européen et du Conseil concernant les virements transfrontaliers.**
- (b) Brussels, 27th January 1997.
- (f) The purpose of the Directive is to improve cross-border credit transfer services within the EU The proposal lays down (i) the minimum requirements needed to ensure an adequate level of customer information, (ii) minimum performance requirements which institutions offering cross-border credit transfer services should adhere to. While the Directive was originally intended to apply to credit

transfers for any amount, it is now limited to transfers that do not exceed a certain amount and thus covers mainly normal customer payments, but not interbank payments. Within this scope, it introduces an obligation for institutions to refund in the case of a non-completed transfer (similar to the "money-back guarantee" of the UNCITRAL Model Law on International Credit Transfers, *infra*). As the notion of "cross-border" will increasingly cease to exist among EU countries, the rules of the Directive will eventually also be incorporated into national legislation applicable to purely domestic payments

The Directive is based on an earlier Proposal of 18th November 1994 (Official Journal of the EC, No. C 360/13 (17.12.1994) (COM(94) 436 - 94/0242(COD))).

- (g) Official Journal of the EC No. C 360 (17.12.1994) p.13 and OJ No. C 199 (3.8.1995) p.16. English and French texts also reprinted in *ULR/RDU* 2(1997)356-371. [Also available online](#).
- (h) **DE RAYMAEKER**, "Commercial Banker's Response to the EU Directive on Cross-Border Payments", *Int'l PaySys*, London : ibc, 1999; **EUROPEAN CENTRAL BANK**, *supra*, p.24; **EHMANN/HADDING**, "EG-Überweisungsrichtlinie und Umsetzung - Regierungsentwurf und Gegenentwurf", *WM* 53(1999) Sonderbeilage Nr.3 p.1-31; **SCHENDER**, "Die Geld-zurück Garantie....", *supra*, p.22.

On the introduction of national laws based on this Directive, see the respective country sections above.

On the Proposal of 1994: *Institutions européennes et finance*, No.18, 31.10.1994, p.1-3, [RGL], "Amended Directive on EU Credit Transfers", *Int'l Banking and Fin.L.*, No.2, 14(1995)11-13; **GENNER**, *Das UNCITRAL-Modellgesetz über den internationalen Überweisungsverkehr - Eine Darstellung im Vergleich mit dem Regeln des Artikel 4 A Uniform Commercial Code (UCC) und des deutschen Rechts*, Berlin : Duncker & Humblot, 1995, p.176-190.

8. Fédération Bancaire de la Communauté Européenne / European Savings Bank Group, and Association of Cooperative Banks of the EC

- (a) **European Banking Industry Guidelines on customer information on cross-border remote payment.**
- (b) Brussels, 2nd March 1992.
- (f) The guidelines were prepared by the three European Credit Sector Associations in the light of work carried out by the EC Commission in relation to examining payment systems in the internal market (see *supra* section III 5, "European Community"). Their purpose is to provide guidance to member organisations in issuing recommendations to member banks in relation to the production of literature of information brochures for their customers.
- (g) Attached as "Annex A" to EC Commission Document SEC(92)621, 27.03.92, *supra* Section III 4).
- (h) For instance, European Commission, *Proposal for a European Parliament and Council Directive on cross-border transfers, Draft notice on the application of the EC competition rules to cross-border transfer systems*, 1994, p.4, 16, [available online](#) from the European Central Bank.

9. International Chamber of Commerce

- (a) **Guidelines on International Interbank Funds Transfer and Compensation / Principes directeurs pour le transfert international interbancaire de fonds et pour l'indemnisation.**
- (b) Paris, February 1990.
- (f) The aim of the Guidelines (18 articles) is not to provide a sophisticated set of rules, but rather a framework in which the largest number of banks can operate, particularly if they have no existing system. The Guidelines apply only to funds transfer messages between banks (in different countries), they do not contain rules on discharge of underlying obligation or time of payment.

Subdivisions of the Guidelines: definitions, applicability, process, liabilities and responsibilities, compensation procedures for incorrect execution of funds transfer messages.

- (g) ICC Publication No. 457 (February 1990); identical draft of 8.07.1988: ICC - Policy and Programme Department, Document No. 470-30/5.
- (h) ICC, Commission on Banking Technique and Practice, *Working Party Report "Inter-bank Funds Transfer and Compensation Rules"*, Document No. 470/Int. 232, 21st September, 1987.

10. International Organisation for Standardisation (ISO) /

(a) International Banking Account Number (IBAN)

- (b) Geneva, 1997
- (d) international standard
- (e) Adopted by or in the process of being adopted by most European countries.
- (g) Created as a viable and internationally agreed bank identifier, used internationally to uniquely identify the account of a customer at a financial institution, to assist error-free cross-border payments and to improve the potential for straight-through-processing (STP), with a minimum amount of change within domestic schemes. The latest edition, ISO 13616:2003, specifies the elements of an international bank account number (IBAN), used to facilitate the processing of data in data interchange internationally -- in financial environments as well as within and between other industries. The IBAN is designed for automated processing, but can also be conveniently used in other media interchange when appropriate (paper document exchange, etc.). ISO 13616 does not specify internal procedures, file organisation techniques, storage media, languages, etc. to be used in its implementation. Nor is it designed to facilitate the routing of messages within a network. It is applicable to the textual data which might be conveyed through a system (network).
- (h) International Organisation for Standardisation, [ISO 13616:2003](#) [ISO Central Secretariat, CH-1211 Genève;].
- (i) The FINNISH BANKERS' ASSOCIATION, [The International Bank Account Number \(IBAN\) in foreign payment transactions](#), 21.9.2000 (updated 23.7.2004); IBAN Information Page: <http://www.ecbs.org/iban.htm>

11. International Organisation for Standardisation (ISO)

(a) Bank telecommunication - Funds transfer messages / Télécommunication bancaire - Messages de transfert de fonds.

- (b) Geneva, 15th September 1987.
- (c) Part 1: International standard; Part 2: Draft (see *infra*, f).
- (f) Part 1 ([ISO 7982-1-1998](#)): Vocabulary and universal set of data segments and data elements for electronic funds transfer messages; Annex A: Parties to a transfer; Annex B: Telex funds transfer message field descriptors [The annexes do not form part of the Standard]. The standard is currently under revision and will extend to documentary credits: "Bank telecommunication - Documentary credit messages: Part 1: Universal set of data segments and elements for electronic funds transfer messages." [The revision was confirmed at ISO on 14th May 1993].

Part 1 identifies and defines terms and data elements used in describing, processing, and formatting funds transfer payment orders. The terms are, generally, defined from the perspective of the receiver of a funds transfer message since it would be incumbent on him to interpret and understand the full intent and meaning of such messages.

- (j) International Organisation for Standardisation, [ISO 7982-1:1998](#) [ISO Central Secretariat, CH-1211 Genève].

12. International Organisation for Standardisation (ISO)**(a) Banking**

- (h) Standards related to Banking are accessible at <http://www.iso.org/iso/en/CombinedQueryResult.CombinedQueryResult?queryString=banking>

Older ISO-Standards within the [former] Standards group 015 (Banking and financial services) concern banking documents (sub-group 140) and identification and credit cards (sub-group 150), inter alia: ISO 4217:1990 - Codes for the representation of currencies and funds; ; ISO 6260 - Mail payment orders; ISO 7746:1988 - Banking, Telex formats for inter-bank messages; ISO 61611:1987 - International securities identification numbering system (ISIN); ISO 7775:1991 - Securities, Scheme for message types; ISO 8730:1990 - Banking, requirements for message authentication (wholesale); ISO 10126-1 and 10126-2: Banking, Procedures for message encypherment (wholesale); ISO 11131:1992 - Banking and related services, Sign-on authentication. ISO 6680:1987 - International cheque remittance.

13. International Organisation for Standardisation (ISO)**(a) Banking and related financial services - Information security guidelines / Banque et services financiers liés aux opérations bancaires - Lignes directrices pour la sécurité de l'information**

- (b) Geneva, [ISO/TR 13569:2005](#); various parts published between 1997 and 2005 [available at ISO](#).
- (f) The objectives of the report are to present an information security programme structure, to present a selection guide to security controls that represent accepted prudent business practice, and to be consistent with existing standards, as well as emerging work in objective and accreditable security criteria.

14. United Nations - UNCITRAL**(a) Model Law on International Credit Transfers / Loi type sur les virements internationaux.**

- (b) New York, 15th May 1992.
- (f) This Model Law, drafted by the UNCITRAL Working Group on International Payments, finalises the most thorough law reform initiative regarding payments that had been discussed in an international framework. The Model Law is designed to produce a comprehensive body of rules to govern relations between parties to funds transfer transactions. These rules are not intended to be part of an international convention, but are designed for use by legislators. The Model Law has thus been addressed to legislative bodies (via the national Governments) for adoption as statutory law. As discussed in the Working Group, a Model Law would be more flexible than a convention because countries would be able to take those parts of it which they find useful and adapt them to their needs [UNCITRAL, Report of the Working Group on International Payments, 18th Session, UN Doc. A/CN.9/318; 27th January 1989, p. 3.]

UNCITRAL's international undertaking paralleled the United States' domestic project to harmonise its rules on credit transfers. Article 4-A UCC has, to a certain degree, had an impact on UNCITRAL's Model Law. On the one hand, the US legislative initiative had begun earlier and was always "ahead" of the discussions at UNCITRAL; on the other hand, both sets of rules address similar problems and have resulted from the desire to eliminate the uncertainties that exist with regard to the judicial nature of a funds transfer, and consequently the rights and obligations that are created as soon as more than one national jurisdiction is involved.

In 1986 UNCITRAL decided to begin preparing model rules which were at first limited to electronic funds transfers. Later, the draft Model Law was expanded to cover any form of credit transfer as long as such a transfer was "international", which, under Article 1 of the Model Law, applies to "credit

transfers where any sending bank and its receiving bank are in different States" A "credit transfer" (as distinguished from a "debit transfer") is understood to be made up of a series of operations that are initiated by a "payment order" which is in turn defined as an "unconditional instruction, in any form, by a sender to a receiving bank to place at the disposal of a beneficiary a fixed or determinable amount of money ...".

The 19 articles cover:

- I. GENERAL PROVISIONS: Sphere of application, Definitions, Conditional instructions, Variation by agreement;
 - II. OBLIGATIONS OF THE PARTIES: Obligations of sender, Payment to receiving bank, Acceptance or rejection of a payment order by receiving bank that is not the beneficiary's bank, Obligations of receiving bank other than the beneficiary's bank, Acceptance or rejection of a payment order by beneficiary's bank, Obligations of beneficiary's bank, Time for receiving bank to execute payment order and give notices, Revocation;
 - III. CONSEQUENCES OF FAILED, ERRONEOUS OR DELAYED CREDIT TRANSFERS: Assistance, Refund, Correction of underpayment, Restitution of overpayment, Liability for interest; Exclusivity of remedies;
 - IV. COMPLETION OF CREDIT TRANSFER.
- (g) Annex I to: United Nations, Report of the Annual Session of UNCITRAL on the work of its 25th Session, New York, 4th - 22nd May 1992, Official Records of the General Assembly, 47th Session (A/47/17). [Weblink to Model Law at UNCITRAL](#)

Informational overview:

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- (h) *Articles and books taking account of the of the Model Law, as adopted by the Commission (or drafts of the text in its almost final form, as discussed in Working Group sessions):*

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15. *Universal Postal Union / Union Postale Universelle*

(a) Arrangement concernant les mandats de poste et les bons postaux de voyage.

- (b) Hamburg, 27th July 1984.
- (c) In force, 1.1.1986.
- (f) The rules (52 articles) concern postal payment orders ("mandats") and postal traveller cheques ("bons postaux de voyage"). Inter alia, there are articles dealing with the money of payment and conversion (art. 3), and with inter-postal administration compensation and netting (arts. 28-30).
- (g) *Acts of the Universal Postal Union*, Vol. IV (Berne) (available in Arabic, English, French and Spanish). Published as law in, for instance, [Luxembourg](#) or Switzerland: *RO*, 1985, pp. 2175-2190.]

16. *Universal Postal Union / Union Postale Universelle*

(a) Money Orders Agreement / Arrangement concernant les mandats de poste.

- (b) Washington, 14th December 1989.
- (c) In force, 1.1.1991.
- (f) The rules (13 articles) govern the exchange of postal money orders ("mandats") which contracting countries agree to set up in their reciprocal relations; the rules on postal travellers' cheques that were contained in the previous Money Orders Agreement (1984 Hamburg Congress) were abolished at the 1989 Washington Congress. Inter alia, there are articles dealing with the currency of payment and conversion (art. 3), and with preparation and settlement of accounts (articles 12 and 13).
- (g) *Universal Postal Union, Annotated Code*, Vol. 4, Berne 1991, pp. 4-78. [Acts of the UPU revised at Washington 1989 and annotated by the International Bureau - available in Arabic, English, French and Spanish. The Arrangement is published as a law in Switzerland: *RO*, 1991, pp. 1797-1805; in Germany: *BGBI.* 1992, Teil II, pp. 887-893.; See also Universal Postal Union (Standards Board), [Identification of Money Orders](#), 2002.

17. *Universal Postal Union / Union Postale Universelle*

(a) Giro Agreement / Arrangement concernant le service des chèques postaux.

- (b) Washington, 14th December 1989.
- (c) In force, 1.1.1991.
- (f) The rules (17 articles) govern all the services which the giro service is able to provide for users of giro accounts and which contracting countries agree to set up in their reciprocal relations; non-postal organisations may also participate (art. 1). The rules contain provisions on transfer, inpayment into a giro account, payment by money order or by outpayment cheque, and postcheque.
- (g) *Universal Postal Union, Annotated Code*, Vol. 4, Berne 1991, pp. 79-140. [Acts of the UPU revised at Washington 1989 and annotated by the International Bureau - available in Arabic, English, French and Spanish. The Arrangement is published as a law for instance in [Belgium](#) or (Switzerland: *RO*, 1991, pp. 1806-1814.)

SECTION IV: PAYMENT SYSTEMS / CLEARING / NETTING / RTGS

IV - A - PAYMENT SYSTEMS

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USA: **DUGAN**, "Derivatives: Netting, insolvency, and end users", *Banking L.J.* 112(1995)638-659; **FEDERAL RESERVE BANK OF ST. LOUIS**, *Antitrust issues and payment system networks* (Proceedings of a symposium held at the Federal Reserve Bank of St. Louis, March 30, 1995), *Fed. Res. Bk. St. Louis Review* 77(Nov/Dec. 1995)1-63; **FEDERAL RESERVE SYSTEM**, *Policy statement....*, *supra* p.37; **HUMPHREY**, *supra*, p. 38; **Idem**, *The U.S. payments system: Costs, pricing, competition and risk*, (Monograph Series in Finance and Economics, 1/2), New York, 1984; **Idem**, "Payments finality and risk of settlement failure", in: **Saunders/White** (eds.), *supra* p.37, at p.97-120; **JACKLIN**, "Netting and close out - Understanding the scope of US law", *Clifford Chance - EC Financial Services*, September 1992, pp. 29-32; **JUNCKER/SUMMERS/YOUNG**, "A primer on the settlement of payments in the United States", *Federal Reserve Bulletin*, Feb. 1992, pp. 847-858; **MCANDREWS/RAJAN**, "The timing and funding of Fedwire funds transfers", *FRBNY Economic Policy Review* (July 2000)17-28; **MCANDREWS**, "The automated clearinghouse system: Moving toward electronic payment", *Fed. Res. Bank of Philadelphia - Business Review* (July/August 1994)15-23; **MENGLE**, *supra*, p.38; **MENGLE/SEVERSON/VITAL**, *supra*, "Switzerland"; **NEW YORK FOREIGN EXCHANGE COMMITTEE**, *Reducing foreign exchange settlement risk*, New York, October 1994; **PATRIKIS/HANSEN/POULOS**, *supra* p.38; **PARKINSON**, "Innovations in clearing arrangements: A framework for analysis", (Prepared for the Conference on Bank Structure and Competition) *Federal Reserve Bank of Chicago*, 9th May 1990; **PATRIKIS/WALRAVEN**, "The netting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991", *Futures Int'l L. Letter*, No. 3, 12(1992)1-8; **ROBERDS**, "The rise of electronic payments networks and the future role of the Fed with regard to payment finality", *Fed. Res. Bank Atlanta Economic Review* (March/April 1993)1-22; **SCOTT/WELLONS**, *International finance*, Westbury, NY : Foundation Press, 1996 (Chapter IX, p. 532-607: The Payment System); **STEVENS**, *supra*, p. 38; **VANHOESE/SELTON**, "Daylight overdrafts, payments system risk, and public policy", *Economic Review, Fed. Res. Bk Kansas City* (Sep/Oct 1989)9-29.

VENEZUELA: **ALVAREZ/GRANDO**, "Developments in payment system reform in Venezuela", *Payment Systems Worldwide* 16(Autumn 2005)11; **CEMLA/WORLD BANK**, [Payments and securities clearance and settlement systems in Venezuela](#), December 2002.

VIETNAM: **THANG**, "Overview on current payment system in Vietnam", in: **HKMA**, *supra* p.36, p.114-119.

See also *supra*, Section III, *general bibliography*.

1. **Basel Committee on Banking Supervision**

- (a) **The supervisory recognition of netting for capital adequacy purposes / Reconnaissance prudentielle de la compensation aux fins de la mesure des fonds propres.**
- (b) Basel, April 1993.
- (c) Proposal.
- (f) The text is a consultative proposal issued for public comment by the Basel Committee with the agreement of the central bank Governors. The text forms part of a three-part package of supervisory proposals for internationally active banks, containing consultative papers on netting, market risk and interest rate risk. If enacted, the proposal encompassing netting would - under carefully defined conditions and recognition by national supervisors - liberalise the terms of the 1988 Basel Capital Accord as they apply to the use of **bilateral netting** in the measurement of credit risk associated with certain classes of financial instruments. The issues raised regarding multilateral netting are of a general nature and, pending further study, will not entail modifications of the Capital Accord.
- (h) **TURING**, "Netting: Developments in 1994 affecting banks", *Butterworths* 10(1995)71-75.

2. *Committee on Payment and Settlement Systems (CPSS) / Bank for International Settlements - BIS*

(a) **Core Principles for Systemically Important Payment Systems**

(b) Basel, January 2001.

(f) The CPSS established a Task Force on Payment System Principles and Practices in May 1998 to consider what principles should govern the design and operation of payment systems in all countries. The Task Force comprised representatives not only from G10 central banks and the European Central Bank, but also from 11 other national central banks of countries in different stages of economic development from all over the world and representatives from the International Monetary Fund and the World Bank. After two rounds of public consultations and numerous consultations with groups of central banks in Africa, the Americas, Asia, Pacific rim and Europe, an international consensus on the principles has been sought and achieved.

The principles are set out in Section 1 of the report, while Section 2 contains explanatory text with regard to the use and implementation of the principles. The principles (10 principles for the design and operation of systems, four principles concerning the responsibilities of central banks) are expressed in a deliberately general way to help ensure that they can be useful in all countries and that they will be durable. They do not represent a blueprint for the design or operation of any individual system, but suggest the key characteristics that all systemically important payment systems should satisfy.

The principles apply to systemically important payment systems, whether they involve a credit or debit mechanism and whether they operate electronically or involve paper-based instruments. In practice, however, for a system that uses paper-based debit instruments (e.g. cheques), there are particular difficulties involved in satisfying some of the principles. In countries where an existing systemically important payment system uses cheques, it may be necessary to give careful consideration to the other options available.

The individual principles are:

- I. The system should have a well-founded legal basis under all relevant jurisdictions.
 - II. The system's rules and procedures should enable participants to have a clear understanding of the system's impact on each of the financial risks they incur through participation in it.
 - III. The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants and which provide appropriate incentives to manage and contain those risks.
 - IV.* The system should provide prompt final settlement on the day of value, preferably during the day and at a minimum at the end of the day.
 - V.* A system in which multilateral netting takes place should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.
 - VI. Assets used for settlement should preferably be a claim on the central bank; where other assets are used, they should carry little or no credit risk and little or no liquidity risk.
 - VII. The system should ensure a high degree of security and operational reliability and should have contingency arrangements for timely completion of daily processing.
 - VIII. The system should provide a means of making payments which is practical for its users and efficient for the economy.
 - IX. The system should have objective and publicly disclosed criteria for participation, which permit fair and open access.
 - X. The system's governance arrangements should be effective, accountable and transparent.
- * Systems should seek to exceed the minima included in these two principles.

Responsibilities of the central bank in applying the core principles

- A. The central bank should define clearly its payment system objectives and should disclose publicly its role and major policies with respect to systemically important payment systems.
 - B. The central bank should ensure that the systems it operates comply with the core principles.
 - C. The central bank should oversee compliance with the core principles by systems it does not operate and it should have the ability to carry out this oversight.
 - D. The central bank, in promoting payment system safety and efficiency through the core principles, should cooperate with other central banks and with any other relevant domestic or foreign authorities.
- (g) <http://www.bis.org/publ/cpss43.htm>

PREVIOUS CONSULTATIVE REPORTS: BANK FOR INTERNATIONAL SETTLEMENTS [CPSS], *Core principles for systemically important payment systems* - Report prepared by the Task Force on Payment System Principles and Practices, Basel, December 1999 and July 2000; available in English, French, German, Italian, Spanish, Russian from the CPSS Secretariat.

- (h) **GOODLET**, "Core principles....", *supra* p. 39; **HEINRICH**, "Why core principles for payment systems?", *Vulindlela* (December 2000)1-3; **OKAY** "Ödeme sistemi temel prensiplerli", *Lira* no.16 (2000)22-24; **SAWYER/TRUNDLE**, "Core Principles for Systemically Important Payment Systems" *Financial Stability Review*, Issue 8 (June 2000)126-135; **TRUNDLE**, "The CPSS core principles for systemically important payment systems", in: **BIS**, *The contribution*, *supra* p.36, at p.9-18; **WATNE**, *supra*, p. 42.

3. **Committee on Payment and Settlement Systems (CPSS) / Bank for International Settlements - BIS**

(a) **General Guidance for National Payment System Development.**

- (b) Basel, January 2006
- (f) The report aims to give assistance and advice on the planning and implementation of reforms in national payment systems. It underlines that payment system development is a complex process that should be principally needs-based, not technology-based. Payment system reforms depend on parallel development of the banking system, institutional arrangements for payment services and payment infrastructures, and should therefore be a cooperative effort among the banking sector, regulatory agencies and other relevant stakeholders. The report includes 14 guidelines and accompanying explanatory text on payment system development. The report also includes implementation sections, which illustrate the guidelines with practical examples, issues and possible approaches to implementation.

- (g) <http://www.bis.org/publ/cpss70.htm>

4. **Committee on Payment and Settlement Systems (CPSS) / Bank for International Settlements - BIS**

(a) **Central Bank Payment and Settlement Services with Respect to Cross-Border and Multi-Currency Transactions.**

- (b) Basel, September 1993.
- (f) This report (a.k.a. *Noël Report*) is a follow-up to the "Lamfalussy Report" (*supra* 6) examines a range of options that central banks might consider in an effort to help reduce risk and increase efficiency in the **settlement** of cross-border and multi-currency interbank transactions. The goal was to "identify and promote a common understanding of the advantages and disadvantages of different payment and settlement services that central banks might offer", without recommending a preferred option. The report highlights how changes in certain features of home-currency payments systems can influence the risk and efficiency of international settlements. In addition, it emphasises the scope and need for private sector efforts to reduce risk and increase efficiency in the settlement process.

- (g) **BANK FOR INTERNATIONAL SETTLEMENTS**, [Central Bank Payment and Settlement Services with Respect to Cross-Border and Multi-Currency Transactions](#), prepared by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries, Basel, September 1993.

5. Consejo Monetario Centroamericano (CMCA)

- (a) **Ley modelo sobre sistemas de pagos y de liquidación de valores de Centroamérica y República Dominicana.**

(b) San José, 12 November 2004.

(c) Final.

(d) Nicaragua, 9.5.2006; Costa Rica, Dominican Republic

- (f) With a view to creating a common legal framework for systemically important payment systems and securities settlement systems in the countries pertaining to the General Treaty of Central-American Economic Integration (Protocol of Guatemala), the Central American Monetary Council approved the principles contained in the 19 articles of the Model Law. The Model Law sets up criteria defining a systemically important system. It is inspired by the CPSS Core Principles for Systemically Important Payment Systems⁷¹, and, in the sections dealing with finality of payment instructions and protection of the system in the event of insolvency of a participant, by the EU Finality Directive. Two articles deal with private international law aspects: article 14 establishes that the law applicable to a given system will govern the rights and obligations of a participant in the system against whom insolvency procedures have been initiated; article 15 establishes that guarantees or collateral in favour of a system shall be governed by the law of the country where such security rights have been registered.

In order to achieve uniformity of laws and mutual recognition of the features of systemically important systems, it is intended that each Central American state should adopt national rules on the basis of the Model Law while the countries would be mutually bound through adoption of a Treaty ("Tratado sobre sistemas de pagos y de liquidación de valores de Centroamérica y de la República Dominicana"), with a view to reducing legal risk and to further the development and strengthening of systems in the region, and also with a view to strengthening the oversight of the respective central bank over payment systems in a member state.

(g) Resolution CMCA/RE-04-240-04

(h) CMCA Executive Secretariat webpage on the project at <http://www.secmca.org>

6. "Group of Ten" Central Banks [Bank for International Settlements - BIS]

- (a) **Report on Netting Schemes**

(b) Basel, February 1989

- (f) This preparatory report (a.k.a. *Angell Report*) to the "Lamfalussy Report" (*infra* 6) assesses arrangements that are used to net out amounts due between banks arising from foreign exchange contracts or from the exchange of payment instructions, on either a bilateral or multilateral basis. The analysis focuses on allocation of credit risk and international financial policy issues raised by the development and operation of "cross-border" (or "offshore") payment systems and contract netting arrangements. Chapter 5 (pp. 11-14) contains a brief analysis of the legal basis for netting.

- (g) **BANK FOR INTERNATIONAL SETTLEMENTS**, [Report on Netting Schemes](#), prepared by the Group of Experts on Payment Systems of the central banks of the Group of Ten countries, Basel, February 1989 (available in English, French, German and Italian).

71 *Supra*, p. 44

- (h) *World of Banking* (1989)4-8; **COMMISSION BANCAIRE**, "Les compensations ("netting") bilaterales ou unilaterales d'obligations et de paiements", in *Rapport 1989*, Paris, pp. 361-366.

7. "Group of Ten" Central Banks [Bank for International Settlements - BIS]

- (a) **Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries / Rapport du comité sur les systèmes de compensation interbancaires des banques centrales des pays du Groupe des Dix**

- (b) Basel, November 1990.

- (f) The report (a.k.a. *Lamfalussy Report*) describes the policy objectives that central banks have in common with respect to the analysed **netting systems**, presents the Committee's analysis of the impact of netting on credit and liquidity risks and on the level of systemic risk and describes the broader implications of netting arrangements for central banks and supervisory authorities. It sets forth the Committee's recommended minimum standards for the design and operation of cross-border and multi-currency netting and settlement schemes, and presents principles for co-operative central bank oversight of these schemes.

The *minimum standards* are:

- (I) Netting schemes should have a well-founded legal basis under all relevant jurisdictions.
- (II) Netting scheme participants should have a clear understanding of the impact of the particular scheme on each of the financial risks affected by the netting process.
- (III) Multilateral netting systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.
- (IV) Multilateral netting systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest net-debit position.
- (V) Multilateral netting systems should have objective and publicly-disclosed criteria for admission which permit fair and open access.
- (VI) All netting systems should ensure the operational reliability of technical systems and the availability of back-up facilities capable of completing daily processing requirements.

The report also suggests the harmonisation of national laws in order to prevent conflict-of-law problems related to achieving binding net exposures (p. 17).

- (g) **BANK FOR INTERNATIONAL SETTLEMENTS**, [Report of the Committee on Interbank Netting Schemes](#), Basel, November 1990 (available in English, French, Italian, and German).

- (h) A summary of the report is published in: *World of Banking*, November-December 1990, pp. 25-27, and 30; **LAMFALUSSY**, "The Report on Netting Schemes", in: Banca d'Italia, Proceedings ... *supra* Section III, *General bibliography* "General problems", pp. 99-104.

Further co-operative efforts with regard to payments/electronic funds transfers published at the BIS are listed *supra*, *General bibliography*.

8. European Central Bank

- (a) **Blue Book**

- (b) (Regular updates)

- (f) The Blue Book publications describe the main payment and securities settlement systems in the EU Member States and in the accession countries. They also provide statistical data. The EU Blue Book contains a euro area chapter. In the **text part**, the euro area chapter and country chapters follow a

commonly agreed outline: first section: overview of the institutional aspects which have an impact on payment and settlement systems, including a brief description of the major parties involved; second section: payment media used by non-banks; third section: interbank transfer and settlement systems; fourth section: securities settlement systems. The text part is updated every few years. The **statistical annexes** provide a set of statistical data for each country and comparative tables. They are updated yearly in the statistical addenda.

- (g) <http://www.ecb.int/paym/market/blue/html/index.en.html>
- (h) See also "[Payment Systems in the euro area](#)", in CPSS "Red Book" 2003.

9. **European Community: Committee of Governors of the Central Banks of the Member States of the EEC**

(a) **Payment Systems in EC Member States.**

- (b) September 1992.
- (f) The report (a.k.a. *Blue Book*) was prepared by an ad-hoc group on EC payment systems that was created in January 1991 by the Committee of Governors. The *Blue Book* is a descriptive guide to the **payment systems** in Community countries with a view to current and future issues of direct concern for central banks, especially taking into account new developments that had occurred in the three years since the publication of the G10 study on "payment systems in 11 developed countries" (*infra* at 6 h); in addition, the study places emphasis on cross-border arrangements, on the role of central banks and on large-value funds transfer systems. The study contains thirteen papers, one per EC country and a final one on cross-border arrangements.

10. **European Community: Committee of Governors of the Central Banks of the Member States of the EEC**

(a) **Issues of common concern for EC central banks in the field of payment systems.**

- (b) September 1992.
- (f) The report was prepared by the Ad-Hoc Working Group on EC Payment Systems. It identifies six areas as requiring specification in terms of minimum common features: access conditions, risk management policies, legal issues, standards and infrastructures, pricing policies and business hours. The report sets up four lines of action for a Working Group on EC Payment Systems which was subsequently set up: (1) The definition of principles for the cooperative oversight of payment systems in EC countries; (2) The establishment and implementation of minimum common features for domestic systems; (3) Preparatory work in the area of large-value cross-border payments in view of EMU; (4) The continuation of the oversight of the ECU Clearing and Settlement System.

11. **European Community: Working Group on EC Payment Systems**

(a) **Minimum common features for domestic payment systems.**

- (b) November 1993,
- (f) The report to the Committee of Governors of the Central Banks of the Member States of the European Community represents a follow-up to the report "Issues of common concern" (*supra* 3). The report was released mainly to the attention of the banking communities, in order to help them to understand the concerns of EC central banks in the field of **payment systems**, and the policies which they intend to conduct in the years to come. The document concludes with comments on 10 principles, covering the six areas that were identified in the report "Issues of common concern" (*supra* 3): (1) Direct access to interbank funds transfer systems; (2) No discrimination in access; (3) Transparency of access criteria; (4) Real-time gross settlement systems; (5) Large-value net-settlement systems; (6) Other interbank funds transfer systems; (7) Legal issues: "The legal basis of

domestic payment systems should be sound and enforceable. Inconsistencies between domestic legal systems in the EC which increase risks in payment systems need to be analysed and, as far as possible, reduced. As a first step, where necessary, EC central banks will press for changes to certain aspects of national bankruptcy laws (e.g. 'zero-hour clause')"; (8) Technical issues; (9) Pricing policies of EC central banks; (10) Operating hours.

Implementation of the principles in every member-state of the European Union should enable banks to benefit from the new possibilities of the common market. On the other hand, assurance is needed that new cross-border payment systems do not result in increased risk for domestic payment systems .

- (h) **TEHAN**, "Cross-border bank payments to be made safer", *The Times*, 15th November 1993. (The list of principles from the report is also reprinted in **BANCA D'ITALIA**, *Interbank payments...., supra* p. 24, 68-70.)

IV - B - PAYMENT SYSTEMS OVERSIGHT

General bibliography (all policy related publications above may also be of relevance):

BANCA D'ITALIA, [White paper on payment system oversight](#) : Objectives, methods, areas of interest, Rome, November 1999; **BANK OF ENGLAND**; *Oversight of payment systems*, November 2000; **BANQUE CENTRALE DU LUXEMBOURG**, *Oversight of payment and securities settlement systems - Policy and Procedures*, Luxembourg, 5 December 2001; **BOSSONE/CIRASINO**, [The Oversight of Payment Systems A Framework for the Development and Governance of Payment Systems in Emerging Economies](#), CEMLA/World Bank, July 2001; **EUROPEAN CENTRAL BANK**, ["Role of the Eurosystem in the field of payment systems oversight"](#), June 2000; **HELLER/STURM**, "New mandate for Swiss National Bank to oversee payment & securities settlement systems"; *Payment Systems Worldwide*, 15(Spring 2004)7; **Idem**, *supra*, p. 42.

Payment systems - whether used by the central bank, commercial banks or non-bank entities - contribute to the speed of the processing of payment instructions and have enabled an impressive shortening of settlement cycles. As the volumes of payments and the speed of transactions increase, so does the risk of failure for the individual parties to a transaction, a particular payment system, the participants in that system, or even the entire economy.

It is for this reason that the CPSS Core Principles⁷² for systemically important payment systems have established a set of minimum principles that such systems should fulfil. But there are also systems that are not "systemically important" but where the users nevertheless expect a certain degree of efficiency, quality and speed. In particular where systems are not operated by central banks, or even where the settlement asset is not central bank money (the preference under the core principles) but commercial bank money, the effectiveness of a system generally relies on (i) confidence in commercial bank liabilities; (ii) safety and efficiency of the means and procedures for executing interbank payments and (iii) safety and efficiency of payment instruments and services provided by banks to end users.

The confidence in commercial bank liabilities is directly related to the soundness of the financial institution itself. The criteria for soundness are set, enforced and typically monitored by bank supervisors.

On the other hand, the safety and efficiency of the existing procedures for executing interbank payments, ie the payment systems, are typically the area of responsibility of payment systems oversight.

72 *Supra*, p. 44

The core principles define payment system oversight as being a public policy activity with a particular goal of reducing systemic risk. This explains why retail payment systems, which usually have much lower levels of systemic risk, have typically received less attention from an oversight point of view.

In general, payment system oversight is a core central bank responsibility. While this power has been based on tradition, and recognised as such, in many countries, for instance the United Kingdom, there is more recent legislation that explicitly grants such powers to the central banks.⁷³ This of course means that a central bank is also responsible for overseeing the systems it operates itself, as recognised in the core principles.

There is no uniform recipe how to actually perform oversight, or how to organise the department that is responsible for oversight. The tools and structures in place should however put the authority in a position to collect information, analyse the information gathered and to take action, all in effective and efficient manner.⁷⁴ Furthermore it appears that effective payment system oversight is often based more on the argumentative power and persuasion in discussions with relevant parties (predators, auditors, participants, etc) than on the use of regulations and rules.

Given this importance, and the experience that has been gained over the years, the Committee on Payment and Settlement Systems felt it would be useful to set out publicly what has been learned about effective oversight, and, in 2005, published the report “Central Bank Oversight of Payment and Settlement Systems”.

1. Committee on Payment and Settlement Systems (CPSS)

(a) Central Bank Oversight of Payment and Settlement Systems

(b) May 2005

(f) The report explains why and how central banks oversee payment and settlement systems, looking at both the similarities and differences in approaches and discussing some of the issues that arise. On the basis of the analysis in the report, the CPSS has agreed a number of principles for the effective oversight of payment and settlement systems. The report also includes a revised version of the Lamfalussy principles for international cooperative oversight among central banks and, where applicable, with other authorities. The main report is then structured as follows. Section 1 explains the importance of payment and settlement systems and why central banks oversee them. Sections 2 to 4 describe how oversight is currently carried out, focusing in particular on domestic systems. Finally, Section 5 looks at how, for certain systems, there is a need for effective cooperation between authorities, focusing in particular on international cooperation.

(g) <http://www.bis.org/press/p050509b.htm>

⁷³ See box 21, on page 65 of the Core Principles report

⁷⁴ See box 22 of the Core Principles report.

IV - C - SECURITIES AND DERIVATIVES SETTLEMENT

General bibliography:

BANK FOR INTERNATIONAL SETTLEMENTS (BIS) [CPSS], [Securities Lending Transactions: Market Developments and Implications](#), Basel, July 1999; **Idem**, [Clearing Arrangements for Exchange-Traded Derivatives](#), Basel, March 1997; **Idem**, [Cross-border securities settlements](#), March 1995; **Idem**, [Delivery versus payment in securities settlement systems](#), September 1992; **BANK OF ENGLAND**, Report of the DVP Steering Group, February 2000; **BOLLEN**, "Cross-border securities settlement and risk analysis framework for cross-border links", *Fin Stab Rev NBB* (2006)123-140; **DEVRIESE/MITCHELL**, "Liquidity risk in securities settlement", *J of Banking and Finance*, 30(2006)1807-1834; **EUROPEAN CENTRAL BANK**, "Consolidation in central counterparty clearing in the euro area", *ECB Monthly Bulletin* (August 2001)69-77; **FREEDMAN**, "The regulation of central securities depositories and the linkages between CSD's and large-value payment systems", Bank of Canada Technical Report No.87, November 1999 (also available at <http://www.bank-banque-canada.ca>); **FUMEAUX/HELLER**, *supra*, p.38; **GUADAMILLAS/KEPLER**, *Securities clearance and settlement systems – A guide to best practices*, Policy Research Working Paper 2581, World Bank, April 2001; **KELLER**, *supra* p.40; ; **LUCAS**, "La surveillance de la sécurité et de l'efficacité...." *supra* p.37; **MCGAW (ED.)**, *The world's clearing houses - A comprehensive report and analysis of clearing for exchange traded futures and options*, 2nd ed., Surrey : Futures & Options World, 1995; **MOONEY**, "Transfer, pledge, clearance and settlement in the Japanese and United States government securities markets". *BOJ Monetary and Economic Studies* 9(1991)103-147; **PARKINSON/GILBERT/GOLLOB/HARGRAVES/MEAD/STEHM/TAYLOR**, *Clearance and settlement in U.S. securities markets*, Board of Governors Fed.Res.System, Staff Study 163, March 1992; **PARENTS RISK COMMITTEE – SECURITIES SETTLEMENT SUB-COMMITTEE**, [A report on cross-border risks](#), (USA), March 1995; **RIPATTI**, "[Central counterparty clearing : Constructing a framework for evaluation of risks and benefits](#)", *Bank of Finland Discussion Papers*, 30, 2004; **STEHM**, "Clearance and settlement systems for securities - Critical design choices in emerging market economies", *World Bank Discussion Papers*, 321, Washington, D.C., 1996

Note: The CPSS "Red Book" Series, the ECB's "[Blue Book](#)", the EMEAP countries' reports as well as the "Yellow books" elaborated for many Latin American and Caribbean countries under the "Western Hemisphere" Initiative coordinated by the World Bank (see www.forodepagos.org and **CIRASINO/GUADAMILLAS/GARCÍA/MONTES-NEGRET**, *supra*, p.11), all contain sections on the respective securities clearance and settlement infrastructure.

1. *Committee on Payment and Settlement Systems (CPSS) / International Association of Securities Commissioners (IOSCO)*

(a) Recommendations for Securities Settlement Systems

- (b) December 2001
- (c) Final
- (f) The report sets out 19 recommendations that define minimum standards for securities settlement systems. These encompass the legal framework for securities settlements, risk management, access, governance, efficiency, transparency, and regulation and oversight.⁷⁵ The recommendations are designed to cover systems for all types of securities, including securities issued in both industrialised and developing countries, and to cover domestic as well as cross-border trades.

The recommendations cover systems for all securities, including equities, corporate and government bonds and money market instruments, and securities issued in both industrialised and developing countries. They also aim to cover settlement of both domestic and cross-border trades. National authorities responsible for the regulation and oversight of securities settlement systems are expected to assess whether markets in their jurisdiction have implemented the recommendations and to develop action plans for implementation where necessary. The report includes key questions pertaining to each of the recommendations, answers to which would form the basis for assessments.

⁷⁵ On the Hague Conference Convention of 2006 that would increase legal certainty on the law applicable to securities held with intermediaries, see *infra*, p. 72.

The CPSS and the Technical Committee of IOSCO plan to develop an assessment methodology in 2002. The IMF and the World Bank will participate in this next stage of the work.

A securities settlement system is defined broadly to include the full set of institutional arrangements for confirmation, clearance and settlement of securities trades and for the safekeeping of securities. Because of the diversity of institutional arrangements internationally, the recommendations must focus on the functions to be performed, not on the institutions that may perform them. While some of the recommendations are relevant primarily to central securities depositories (CSDs), others are relevant to stock exchanges, trade associations and other operators of trade confirmation systems, central counterparties, settlement banks, or custodians and other interested parties.

The CPSS-IOSCO Joint Task Force on Securities Settlement Systems was created in December 1999 with the intention of making such arrangements safer and more efficient.

The Task Force comprised 28 central bankers and securities regulators from 18 countries and regions and the European Union.

- (g) <http://www.bis.org/publ/cpss46.pdf> and <http://www.iosco.org>
- (h) CPSS/IOSCO, *Assessment methodology for "Recommendations for Securities Settlement Systems"*, November 2002 (available also in Spanish and French). BOLLEN, *supra*, p. 51.

2. Committee on Payment and Settlement Systems (CPSS) / International Association of Securities Commissioners (IOSCO)

(a) Disclosure framework for securities settlement systems

- (b) February 1997
- (c) The Disclosure Framework provides a protocol for the review of a securities settlement system's operation and its allocation of risks. It is intended as a tool for system operators and participants to use in discussing the risks associated with securities settlement arrangements. The contribution of the Disclosure Framework to enhancing the transparency of settlement arrangements will naturally depend on the positive cooperation of system operators in devoting their own resources to its completion.

The Disclosure Framework is structured in the form of a questionnaire intended to be completed by organisations that operate securities settlement systems.

The BIS website contains the full text of the Disclosure Framework as well as samples of the disclosure framework responses as completed by various system operators. This section is updated regularly.

- (g) CPSS/IOSCO, *Disclosure framework for securities settlement systems*, Basel, February 1997.

3. Committee on Payment and Settlement Systems (CPSS) / Bank for International Settlements - BIS

(a) Delivery Versus Payment in Securities Settlement Systems / Livraison contre paiement dans les systèmes de règlement de titres.

- (b) Basel, September 1992.
- (f) The first part of the report contains the analysis made by the study group of the types and sources of risk in **securities clearing and settlement**, including the concept of delivery versus payment (DVP). It describes the common approaches to DVP and evaluates the implications of the various approaches for central bank policy objectives. A second part of the report includes a glossary and a schematic overview of the key features of securities transfer systems in the G10 countries. The report is of analytical nature and does not contain any formal policy recommendations; however, in Chapter 5 (pp. 30-38) the report explores whether the implications of securities settlement systems

for financial stability are similar to those identified in the "Lamfalussy Report" (*supra* 6). The report also points to the need for further work on issues relating to cross-border securities transactions.

- (g) **BANK FOR INTERNATIONAL SETTLEMENTS**, [Delivery Versus Payment in Securities Settlement Systems](#) - Report prepared by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries, Basel, September 1992 (available in English, French, German and Italian).

See also BIS, [Cross-border Securities Settlement](#), Basel, March 1995, a report that describes alternative channels for settling cross-border trades, risks in cross-border settlements and implications for central bank policy objectives of the expansion of cross-border trading and the concentration of securities settlement activity in certain intermediaries.

4. **Committee on Payment and Settlement Systems (CPSS) / Bank for International Settlements - BIS**

(a) **Cross-border collateral arrangements.**

(b) **Basel, January 2006**

- (f) The report serves as a guide for central banks as they review the potential costs and benefits associated with accepting cross-border collateral⁷⁶ in the context of their financial markets. Collateral plays an important role in securing the credit extended by a central bank. It assures liquidity for commercial banks' use of payment systems. Liquidity issues, in turn, are interrelated with policies stipulating the terms and conditions under which a central bank accepts collateral.

The report investigates issues related to (i) calls for central banks to accept collateral denominated in a foreign currency or located in a foreign jurisdiction in order to support intraday or overnight credit; (ii) the existing institutional arrangements through which central banks accept foreign collateral; and (iii) alternative models for the acceptance of foreign collateral.

- (g) **BANK FOR INTERNATIONAL SETTLEMENTS**, [Cross-border collateral arrangements](#). CPSS Publications No. 71, Basel, January 2006. (see also McPhail/Vakos, *supra*, p. 39).

5. **Group of Thirty (G30)**

(a) **Clearance and Settlement Systems in the World's Securities Markets.**

(b) **New York/London, March 1989.**

- (f) The report was prepared by an international Steering Committee with the support of an expert international Working Committee. It responds to a widespread perception that **clearance and settlement practices** in most security markets were deficient, in that they involved participants in undue risks and unnecessary costs. The report lists nine recommended standards which are designed to be applicable to all markets in corporate securities, mainly equities, and a suggested time-frame for implementation, they address *i.a.* issues such as central securities depositories, benefits of a trade netting system, employment of delivery versus payment (DVP), "same day" funds conversion, and "rolling settlement system".

- (g) <http://www.group30.org>

- (h) **G30**, *Clearance and Settlement Systems, Status Reports Clearance and Settlement Systems, Status Reports*: Spring 1990 [17 country reports]; *Idem*, *Status Reports - Year-End 1990*, New York/London, May 1991; *Idem*, *Status Reports - Autumn 1992*, Washington DC., December 1992 [34 country reports]. A version of the Recommendations, as amended by ISSA, is [available online](#)

⁷⁶ On the Hague Conference Convention that would increase legal certainty on the law applicable to securities held with intermediaries, see *infra*, p. 72.

6. *Group of Thirty (G30)*

(a) **Global Clearing and Settlement: A Plan of Action.**

(b) New York/London, January 2003

(f) The report proposes twenty recommendations and a detailed agenda for their implementation. It aims at improving technical performance, better business practice and stronger governance intended to produce an interoperable, safer and more efficient international system for securities clearing and settlement.

The recommendations cover in particular: coordinated timing and synchronisation between systems, the presence of central counterparties in all major securities markets, the availability of securities lending including the supportive framework of law and regulation to make the process an attractive economic proposition, immobilisation of securities and the elimination of paper from clearing and settlement, the adoption of uniform messaging standards and communication protocols, the implementation of reference data standards, automated institutional trade matching schemes, and efforts to automate and standardise asset servicing processes. Furthermore, the G30 recommends a series of steps to mitigate financial, operational, and legal risks, as well as to improve governance.

(g) <http://www.group30.org>

(h) **G30**, *Global Clearing and Settlement: Final Monitoring Report*, May 2006; see also executive summary published by [JPMorgan](#).

7. *Group of Thirty (G30)*

(a) **Derivatives: Practices and Principles.**

(b) Washington, DC, July 1993.

(f) The report focuses on market practices (separately from the continuing efforts of central bankers and other regulators to develop appropriate supervisory practices). It defines a set of sound risk management practices for dealers and end-users. The Recommendations and Working Papers which form part of the study lay these out in detail. Problems related to **netting** are discussed mainly in the "Working Paper of the Enforceability Subcommittee" (*Appendix I: Working Papers*, pp. 42-61) and in various country reports (*Appendix II: Legal enforceability - Survey of nine jurisdictions*).

(g) <http://www.group30.org>

(h) **WOODMAN/PLEWS**, "The Group of Thirty: Global derivatives report - Part two, Enforceability issues", *Clifford Chance - Asian Financial Services Newsletter*, October 1993; **PLEWS/WOODMAN**, "The Group of Thirty derivatives report - Enforceability issues", *Clifford Chance - EC Financial Services Newsletter*, October 1993; **PLEWS**, "The Group of Thirty - Global derivatives report (Part. 1)", *Clifford Chance - EC Financial Services Newsletter*, September 1993, pp. 30-33.

SECTION V: ELECTRONIC MONEY / ELECTRONIC COMMERCE / ELECTRONIC DATA INTERCHANGE (EDI)

General bibliography on EDI, electronic commerce, "electronic banking":

A very comprehensive bibliography for the various types of electronic purses and e-money developments can be found at:

European ePayment Systems Observatory/European Commission Joint Reserach Centre [Leo van Hove] at <http://epso.jrc.es/purses.html>; a further resource is at <http://www.e-pso.info>.

on-line links to additional material on "electronic money" and "electronic purses" can be found at <http://epso.intrasoft.lu/inventory/indexvanhove.cfm>. A webpage with links to ongoing "electronic money" models can be found at <http://www.emoney.ru/eng/esystem/default.htm>

A.F.D.I., *Le nouveau droit des EDI (Echange de données informatisés)* (Travaux publiés sous la direction de X.L. **de Bellefonds**), Paris : Ed. des Parques, 1991; **BAUM/PERRITT, JR.**, *Electronic Contracting, Publishing and EDI LAW*, New York : Wiley Law Publications 1991; **BERGSTEN**, "Paperless systems: The legal issues", *CLSR* 4(1988)23-26; **BISCHOFF**, "Rechtssicherheit soll verbessert werden", *Output* (Switzerland) (1994)66-67; **BASEL COMMITTEE ON BANKING SUPERVISION**, *Electronic Banking Group Initiatives and White Papers*, October 2000; **BOSS/RITTER**, *Electronic Data Interchange Agreements - A guide and sourcebook*, Paris : ICC, 1993 (ICC Publication No. 517) (p. 133-243: Selected Model Agreements); **CAPRIOLI/SORIEUL**, "Le commerce international électronique : vers l'émergence de règles juridiques transnationales", *J.D.I.* 124(1997)323-393 (Annexe, p.394-401: Loi-type UNICTRAL); **CHANDLER**, "Negotiable transactions using EDI", *Dir.comm.int.* (1992)505-509 [pp. 510-514: CMI Rules for Electronic Bills of Lading]; **COLBERG/GARDNER/ET.AL.**, *The Price Waterhouse EDI Handbook*, 1995 [ISBN r-0-471-10753-0]; **COMMISSION BANCAIRE/BANQUE DE FRANCE**, *Internet - The prudential consequences*, White Paper, Paris, December 2000; **COMMISSION OF THE EC**, *Formation of Contract by Electronic Data Interchange - The Tedis Programme (1991)*, Reprinted 1993; **COSTES**, "Vers un droit du commerce international 'sans papier'? / Towards a 'paperless' international commercial law?", *RDAl/IBJL* (1994)735-752; **DE SÈZE**, "Electronic Data Interchange Developments in Europe", in: Banca d'Italia, *Proceedings ... , supra*, Section III, *General bibliography*, "General problems", pp. 233-241; **ELECTRONIC MESSAGING SERVICES TASK FORCE: (Boss/Ritter)**, "The commercial use of electronic data interchange - A report and Model Trading Partner Agreement", *Bus.Lawyer* 45(1990)1645-1716 (Model Agreement and commentary: pp. 1717-1749); **FEHR**, *EDI und UN/EDIFACT - Grundlagen, Organisation, Stand heute*, Zürich 1993; **FINANCIAL SUPERVISORY AUTHORITY (FINLAND)**, "[Electronic financial services](#)", *Fin.Sup.Auth. Publication Series*, 29 March 2001; **Fox (ED.)**, *Electronic Data Interchange : Strategies for success - How banks and corporations are successfully implementing EDI*, Lake Forest, IL : F.I.A. Fin.Publishing Co., 1996; **FRANKE**, "EDI - Ohne Edifact droht die Kleinstaaterei wie anno 1648", *Computerwoche*, 23.10.1992, pp. 43-47; **FRTZMEYER/HEUN**, "Rechtsfragen des EDI", *Computer & Recht* 8(1992)129-133 and 198-203; **GLOBAL INTERNET POLICY INITIATIVE**, "[The regulatory framework for E-Commerce – International legislative practice](#)", 21.5.2002; **ICC - JOINT WORKING PARTY ON LEGAL AND COMMERCIAL ASPECTS OF EDI**, *Draft ICC policy statement on the development of EDI in international trade*, ICC Doc. No. 460-10, 12th April 1991; **JOHNSON, C.**, "Electronic Data Interchange and negotiable instruments - a preliminary review of some legal issues", in: *Int'l Yb. of Law Computers and Technology* (ed. by K. **Russell**), Vol.6, Oxford, 1992, p. 5-22; **MARSLAND**, "The future of e-payments", *Mondex Magazine* (May 2000)11-14; **MORITZ**, "Quo vadis elektronischer Geschäftsverkehr", *CR* 16(2000)61-72; **OECD**, *Report on international and regional bodies: Activities and initiatives in electronic commerce*, SG/EC(98)10/final, 13 January 1999 (Report prepared for the OECD Ministerial Conference "A borderless world: Realising the potential of global electronic commerce, Ottawa, 7-9 October 1998); **Idem**, *Report...., First Update*, SG/EC(99)5 (report prepared for Paris E-commerce Forum "Electronic commerce: toward convergence of stakeholder interests"; **PARFETT**, *What is EDI? - A guide to Electronic Data Interchange*, 2nd edition, Manchester/Oxford : NCC Blackwell, 1992; **PRINS**, "Contracting in an on-line marketplace", in: **BEKKERS/KOOPS/NOUWT (Eds.)**, *Emerging Electronic Highways : New Challenges for politics and law*, The Hague/London/Boston : Kluwer, 1996, p. 139-152; **RIBA**, "Comercio electrónico en Internet. Aspectos jurídicos", *R.E.D.I.* No.1 (Agust 1998); **RITTER/GLINIECKI**, "Electronic commerce: and administrative law: The need for harmonised national reforms", *Harv.J. Law and Tec*, 6(Spring 1993)263-284; **SCHMALFUSS**, "Edifact-Konzept sollte auch Migrationshilfen beinhalten", *Computerwoche*, 23.10.1992, p.51-54; **SWATMAN/SWATMAN**, "EDI system integration : A definition and literature survey", *The Information Society*, 8(1992)169-205; **WALDEN**,

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Sources of legal information relating to e-commerce, with an emphasis on Canada, *Lex Electronica* at <http://www.lex-electronica.org>

Electronic publication : [REDI – Revista Electrónica de Derecho Informático](http://www.lex-electronica.org).

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Selected **WWW-Sites** (as of August 1995): http://ananse.iry.uit.no/trade_law/nav/trade.html, i.a. with direct links to material from CMI/IMC, European Union, Hague Conference, ICC, UNIDROIT, UN/UNCITRAL/UNCTAD, WTO/GATT and NAFTA resources; UN/EDIFACT: <http://www.premenos.com/-unedifact> ; NAFTA related EDI and electronic commerce: <http://www.nafta.net/ecedi> ; other EDI and electronic commerce resources: <http://199.0.58.4/edires.htm> ;

Specialised journals: *EDI Law Review*; *EDI Update International*, *Lex Electronica* (<http://www.lex-electronica.org>)

On "writing", "electronic signatures" in particular:

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Online-Banking", *WM* 55(2001)221-231; **LAMBERTERIE** "La valeur probatoire des documents informatiques dans les pays de la CEE", *Rev.int.dr.comp.* (1992)641-685; **LEHMANN**, "Rechtliche Aspekte der elektronischen Archivierung", *Computerworld Schweiz*, 28.8.1993, p. A10-A12; **POTTIER**, "La preuve dans les transactions financières à distance", *Banque*, no. 568 (mars 1996)70-72; **SCHMITTMANN**, "Kaufmännisches Bestätigungsschreiben mittels Telefax", *NJW* (1994)3149-3150; **TAPPER/TOMBS**, *The Legal Admissibility of Document Imaging Systems*, Westport, CT. 1992; **UNCITRAL**, Legal Value of Computer Records - Report by the Secretary-General, UN Doc. A/CN.9/265, 21st February 1985, *UNCITRAL Yb.* 16(1985)351-365; ; **WALDEN**, "Data security and document image processing: Legal security for cross-border electronic banking", in: *Cross-border electronic banking - Challenges and opportunities* (ed. by J. Norton), London : Lloyd's of London, 1995, p. 29-53 [article also published in *JIBL* (1994)506-518.

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European Union: European Parliament/Council: "Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce)", *Off.J* 17.7.2000, L 178/1 ([weblink to document](http://europa.eu.int) at <http://europa.eu.int>); **BERTRAND**, "EDI - The final draft of the European Interchange Agreement", *Int'l Computer Law Adviser* 5(1991)4-15 [contains final draft of the **European Model EDI Agreement** and Commentary by TEDIS]; **EUROPEAN COMMITTEE ON BANKING STANDARDS (ECBS)**, *Secure banking over the internet*, (Doc. DTR 401), Brussels, February 1997; **LINDHOLM/MAENNEL**, "Directive on Electronic Commerce (2000/31/EC)", *CR International* 1(2000)65-69; **TROYE**, "Aspects juridiques européennes de l'EDI", in: *Le nouveau droit des EDI*, infra "France", p. 143-153; **VAN OVERBEEK**, "Electronic invoicing in Europe", *EDI L.Rev.* 1(1994)263-275.

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COMMISSION OF THE EC, [Standardisation mandate to CEN, CENELEC and ETSI in support of interoperability of electronic invoicing in the Community](#), October 1993; **Idem**, *Amended proposal for a European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal market*, COM(1999)427 final ([weblink to document](http://europa.eu.int) in official languages at <http://europa.eu.int>: **Idem**, *Commission Recommendation of 19 October 1994 relating to the legal aspects of electronic data interchange* / Recommandation ... concernant les aspects juridiques de l'échange de données informatisées (94/820/EC), Official Journal No. L 338/98 of 28.12.1994; *EDI Perspectives*, Brussels/Luxembourg 1989 [a brochure published in all official EC languages by

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1. International Chamber of Commerce (ICC)

(a) **Uniform Rules of Conduct for Interchange of Trade Data by Teletransmission ("UNCID") / Règles de conduite uniformes pour l'échange de données commerciales par télétransmission.**

(b) Paris, 1988.

(f) A set of non-mandatory rules which users of electronic communications technology and suppliers of network services could incorporate by reference into their communication agreement, or that can

form the foundation on which parties can build a contract with legally binding effect.. Its primary provisions cover: definition standards, required care for transferring and receiving messages: identification of the parties; acknowledgement of receipt; verification of completeness of a received message; protection of the information exchanged; maintenance of records and storage of data.

- (g) ICC Publication No. 452; reprinted also in *UNCITRAL Yb.* 23(1992)379-382; [weblink to document](#) at UN/EDIFACT.
- (h) **Boss**, "The international commercial use of electronic data interchange and electronic communications technologies", *Bus.Lawyer* 46(1991)1787-1802 (1791-1792); **CUNLIFFE**, "Electronic Data Interchange (EDI) and international trade", *Int'l Computer Law Adviser* 5(1991)15-23; **WHEBLE**, "The legal obstacles to efficient use of EDI", in: Del Busto (ed.), *Funds transfer in international banking - A Compendium on capital adequacy, SWIFT, EDI, bank's liability, and payment systems in the 1990s*, Paris: ICC, 1992, pp. 76-81. Text of UNCID Rules also reprinted in **Boss/RITTER**, *supra* p. 55, 133-135. French text also published in **A.F.D.I.**, *supra* p. 55, 163-166

As an example for reference to UNCID in an EDI agreement used by a commercial company, see : **TEXAS INSTRUMENTS**, [Electronic Data Interchange Agreement \(Europe\)](#), on the website of Texas Instruments.

2. United Nations - UNCITRAL

(a) Model Law on Electronic Commerce / Loi type sur le commerce électronique.

- (b) 14th June 1996.
- (f) In its 25th session (New York, May 1992) UNCITRAL entrusted the preparation of legal rules on EDI to the Working Group on International Payments which it renamed the Working Group on International Data Interchange. The Model Law was finalised at UNCITRAL's 29th session, 28th may - 14th June 1996.

The 17 articles of the Model law cover:

PART One: ELECTRONIC COMMERCE IN GENERAL (Articles 1 - 15)

- I. GENERAL PROVISIONS: Sphere of application, Definitions, Interpretation, Variation by agreement;
- II. APPLICATION OF LEGAL REQUIREMENTS TO DATA MESSAGES: Legal recognition of data messages, Writing, Signature, Original, Admissibility and evidential weight of data messages, Retention of data messages;
- III. COMMUNICATION OF DATA MESSAGES: Formation and validity of contracts, Recognition by parties of data messages, Attribution of data messages, Acknowledgement of receipt, Time and place of dispatch and receipt of data messages.

PART TWO: ELECTRONIC COMMERCE IN SPECIFIC AREAS (Articles 16 - 17)

- I. CARRIAGE OF GOODS: Actions related to contracts of carriage of goods, Transport documents.

The Model Law aims at "any kind of information in the form of a data message used in the context of commercial services" (Art. 1). A data message is defined to include any information generated, sent, received or stored by electronic or analogous means, including e-mail, telex and fax. EDI is transfer from computer to computer using an agreed standard to structure the information (Art. 2). In general, the Model Law achieves recognition of EDI-type communications by not allowing that legal effect, validity or enforceability of a message be denied on the ground that the relevant information takes the form of a data message under the Model Law (Art. 5).

The Model Law also addresses issues such as on-line contracts, "documentary" requirements such as *signature, original and writing*, as well as rules of evidence and contracts for the *carriage of goods*.

In addition, a "[Guide to Enactment of the Model Law](#)" was elaborated.

Legal questions relating to "digital signatures" were not addressed in this Model Law but are being discussed in the Working Group as a follow-up work to the Model Law (see *supra*, bibliography on "digital signatures").

- (g) The text of Model Law is reprinted in English and French in *ULR/RDU* 1(1996)716-731; **United Nations**, *General Assembly, Official Records, 51st Session: Report of the UN Commission on International Trade Law on the work of its 29th Session, 28 May - 14 June 1996*, UN Doc. A/51/17, p.48-49, 70-77. Weblink do [document, with Guide of Enactment](#), at UNCITRAL.

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UNCITRAL, *Model Law on Electronic Commerce with Guide to Enactment - 1966*", New York : United Nations, 1997; **Idem**, "Electronic Data Interchange, Preliminary Study of legal issues related to the formation of contracts by electronic means - Report by the Secretary General", U.N. Doc. A/CN.9/333 (1990); **Idem**, "Legal issues of electronic data interchange - Report of the Secretary-General", (A/CN.9/350) *UNCITRAL Yb*. 22(1991)381-397.

- (h) **CAPRIOLI/SORIEUL**, *supra*, p. 63; **GLOBAL INTERNET POLICY INITIATIVE**, *supra*, p. 55; **HEINRICH**, "UNCITRAL und EDI", *CR*, 10(1994)118-121; **Idem**, "Harmonised global interchange? UNCITRAL's Draft Uniform Rules for EDI", *Payment Systems Worldwide*, No.3, 5(1994)22-25; (updated and revised versions in:) [Web J.Curr.Leg.Iss.](#) No.3 (1995); and also in: **FOX**, *supra* p. 55; **MADRID PARRA**, "Sobre los trabajos de UNCITRAL en materia de intercambio electrónico de datos - EDI (Electronic Data Interchange)", *Rev.der.bancario y bursátil* 45(1992)284-288; **SORIEUL**, "Update on the work of the United Nations Commission on International Trade Law (UNCITRAL) in field of EDI", *EDI LawRev.* (1994)223-232.

In addition, a number of governments and international organisations made official comments to the Model Law that were compiled and published by UNCITRAL (A/CN.9/409).

On **UNCITRAL bibliography** in general, *supra* fn. 37.

3. **United Nations - Economic and Social Council (ECE)**

- (a) **Model Interchange Agreement for the International Commercial Use of Electronic Data Interchange.**
- (b) 20th September 1995.
- (f) The Model Interchange Agreement (Agreement) - similar in scope to the European Model Interchange Agreement - provides a model standard contract between two or more trading partners. It establishes certain governing rules with regard to the electronic communications between the parties of EDI messages in accordance with the UN/EDIFACT structures and standards. It does not, however, apply to other forms of electronic communications, such as facsimile transmissions or electronic mail. It also does not set forth rules regarding the underlying obligation, that is, the related commercial transactions for which EDI might be employed (for instance sales, shipping or insurance contracts).

The Agreement is comprised of seven sections: 1) Scope and structure; 2) Communications and operations; 3) Message processing; 4) Validity and enforceability; 5) Data content requirements; 6) Liability; 7) general provisions. In addition, the Agreement needs to be completed by a Technical Annex, which is to be attached to, and is considered an integral part of the Agreement. The Model

Agreement contains a "Technical Annex Checklist" which can be used in preparing a Technical Annex between the trading partners.

- (g) The Model Interchange Agreement, including a comment) is part of the [ECE Recommendation No. 26](#), adopted by the Working Party on Facilitation of International Trade Procedure in March 1995; UN DOC. TRADE/WP.4/R.1133/Rev.1, 23 June 1995. See also [Recommendation No.25](#), September 1995..

4. "Group of Ten" Central Banks [Bank for International Settlements - BIS]

(a) Security of Electronic Money

(b) Basel, August 1996

- (f) This report highlights the main design features and functional aspects of electronic money products and analyses the technical risks specific to those products. It also describes the possible security measures that can be relied upon to prevent, detect and contain fraud. The report does not directly address legal issues related to electronic money (e-money), but the analysis and the conclusions contained in the report (on the basis of schemes under development or at a pilot stage at the time of publication of the report) provide a valuable basis for research on related legal issues.

One conclusion of the report is that a range of measures exist which would enable the risks inherent in using e-money products to be controlled. It is the combination of several measures together with the rigour with which they are implemented and administered that will serve to reduce risk most effectively. The report also underlines the importance of an overall approach to risk management, which might involve assessment by individual bodies.

The BIS, with the support of the G10 Governors continues to monitor e-money developments in the world.

- (g) **BANK FOR INTERNATIONAL SETTLEMENTS**, [Security of Electronic Money](#), Report by the Committee on Payment and Settlement Systems and the Group of Computer Experts of the central banks of the Group of Ten countries, Basel, August 1996.

SECTION VI: COLLECTIONS

See also related **ISO-standards**, *supra* at Section III 8.

1. *International Chamber of Commerce*

(a) Uniform Rules for Collections (URC 522) / Règles uniformes relatives aux encaissements (RUE 522).

(b) Paris, June 1995.

(c) 1st January 1996.

(f) "Collection" means the handling of documents by banks as agent in accordance with instructions received in order to obtain payment and/or acceptance or to effect delivery of documents against payment and/or acceptance in connection with the financing of international trade. Parties to a contract have to agree to the Rules (26 articles); under a certain legal opinion, however, the rules define current trade practice. The Rules are binding whenever incorporated into the text of the "collection instrument", unless otherwise expressly agreed or contrary to mandatory national, state or local law and/or regulation. The Rules cover, *inter alia*, form of presentation, liabilities and responsibilities, payment (documents payable in local currency [art. 17] or in currency other than that of country of payment [art. 18], interest, charges and expenses.

The Uniform Rules were first published by the ICC in 1956. Revised versions were issued in 1967 and 1978. The principal effect of the current revision is to introduce a concept of "collection instruction" to the collection process and widen the protections available to a collecting bank.

(g) ICC publication No. 522 (July 1995). A comprehensive commentary of URC 522 is contained in ICC publication No. 550.

(h) **NIELSEN**, *Das Inkassogeschäft*, Köln 1987. [German text of URC 522 reprinted in *WM* 50(1996)229-235.]

2. *Universal Postal Union / Union Postale Universelle*

(a) Collection of Bills Agreement / Arrangement concernant les recouvrements.

(b) Hamburg, 27th July 1984.

(c) In force, 1.1.1986, abolished at the 1989 Washington Congress of the Union in light of an EC study that was initiated pursuant to a resolution at the 1984 Hamburg Congress.

(f) The "arrangement" (23 articles) regulated the collection of a wide range of commercial paper. The rules covered, *inter alia*, deposit of collectibles, the collection and forwarding of funds, liabilities.

(g) *Acts of the Universal Postal Union*, Vol. IV (Berne) (also available in French, Spanish, etc.). [The Agreement was published as a law in Switzerland: *RO*, 1985, pp. 2213-2218.]

SECTION VII: BANKRUPTCY / INSOLVENCY

General remarks and bibliography:

"Bankruptcy" appears to be the most difficult legal domain to harmonise. The regulation of bankruptcies touches the heart of the organisation of an economic framework for any country. Therefore bankruptcy regulations are generally mandatory, are often considered to be part of the public - and not commercial - law, and therefore bankruptcy rules cannot - in principle - be varied by agreement.

See **BALZ/SCHIFFMAN**, "Insolvency law reform for economies in transition - A comparative perspective", *Butterworths* (January and February 1996)19-26, 65-72; **BASEL COMMITTEE**, *Supervisory Guidance on dealing with weak banks – Report of the Task Force on Dealing with Weak Banks*, BIS, March 2002; **BRUNNER**, "Gläubigerschutz im internationalen Konkursrecht", *AJP/PJA* (1995)3-24; **DIDIER**, "La problématique du droit de la faillite internationale", *RDAI/IBLJ* (1989)201-206; **FLESSNER**, "Internationales Insolvenzrecht in Europa", in *Festschrift f. Th. Heinsius*, Berlin/New York 1991, pp. 111-127; **FLETCHER**, "International insolvency: A case for study and treatment", in: **Norton/Cheng/Fletcher** (ed.), *supra* footnote 39, p. 147-167; **FLETCHER** (ed.), *Cross-border insolvency: National and comparative studies*, Tübingen : J.C.B.Mohr(Paul Siebeck), 1992; **HANISCH**, "Aktuelle Probleme des internationalen Insolvenzrechts" *SJbIntR/ASDI* 136; **Idem**, "Internationale Insolvenzrechte des Auslandes und das Gegenrecht nach Art. 166 Abs. 1 IPRG", *SZIER* (1991)3-32; **GROUP OF TEN**, *Insolvency Arrangements and Contract enforceability* (report by the Contact Group on the legal and institutional underpinnings of the international financial system), Basel : BIS, September 2002; **HAUSMANN**, "Verfügungsbefugnis des Insolvenzverwalters", in: **Reithmann/Martiny**, *Internationales Vertragsrecht*, 5. Aufl. Köln : OttoSchmidt, 1996, p. 1381-1430; **GIOVANOLI/HEINRICH** (ed.), *International Bank Insolvencies: A central bank perspective*, London : Kluwerlaw International, 1999; **KIRCHHOF**, "Grenzüberschreitende Insolvenzen im Europäischen Binnenmarkt - Insbesondere unter Beteiligung von Kreditinstituten", *WM* 47(1993)1364-1370, 1401-1407; **KRINGS**, "Unification législative internationale récente en matière d'insolvabilité et de faillite", *RDU* (1997)657-674 (with English abstract); **LEONHARD/BESANT** (ed.), *Current issues in cross-border insolvency and reorganisations*, London/Dordrecht/Boston : Graham & Troman, 1994, v. **MARSCHALL** (ed.)/**HANISCH-LEMONTEY/RIESENFELD**, *Probleme des internationalen Insolvenzrechts*, Frankfurt a.M. 1982; **SCOLES/HAY**, *supra* at Section VIII 1 h), pp. 938-946 (International bankruptcy); **MARTIN-SERF**, "La faillite internationale : Une réalité économique pressante, un enchevêtrement juridique croissant", *J.D.I.* 122(1995)31-99; **OTTE**, "Inländischer einstweiliger Rechtsschutz im Inland bei Auslandskonkurs - ein neuer internationaler Justizkonflikt?", *RebelsZ* 58(1994)292-324; (**Various authors**): *Solving the insoluble - A legal guide to insolvency regulations around the world*, *IFL Rev.*, *Special Supplement*, June 1990; **MUIR-WATT**, "La réalisation de l'actif en cas de procédures parallèles de faillite: les pouvoirs du syndic étranger de la procédure principale à l'épreuve du droit français des effets des jugements", *Dr.prat.comm.int* 20(1995)541-552; **VOLKEN**, "Europäische Harmonisierung des Konkursrechts: frühe Staatsverträge", in: *Festschrift für Oscar Vogel*, Freiburg (Schweiz) 1991, pp. 465-481; **Idem**, "L'harmonisation du droit international privé de la faillite", *Rec. des cours*, 1991, V, pp. 343-431; **Idem**, "Der internationale Konkurs in neuer Sicht", in: *L'image de l'homme en droit/Das Menschenbild im Recht*, Freiburg (Schweiz), 1990, pp 538-561; **WILMOWSKI**, "Internationales Insolvenzrecht - Plädoyer für eine Neuorientierung", *WM* 51(1997)1461-147.

A comprehensive **bibliography** is to be found in **PRATTER**, *International insolvency bibliography: Commentary in books and journals*, Tarlton Law Library (University of Texas), Austin, 1995.

1. Council of Europe

- (a) **European Convention on Certain International Aspects of Bankruptcy / Convention européenne sur certains aspects internationaux de la faillite.**
- (b) Istanbul, 5th June 1990.
- (c) Not yet in force; requires three ratifications.
- (e) As of March 1992: B, D, F, GR, I, LUX, TR.
- (f) The Convention (44 articles) ends a project that was begun in 1981. In particular, it allows the opening of secondary bankruptcies in any other signatory country in which the bankrupt

party possesses assets, without the need for his insolvency to be established at local level: the secondary bankruptcy is governed by the national law of the state in which it is opened. It allows a bankruptcy administrator appointed abroad to take measures to protect property and institute legal proceedings; and contains safeguards for foreign creditors to enable them to prove their claims in national bankruptcy proceedings.

- (g) *I.L.M.* 30(1991)167-180 (English text), also available on-line at <http://www1.umn.edu/humanrts/euro/ets136.html>.
- (h) **DANIELE**, "La convenzione europea su alcuni aspetti internazionali del fallimento: prime riflessioni", *Riv.dir.int.priv.proc.* 30(1994)499-510; **FLETCHER**, "Cross-border developments", in *Financial Times - Business Law Brief*, May 1992. pp. 7-9; **Idem**, "Harmonization of jurisdictional and recognition rules: The Istanbul Convention and the Draft EEC Convention", in: **Ziegel** (ed.), *Current developments in international and corporate insolvency law*, Oxford : Clarendon, 1994; **RAMACKERS**, "Réflexions critiques sur la Convention européenne relative à certains aspects internationaux de la faillite", *J.C.P.-[Doctrine]* 67(1993)277-284; **MARTIN-SERF**, *supra* p.66, at. p.72-75; **VALLENS**, "La convention du Conseil de l'Europe sur certains aspects internationaux de la faillite", *Rev.crit.d.i.p.* 82(1993)136-166 (French text of Convention at pp. 121-136); **VOLKEN**, *supra* at "general remarks and bibliography", pp. 420-429.

On the previous *draft convention* of 1984, prepared by the Committee of Experts on Bankruptcy Law: **ALBANESE**, "Activités du Conseil de l'Europe en matière de droit de la faillite", in *Le droit de la faillite internationale*, Premier séminaire de droit international et de droit européen (Neuchâtel, 11-12 octobre 1985), Zürich 1986; **ARNOLD**, "Entwurf eines Europäischen Übereinkommens über den Konkurs", *ZIP* 5(1984)1114-1152 (German translation of draft convention at pp. 1152-1155); **GUILLENSCHMIDT**, "Projet de convention du Conseil de l'Europe sur certains aspects internationaux de la faillite", *Banque & Droit*, No. 7, 1989, pp. 191-194; **LOWRY**, "The harmonisation of bankruptcy law in Europe, The role of the Council of Europe", *J.Bus.L* (1985)73-76.

2. European Community

- (a) **Directive 2001/24/EC of the European Parliament and of the Council on the reorganisation and winding up of credit institutions**
- (b) Brussels, 4 April 2001
- (c) Final.
- (f) This Directive forms part of the Community legislative framework set up by Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions. It follows therefrom that, while they are in operation, a credit institution and its branches form a single entity subject to the supervision of the competent authorities of the State where authorisation valid throughout the Community was granted. The administrative or judicial authorities of the home Member State must have sole power to decide upon and to implement the reorganisation measures provided for in the law and practices in force in that Member State. Owing to the difficulty of harmonising Member States' laws and practices, it is necessary to establish mutual recognition by the Member States of the measures taken by each of them to restore to viability the credit institutions which it has authorised.

The Directive this contains rules on, *inter alia* mutual information of reorganisation procedures, division of competences in winding-up procedures, and the exercise of powers on appointed liquidators in another Member State. As regards the law applicable to netting agreements, Article 25 states, that they shall be governed solely by the law of the contract which governs such agreements.

- (g) O.J. L.125/15 of 5 May 2001; also at this [weblink to document](#)

- (h) On the draft of 8 February 1988(O.J. C 36, 8.2.1988, pp. 1-22): **DASSESE**, *supra*, p. 40; **DEVOS**, *supra*, p. 36.

3. *European Community*

- (a) **Commission, Draft of a Convention on Bankruptcy, Winding-up, Arrangements, Compositions and Similar Proceedings / Projet de Convention relative à la faillite, aux concordats et aux procédures analogues.**

(b) Bruxelles, 26th June 1980 / 17th November 1994.

(c) Draft.

- (f) The Convention (a.k.a. European Convention on Insolvency Proceedings, or "Bankruptcy Convention") is intended to provide a system of mutual recognition and enforcement of judgements in insolvency proceedings. It contains 87 articles in 9 Titles: I: Scope, II: jurisdiction, III: applicable law, IV: general effects of bankruptcy, V: recognition and enforcement, VI: interpretation by the Courts of Justice, VII: transitional provisions, VIII: relationship to other conventions, IX: final provisions. Title IV, Sec. V (effects of the bankruptcy on past acts and on current contracts), article 36 [**set-off**]: "The laws of the Contracting States must allow set-off in the event of bankruptcy, ...".

The harmonised rules will eventually be a *lex specialis* in bankruptcy matters with regard to the "Brussels Convention" (see Section VII .3). However, according to the most recent draft, it does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, fund management undertakings or collective investment undertakings, which will all be regulated by other Community legislative provisions (e.g. *infra*, 3).

- (g) *EC Bulletin*, 1982, Supplement No. 2. (A report/commentary is published at pp. 45-116 of the Supplement.); Lemontey, "Rapport sur la Convention...", III D/222/80-FR (Commission, Direction III); [weblink to Commssion Opinion](#) on Draft, of 10 December 1981 (in several languages)

Current version: 17th November 1994 [11013/94, DRS 30].

- (h) **DEVOS**, "Specific cross-border problems regarding bank insolvencies and European harmonization efforts", in **Giovanoli/Heinrich**, *supra*, p.66, 311-326; **FIDLER**, "A small step forward? - The Draft EU Bankruptcy Convention", *JIBL* 11(1996)3-6; **IDOT**, "La 'faillite' dans la Communauté: enfin une convention internationale?", *D.P.C.I.* 21(1995)34-55; **TURING**, "The European Convention on Insolvency Proceedings", *Butterworths* (February 1996)56-59

On the draft of 1980, **AMINOFF**, "The EEC Draft Bankruptcy Convention - an exercise in harmonising private international law", *Legal Issues of European Integration* (1990)121-137; **CELLE**, "Sulla legge regolatrice degli effetti del fallimento sui rapporti giuridici preesistenti", *Riv.dir.int.priv.proc.* 25(1989)837-862; **FARRAR**, "The EEC Draft Convention on Bankruptcy and Winding Up, a progress report and evaluation", *J.Bus.L.* (1977)320-337; **HUNTER**, "EEC Bankruptcy Convention and the development of insolvency law in the UK", *Bus.L.Rev.* (1980)250-252; **NADELMANN**, "Bankruptcy jurisdiction: News from the Common Market and a reflection for home consumption", *American Bankruptcy L.J.* 56(1982)65-73; **MARTIN-SERF**, *supra* p.66, at p. 67-72; **THIEME**, "Der Entwurf eines Konkursübereinkommens der EG-Staaten von 1980", *RabelsZ* 45(1981)459-499; **Idem** (ed.), *Materialien zum ausländischen und Internationalen Privatrecht*, Tübingen 1988, Bd. 32: Vorschläge und Gutachten zum Entwurf eines EG-Konkursübereinkommens [Bearb. von J. Thieme]; **VOLKEN**, *supra* at "general remarks and bibliography", pp. 401-420; **WOODLAND**, "The proposed European Community Insolvency Convention", in: **Leonhard/Besant**, *supra* p.66, at p. 1-32; **Idem**, "Cross-border bankruptcy in the light of the European Community Draft Convention on Insolvency Proceedings", in: *The International Symposium on Civil Justice in the Era of Globalization* (Tokyo, August 1992), Tokyo: Shinzan Pub.Corp., 1993, p. 443-456.

On the preliminary draft of 1970, FLETCHER, "The proposed Community Convention on bankruptcy and related matters", in: Lipstein (ed.), *Harmonisation of Private International Law by the E.E.C.*, London 1978, pp. 119-137; *Les problèmes internationaux de la faillite et le Marché commun*, Actes du colloque international sur l'avant projet de convention C.E.E. en matière de faillite, concordats et procédures analogues (Milan, 12-14 juin 1970), Padova 1971.

4. **International Bar Association**

(a) **Model International Insolvency Cooperation Act (MIICA).**

- (b) Helsinki, June 1989.
- (f) MIICA is a model statute proposed, not as a treaty, but in a format for enactment as domestic legislation. The model act provides mechanisms by which courts may assist and act in aid of insolvency proceedings in other countries; the basic purpose is to obtain a universal right for a representative of a foreign insolvency proceeding to appear and request ancillary relief with respect to assets located in another jurisdiction.
- (h) GLOBAND/KATUCKI, "Current Developments in International Insolvency Law and Practice", *Business Lawyer* 45(1990)2273-2280 (2279-2280); WYNNE, "[The coin of the realm : In the absence of treaty or convention, U.S. courts have adopted the principle of comity to govern transnational insolvencies](#)" (Kirkland&Ellis).

5. **United Nations - UNCITRAL**

(a) **Model Law on cross-border insolvency / Loi-type sur l'insolvabilité transnationale.**

- (b) 30th May 1997
- (f) The law applies to cases of inbound and outbound requests for assistance in respect of insolvency. It caters for the possibility of concurrent proceedings in respect of the same debtor and enables foreign creditors and other interested persons to have a *locus* in domestic insolvency proceedings. In particular the Model Law respects the differences among national procedural laws and does not attempt a substantive unification of insolvency law. The solutions offered by the Law include the following:
- providing access for the person administering a foreign insolvency proceeding ("foreign representative") to the courts of the enacting State and allowing the courts in the enacting State to determine what relief is warranted for optimal disposition of the insolvency;
 - determining when a foreign insolvency proceeding should be accorded "recognition", and what the consequences of recognition may be;
 - providing a transparent regime for the right of foreign creditors to commence, or participate in, an insolvency proceeding in the enacting State;
 - permitting courts in the enacting State to cooperate more effectively with foreign courts and foreign representatives involved in an insolvency matter;
 - authorizing courts in the enacting State and persons administering insolvency proceedings in the enacting State to seek assistance abroad;
 - providing for court jurisdiction and establishing rules for coordination where an insolvency proceeding in the enacting State is taking place concurrently with an insolvency proceeding in a foreign State;
 - establishing rules for coordination of relief granted in the enacting State in favour of two or more insolvency proceedings that take place in foreign States regarding the same debtor

History: At the UNCITRAL Congress held in May 1992 in New York proposals were made that the Commission consider undertaking work on international aspects of bankruptcy. A document was prepared in order to assist the Commission to decide whether an in-depth study on the desirability and feasibility of harmonised rules in this field should be taken.

In 1993 the Commission decided to pursue the matters further, and on the basis of a decision by the Commission taken in May 1995 the Working Group on Insolvency Law has embarked on the development of a legal instrument relating to cross-border insolvency.

The first major report of the Working Group of 1st December 1995 put an emphasis on judicial cooperation and access and recognition in cross-border insolvency. In particular, preliminary draft provisions were considered by the Working Group. They concern definitions of "foreign proceeding" and "foreign representative", as well as draft provisions on judicial cooperation, effects of recognition and on proof concerning foreign proceedings.

- (g) **UNCITRAL**, Official Records of the General Assembly, Fifty-second Session, Supplement No. 17 (A/52/17, annex I) (UNCITRAL Yearbook, vol. XXVIII: 1997, part three); [weblink to Model Law](#) at UNCITRAL; *Idem*, [Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency](#)", A/CN.9/442). The text is also reprinted in **Giovanoli/Heinrich**, *supra*, p.66, 387-399.

Report of the Working Group on Insolvency Law, 21st Session (20-31 January 1997), A/CN.9/435, of 19.02.1997; *Report of the Working Group on Insolvency Law, 19th Session (1-12 April 1996)*, A/CN.9/422, of 25.4.1996.

Preliminary documents: United Nations, UNCITRAL, A/CN.9/378/Add.4, *UNCITRAL Yb 24(1993)248-253*; **UNCITRAL**, *Cross border insolvency - Possible issues relating to judicial cooperation and access and recognition on cases of cross-border insolvency*, A/CN.9/WGV/WP.42 (26.9.1995); *Idem*, *Report of the Working Group on Insolvency Law on the work of the 18th session*, A/CN.9/419 (1.12.1995).

- (h) **SEKOLEC**, "The UNCITRAL Model Law on Cross-Border Insolvency", in: **Giovanoli/Heinrich**, *supra*, p. 66, 337-346; **UNCITRAL**, *Cross-border insolvency: Report UNCITRAL-INSOL Colloquium on cross-border insolvency: Note*, Vienna, 1994 (UN Doc.: A/CN.9/398); *Idem*, *Report on the UNCITRAL-INSOL Judicial Colloquium on cross-border insolvency* (Toronto, 22-23 March 1995), Vienna, 1995 (A/CN.9/413).

6. World Bank (International Bank for Reconstruction and Development)

(a) Principles for Effective Creditor Rights and Insolvency Systems.

(b) revised draft, 21 December 2005.

- (f) Developed by the World Bank in conjunction with partner organisations, international experts, and input from the international community, the *Principles* represent international consensus on a uniform framework and constitute been designed as a tool to assist countries in their efforts to evaluate and improve core aspects of their commercial law systems that are fundamental to a sound investment climate, and to promote commerce and economic growth. They offer guidance to policymakers on the policy choices required to establish or strengthen a functional system for healthy debtor-creditor relations, focusing mainly on creditor rights.

As of March 2006, the Principles have not yet been revised or approved by the Board of the World Bank.

- (g) **WORLD BANK**, [Revised Insolvency and Creditor Rights Systems Principles \[Draft 2005\]](#);

- (h) **FINANCIAL STABILITY FORUM**, "[Ongoing and recent work relevant to sound financial systems](#)", Note by the FSF Secretariat, 21 March 2006, p.16-17; **WORLD BANK**, [Insolvency and Creditor Rights Standard \[Draft 2005\]](#) (based on the World Bank Principles and the UNCITRAL Legislative Guide to Insolvency Law; the document was prepared by World Bank staff and experts, in collaboration with the Fund and UNCITRAL staff and experts, integrating the Principles and the Recommendations in a coordinated fashion; it will be part of the joint Bank/Fund initiative on standards and codes. **WORLD BANK**, [Global Insolvency law database website](#)).

7. World Bank (International Bank for Reconstruction and Development) / International Monetary Fund (IMF)

(a) Bank Insolvency Initiative.

(b) ongoing

- (f) The project, closely related to the work on effective insolvency described above, seeks to identify an appropriate legal, institutional and regulatory framework to deal with bank insolvency, including in the context of systemic crisis, and to develop an international consensus regarding that framework. The initiative covers a wide range of issues, from official administration of banks, over bank restructuring, to bank liquidation and key legal features of the legal framework in the context of systemic banking crises.

A number of global and regional seminars, as well as a series of consultation meetings with supervisory/legal authorities in all areas of the world, have been completed.

A version of the main document was presented for a technical briefing to the World Bank Board of Directors in January 2004. The document and its supporting and complementary papers are being used as benchmarks for voluntary policy dialogue with countries and for the respective reviews of their framework for bank insolvency. Four pilot country reviews (Chile, Czech Republic, South Africa and Brazil) have been completed and sent to the respective country authorities. 2006. The preparation of an annex to the document dealing with cross border aspects of bank insolvency is currently being considered.

- (h) **FINANCIAL STABILITY FORUM**, "[Ongoing and recent work relevant to sound financial systems](#)", Note by the FSF Secretariat, 21 March 2006, p.17-18;

SECTION VIII: PRIVATE INTERNATIONAL LAW

1. *Hague Conference on Private International Law*

(a) **Convention on the law applicable to certain rights in respect of securities held with an intermediary / Convention sur la loi applicable à certains droits sur des titres détenus auprès d'un intermédiaire.**

(b) The Hague, 5 July 2006.

(c) Not yet in force, requires 3 ratifications.

(e) CH: 5.7.2006; USA: 5.7.2006

(f) The Convention, adopted by the Diplomatic Session of 12 December 2002, addresses the need in a large and growing global financial market to provide legal certainty and predictability as to the law applicable to securities that are now commonly held through clearing and settlement systems or other intermediaries. It aims at reducing legal risk, systemic risk and associated costs in relation to cross-border transactions involving securities held with an intermediary so as to facilitate the international flow of capital and access to capital markets. Adoption of the Convention would establish common provisions on the law applicable to securities held with an intermediary beneficial to States at all levels of economic development, and establish legal certainty and predictability for the "Place of the Relevant Intermediary Approach" (or PRIMA) as determined by account agreements with intermediaries provides the necessary.

A first round of signatures, is to be expected in the course of 2006.

(g) Hague Conference. [Weblink to text of Convention](#) at Hague Conference (in English and French ; also : preliminary documents, and state of signatures/ratifications)

(h) DEVOS, "The Hague Convention on the law applicable to book-entry securities – the relevance for the European System of Central Banks" in: *Legal Aspects of the European System of Central Banks*, Liber Amicorum Paolo Zamboni Garavelli, Frankfurt : ECB, 2005, p. 377 ff.; *Idem*, "La loi applicable aux titres inermédiés: l'allort de la Convention de La Haye de décembre 2002", *T.B.H.* (2006) No.1, 5-32; SIGMANN/BERNASCONI, "[Myths about the Hague Convention debunked](#)", *IFLRev* (2003) No 1, p. 103; (further bibliography on the Convetion at the [Hague Conference website](#).)

2. *Hague Conference on Private International Law*

(a) **Note on the problem of the law applicable to international credit transfers / Note sur le problème de la loi applicable aux virements internationaux.**

(b) The Hague, November 1991.

(f) The document points out various problems of conflicts of laws in connection with UNCITRAL's Model Law on International Credit Transfers. The main issues concern the scope of the Model Law, the revocability of a payment order, the duty to refund, and conflict of laws. It comes to the conclusion that it does not seem possible to treat a transfer conducted electronically in exactly the same way as one carried out by the paper based method for conflict of law purposes. Before entering into detailed work on the elaboration of a possible convention on the law applicable to international credit transfers, the Conference intends to thoroughly consult the banks and the "funds transfer systems" which currently exist by means of a questionnaire.

(g) **HAGUE CONFERENCE**, Prel. Doc. No. I, (drawn up by Michel Pelichet) for the attention of the Special Commission of June 1992.

See also: **HAGUE CONFERENCE**, Note on conflicts of laws occasioned by transfrontier data flows: Preliminary Document No. 5 of November 1987; **HAGUE CONFERENCE**, Questionnaire on the law appli-

cable to international credit transfers - Synthesis of replies: Preliminary Document No. 20 of March 1993.

3. *Hague Conference on Private International Law*

- (a) **Convention on the law applicable to contracts for the international sale of goods / Convention sur la loi applicable aux contrats de vente internationale de marchandises.**
- (b) 22nd December 1986.
- (c) Not yet in force (requires ratification, acceptance, approval, or accession by at least five States).
- (d) Argentina (4.10.91).
- (e) (as of August 1994) NL (2.2.90), Czech Republic, Slovak Republic [In lieu of Czechoslovakia that had signed the Convention on 22.12.86, but ceased to exist as a federal State on 1st January 1993].
- (f) The Convention (31 articles), bearing in mind the UN Convention on contracts for the international sale of goods (*supra* section I.5), determines the law applicable to such contracts between parties (i) having their places of business in different States; (ii) in all other cases involving a choice between the laws of different States, unless such choice arises solely from a stipulation by the parties as to the applicable law, even if accompanied by a choice of court or arbitration (art. I). The law applicable to a contract governs, inter alia, also the various ways of extinguishing obligations, as well as prescription and limitation of actions (art. 12 g).

The Convention is intended to replace the Convention of 1955 on the same subject (in force for B, CH, DK, E, F, I, L, N, NL, S, SF, Niger).

- (g) *Act.Doc. La Haye* (1987)690-708 (official text in English/French) an annex contains unofficial UN-translations in Arabic, Chinese, Spanish and Russian; Hague Conference, Collection of Conventions (1951-1988), pp. 326-339; the official text ("édition définitive" of the Extraordinary Sessions, 30th October 1985) is also reprinted in: *RabelsZ* 51(1987)197-213; Hague Conference, *Convention ..., and Explanatory Report/Rapport explicatif* (by/de von Mehren), Den Haag, May 1987. [Weblink to the Convention at the Hague Conference.](#)
- (h) **BOSCHIERO**, "La nuova convenzione dell'Aja sulla legge applicabile alla vendita internazionale", *Riv.dir.int.priv.proc.* 22(1986)507-540; **COHEN/UGHETTO**, "La nouvelle Convention de La Haye relative à la loi applicable aux ventes internationales de marchandises", *Rec. Dalloz* (1986) No. 20 p. 20 et seq., No. 21 pp. 157 et seq.; **ENDERLEIN/MASKOW/STROHBACH**, *supra* at Section I 5 h); **LANDO**, "The 1985 Hague Convention on the Law Applicable to Sales", *RabelsZ* 51(1987)60-85; **LOUSSOUARN**, "La Convention de La Haye d'octobre 1985 sur la loi applicable aux contrats de vente internationale de marchandises", *Rev.crit.d.i.p.* 75(1986)271-296; **NAPOLETANO**, "Il progetto di una nuova convenzione sulla legge applicabile alla compravendita internazionale di merci", *Dir.comunit.scambi int.* 24(1985)19-54; **PELICHET**, "La vente internationale de marchandises et le conflit de lois", *Rec. des Cours*, tome 201, 1987, I, pp. 9-193 (text of Convention in E/F, pp. 195-209).

On the *Convention of 1955*: **ZWEIGERT/DROBNIG**, "Einheitliches Kaufrecht und IPR", *RabelsZ* 29(1965)146-165.

4. *European Community*

- (a) **Convention on the Law Applicable to Contractual Obligations ("Rome Convention").**
- (b) Rome, 19th June 1980.
- (c) In force, 1.4.1991. In some countries, the provisions of the Convention had been prior introduced into the respective legal system by specific laws, e.g. B-law of 14.7.87, D-25.7.86, DK-9.5.84, LUX-27.3.86.
- (d) B-14.7.1987, D-8.1.1987, DK-7.1.1986, F-10.11.1983 (J.0.3.3.1991), GB-29.1.1991, I-25.6.1985, LUX- 1.10.1986, NL-1.9.91.

- (e) E- (Convention d'adhésion du 18.5.1992); GR (Convention d'adhésion du 10.4.1984), Ireland (in force: 1.1.1992); P- (Convention d'adhésion du 18.5.1992).
- (f) Its rules (33 articles) apply even as regards contracts with a link to a non-EC country. Some main provisions: an express choice of law will be given effect (art. 3), otherwise, a contract will be governed by the law of the country with which it is most closely connected, i.e. country where party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence/central administration/principal place of business (art. 4), under certain circumstances, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection (art. 7.1).
- (g) *Official Journal of the EC*, 1980, No. L 266/1-19 (9.10.1980); [weblink to the text of the Convention in several languages](#). Report by Professors **Giuliano** and **Lagarde**, *O.J.* 1980, C 282/1-50 (31.10.1980).
- (h) **BONOMI**, "I nuovo diritto internazionale privato dei contratti", *Banca Borsa I*, 55(1992)36-107; **JAFFEY**, "The English proper law doctrine and the EEC Convention", *I.C.L.Q.* 33(1984)531-557; **FOYER**, "Entrée en vigueur de la Convention de Rome du 19 juin 1980 sur la loi applicable aux obligations contractuelles", *J.D.I.* 118(1991)601-631; **LAGARDE**, "Les limites objectives de la Convention de Rome: conflits de lois, primauté du droit communautaire, rapports avec les autres conventions", *Riv.dir.int.priv.proc.* 29(1993)33-42; **LESGUILLONS**, "Loi applicable aux obligations contractuelles: entrée en vigueur de la Convention de Rome du 19 juin 1980", *RDAI/JIBL* (1991)267-283; **MALATESTA**, "Considerazioni sull'ambito di applicazione della convenzione di Roma del 1980: Il caso dei titoli di credito", *Riv.dir.int.priv.proc.* 28(1992)887-904; **PELICHET**, "Quelques réflexions sur l'article 23 de la Convention de Rome sur la loi applicable aux obligations contractuelles"; in *Mélanges en l'honneur de M. Van Rijn van Alkemand*, Dordrecht 1993; **PLENDER**, *The European Contracts Convention - The Rome Convention on the Choice of Law for Contracts*, London 1991; **REITHMANN-MARTINY**, *Internationales Vertragsrecht*, 4. Auflage, Köln 1988, pp. 1-33, **ROME CONVENTION.ORG**, [Online database on the Convention](#) (with cases and bibliography); **SCOLES/HAY**, *Conflict of Laws*, 2nd ed., St. Paul, MN. 1992, pp. 725-727. **SOUSI-ROUBI**, "La Convention de Rome et la loi applicable aux contrats bancaires", *Rec. Dalloz Sirey - Chronique*, No. 26 (1993)183-190; Text and report of Convention also reprinted in **NORTH** (ed.), *Contract Conflicts*, 1982.

5. European Community

- (a) **Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters ("Brussels Convention") / Convention concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale ("Convention de Bruxelles")**.
- (b) Brussels, 27th July 1968.
- (c) In force; (for respective dates, see *infra*, d).
- (d) B, D, F, I, LUX, NL = 1.2.1973; GB = 1.1.1987; IRE = 1.6.1988 (see "Conventions d'adhésion", *infra*, g)
- (f) 41 articles (partially altered by the "Conventions d'adhésion").
- (g) *Official Journal of the EC*, No. L 299/32 (1972); [weblink to text of Convention](#). "Conventions d'adhésion": *O.J. EC*, No. L 304/1 (1978), L 388/1 (1982), C 97/1 (1983). See also **FCO TREATY SECTION** (UK Government), ["Status information on the Lugano and Brussels Conventions"](#).
- (h) **BASEDOW**, "Allgemeine Fragen des Europäischen Gerichtsstands- und Vollstreckungsübereinkommens (GVÜ)", in: *Handbuch des internationalen Zivilverfahrensrechts*, Bd.I, Tübingen 1982, pp. 99-179; **CHATTERJEE**, "The legal effect of the exclusive jurisdiction clause in the Brussels Convention in relation to banking matters", *JIBL* 10(1995)334-340; **COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES** (ed.), *Compétence judiciaire et exécution des jugements en Europe* (Actes du colloque sur l'interprétation de la Convention de Bruxelles par la Cour de justice européenne dans la perspective de l'espace judiciaire européen, Luxembourg, 11-12 mars 1991), London, Dublin, etc. 1993; **DROZ**, *Compétence judiciaire et effets des jugements dans le Marché commun*, Paris : Dalloz,

1972; **FOCSANEANU**, *Compétence judiciaire, reconnaissance et exécution des décisions civiles et commerciales dans la CEE*, Paris 1982; **GAUDEMET-TALLON**, *Les conventions de Bruxelles et de Lugano: Compétence internationale, reconnaissance et exécution des jugements en Europe*, Paris : LGDJ, 1993; **HARTLEY**, *Civil Jurisdiction and Judgements - The application in England of the Convention on Jurisdiction ... under the Civil Jurisdiction and Judgements Act 1982*, London 1984; **Juris-Classeur de droit international**, T. 9, fasc. 630 (Convention), 631 (commentary on "Généralités" by P.Jenard/ J.Lemontey), and fasc. 632-633 (commentary on specific matters by J.-P. Beraudo); **MOLONEY/ROBINSON** (eds.), *The Brussels Convention ...*, Dublin: I.C.E.L. 1989); **VANDER ELST/M. WESER**, *Droit international privé belge et droit conventionnel international*, T. II, Bruxelles 1985.

6. *European Community/EFTA*

- (a) **EC/EFTA Parallel Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters / Convention concernant la compétence judiciaire et l'exécution en matières civile et commerciale. ("Lugano Convention").**
- (b) Lugano, 16th September 1988.
- (c) In force for CH, F and NL on 1.1.92; for LUX on 1.2.92; for B on 1.1.97
- (c) For CH vis-à-vis F, NL, LUX, GB, P; for N, S and SF vis-à-vis F, GB, I, LUX, NL, P (as of July 1993). (+A)
- (d) CH: 18.10.91; LUX: 5.11.91; N: 2.2.93; S: 9.10.92; SF: 27.4.93.
- (e) A: 26.2.92; ISL: 16.9.88
- (f) (68 articles).
- (g) *Official Journal of the EC*, No. L 319 (25.11.1988) (Convention and Protocols). Text and Explanatory report/"Travaux préparatoires" - in: *Lugano Convention*, Vol.I and II, Zürich 1991. Text also reprinted in: *Rev.crit.d.i.p.* 78(1989)149-175, English text in: *I.L.M.* 28(1989)620-643; Italian text in: *Riv.dir.int.priv.proc.* 25(1989)735 ff. [Weblink to the text of the Convention and Protocols](#). See also: **FCO TREATY SECTION** (UK Government), "[Status information on the Lugano and Brussels Conventions](#)".
- (h) **BERNET/HEIM**, "The EC/EFTA Parallel Convention ...:", *Butterworths* (1989)80-82; **BERNASCONI/GERBER**, "Der räumlich-persönliche Anwendungsbereich des Lugano-Übereinkommens", *SZIER* 3(1993)39-72; **BROGGINI**, "La Convention parallèle de Lugano, vue par un juriste suisse", *Sem.judiciaire* 112(1990)481-512; **CONSEIL FÉDÉRAL SUISSE**, "Message du 21 février 1990 au Parlement suisse et texte de la Convention", *Feuille fédérale/Bundesblatt* n.16, vol. II, 24. avril 1990, pp. 269 et seq.; **COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES** (ed.), *supra*, 2 h; **DONZALLAS**, *La Convention de Lugano*, Vol. I, Berne :Staempfli, 1996; **DROZ**, "La Convention de Lugano parallèle", *Rev.crit.d.i.p.* 78(1989)1-51; **DUTZAK** (ed.), *The Lugano and San Sebastian Conventions*, London 1990; **GAUDEMET-TALLON**, *supra*, p. 75; **GILLARD** (ed.), *L'espace judiciaire européen - La Convention de Lugano du 16 septembre 1988* (contributions de: Voyame, Broggin, Poudret, Patocchi, Volken), Lausanne 1992; **KAUFMANN-KOHLER**, "Convention de Lugano et contentieux bancaire", in: *Journée 1995 de droit bancaire et financier*, Bern : Staempfli, 1995, p. 55-89, and *RDIA/IBJL* (1996)961-986; **MEIJKNECHT**, "The Lugano Convention and the San Sebastián Accession Convention viewed in their mutual context", *NILR XL*(1993)487-495; **MERCIER/DUTOIT**, *Europe judiciaire: les Conventions de Bruxelles et de Lugano*, Bâle, Frankfurt a.M., 1991; **MINOR**, "The Lugano Convention - some problems of interpretation", *Common Market L.Rev.* 27(1990)507.

Glossary of journals

AcP	Archiv für die civilistische Praxis (Tübingen, Germany)
AFDI	Association française de droit de l'informatique
AGEFI	L'Agence Economique et Financière (Paris)
AJP/PJA	Aktuelle Juristische Praxis/Pratique juridique actuelle (St. Gallen, Switzerland)
Alabama L.Rev.	Alabama Law Review (Alabama)
Am.J.Comp.L	American Journal of Comparative Law (Ann Arbor, MI / Berkeley, CA)
A.U.L.Rev.	American University Law Review (Washington College of Law); also at http://www.wcl.american.edu/pub/journals/lawrev/aulrhome.htm
Banca Borsa	Banca, borsa e titoli di credito (Milano)
Bus.L.Rev.	Business Law Review (Ipswich, England)
Bancaria	(Roma)
Bankers Magazine	(Boston, USA)
Banking&Fin.L.Rev	Banking and Finance Law review (Scarborough, Ontario)
Banking L.J.	Banking Law Journal (Boston, MA)
Banking Technology	Banking Technology (London)
Banque de France Bulletin Digest,	
Banque & Droit	Banque & Droit (Paris)
Bulletin de la Banque de France	
BGBI.	Bundesgesetzblatt (Germany)
Brooklyn J.Int'l L	Brooklyn Journal of International Law (Brooklyn, New York)
Bus.Lawyer	Business Lawyer (Chicago)
Butterworths	Butterworths Journal of International Banking and Financial Law (London)
Cahiers de droit (Québec)	(Laval, Québec)
Cause/Effect	(USA / Boulder, Colorado?)
C.B.L.J	Canadian Business Law Journal / Revue Canadienne du droit de commerce (Aurora, Ontario)
CEPR	Centre for Economic Policy Research (London)
C.F.R. - (USA)	Code of Federal Regulations (Washington, USA)
Clifford Chance Newsletter	(London)
CLSR	Computer Law and Security Report
Common Market L.Rev.	Common Market Law Review (London)
Computerwoche	
Conyuntura Económica	Fedesarrollo (Bogotá, Colombia)
CR	Computer und Recht (Köln)
CRi	Computer und Recht International (Köln)
Dir.com.int.	Diritto del commercio internazionale (Milano)
Can.Bus.L.J/Rev.can.dr.comm	Canadian Business Law Journal (? Ottawa)
Col.L..Rev.	Columbia Law Review (New York)
De Pecunia	De Pecunia (Bruxelles)
Dir.comunit.scambi int. Diritto	Comunitario e degli Scambi Internazionali (Milan, Parma, Naples)
DIT	Droit de l'informatique et de Télécoms
Droit bancaire	

Droit de l'informatique	(Bruxelles)
Dr.prat.comm.int	Droit et pratique du commerce international (Paris)
DuD	Datenschutz und Datensicherung
ECB	European Central Bank
Economic Bulletin	Norges Bank, Economic Bulletin (Oslo)
EDI Forum	(USA, Dallas),
EDI LawRev.	EDI Law Review : legal aspects of paperless communication (Dordrecht)
EDI Update International	(London)
EDV und Recht	
Europe	Europe-Agence internationale d'information pour la presse (Bruxelles)
Eur.J.Op.Research	European Journal of Operational Research
Expertises	Expertises des systèmes d'information (ISSN 0221-2102)
Fin Stab Rev NBB	Financial Stability Review (National Bank of Belgium), also at http://www.nbb.be
Fordham L.Rev	Fordham Law Review (New York)
Federal Reserve Bulletin	Federal Reserve Bulletin (Washington)
Firstmonday	Firstmonday (peer-reviewed journal on the internet) http://www.firstmonday.org
Futures Int'l L. Letter	
GALJ	German American Law Journal (Washington, D.C.)
Gaz. Pal.	Gazette du Palais (Paris)
Harvard Int'l L.J.	Harvard International Law Journal (Cambridge, Mass.)
Harv.J..Law and Tec.	Harvard Journal of Law and technology
I.C.L.Q.	International and Comparative Law Quaterly (London)
IFLRev.	International Financial Law Review (London)
I.L.M.	International Legal Materials (Washington)
Institutions Européennes & Finance	(Paris)
Int'l Banking and Fin. L.	International Banking and Financial Law (London)
Int'l Bus.Lawyer	International Business Lawyer (London)
Int'l Computer Law Adviser	
Int'l PaySys	International Payment Systems, 7th Annual Conference, April 1999; Conference papers on CD-Rom (London : ibc).
Int'l Yb of L.Comput.&Technol	International Yearbook of Law Computers and Technology
J.D.I.	Journal du droit international /"Clunet" (Paris)
J.Bus.L	Journal of Business Law (London)
JIBL	Journal of International Banking Law (Oxford)
J of Banking & Finance	Journal of Banking & Finance (Reed Elsevier, London) www.elsevier.com
J of Financial Transformation	Journal of Financial Transformation, Capco-Capital Markets Company, www.capco.com
Legal Issues of European Integration	(Deventer, Netherlands)
Lira	Lira Bültten, Turkish Central Bank, Ankara
L.M.C.L.Q..	Lloyd's Maritime and Commercial Law Quaterly (London)
Michigan L.Rev.	(Mich. L. Rev.) Michigan Law review (Lincoln, Nebraska)
MonRev	Danmarks Nationalbank, Monetary Review
Mortgage Banking	(by Mortgage Banking Association of America)
NamJecFin	North American Journal of Economics & Finance, JAI Press Inc.

Nederlands Jurisdenblad	
O.J. (EC)	Official Journal of the European Communities (Luxembourg)
Payment Systems Worldwide	(Lake Forest, IL. USA; in 2006, this Journal was taken over by Centralbanking Publications and renamed "Speed")
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht (Tübingen, Germany)
RBU	Revue de droit uniforme / Uniform Law Review (UNIDROIT, Rome)
RDAI/IBLJ	Revue de droit des affaires internationales / International Business Law Journal (Paris / Kluwer)
Rec. des Cours	Recueil des Cours. Académie de droit international (Paris)
RCDAI	
Rec. Dalloz	Recueils Dalloz et Sirey (Paris)
R.E.D.I.	Revista electrónica de derecho informático (Barcelona, Spain / http://derecho.org/redi)
Rev.crit.d.i.p.	Revue critique de droit international privé (Paris)
Rev.der.bancario y bursátil	Revista de Derecho Bancario y Bursátil (Madrid)
Rev.dr.bancaire et de la bourse	Revue de droit bancaire et de la bourse (Paris)
Rev.Banque	Revue Banque (Paris)
Rev. de la Banque	Revue de la Banque/Bank en Financiewezen (Bruxelles)
Rev.econ.fin.	Revue d'economie financière (Paris)
Rev.FELABAN	Federación Latinoamericana de Bancos (Bogotá)
Rev.europ.dr. de la consommation	
Rev.jurispr.com	Revue de jurisprudence commerciale (Paris)
RIDE	Revue Internationale de Droit Economique (Bruxelles)
Riv.dir.int.priv.proc.	Rivista di diritto internazionale privato e processuale (Padova)
RO (rec Of Lois fed)	Recueil Officiel des Lois Fédérales (Bern, Suisse)
Schweizer Bank	
Sem.judiciaire (Genève)	Semaine Judiciaire
Sem.juridique -	(J.C.P.) Semaine Juridique (Paris)
SJbIntR/ASDI	Schw. Jahrbuch für internationales Recht / Annuaire suisse de droit international (Zürich, Suisse)
SMM	Single Market Monitor
Speed	(Centralbanking Publications) ; Speed succeeded to Payment Systems Worldwide in 2006)
SZIER	Schweizerische Zeitschrift für internationales und europäisches Recht =Revue suisse de droit international et de droit européen - RSDIE (Fribourg, Suisse)
SZW/RSDA	Schweizerische Zeitschrift für Wirtschaftsrecht - Revue suisse de droit des affaires (Zürich, Suisse)
T.B.H.	Tijdschrift voor Belgisch Handelsrecht – Revue de Droit Commercial Belge
ULR/RDU	Uniform Law Review/Revue de droit uniforme (UNIDROIT, Rome)
UNCITRAL Yb	United Nations Commission on International Trade Law Yearbook (New York)
UNTS	United Nations Treaty Series
U.Pa.J.Int'l.Bus.L.	University of Pennsylvania Journal of International Business Law
Vulindlela	Vulindlela-Open the Way, SADC Payment System Project journal (SA Reserve Bank)
Web J.Curr.Leg.Iss	Web Journal of Current Legal Issues (electronic journal on Web-server of University of Newcastle upon Tyne, a hardcopy yearbook is published at the end of each calendar year [Blackstone Press])

Wisconsin Int'l L.J.	Wisconsin International Law Journal (Madison, Wisconsin)
I.C.L.Q.	International and Comparative Law Quarterly (London)
Wirtschaft und Recht	(Zürich, Suisse)
World of Banking	(Washington)
WM	Wertpapiermitteilungen, Teil IV. Wirtschafts- und Bankrecht (Frankfurt/Main)
x-change	(Berlin, Deutsche EDI-Gesellschaft - DEDIG)
ZBB	Zeitschrift für Bankrecht und Bankwirtschaft (Köln, Germany)
ZfRV (Wien)	Zeitschrift für Rechtsvergleichung, internationales Privatrecht und Europarecht
ZIP	ZIP- Zeitschrift für Wirtschaftsrecht (Köln)
ZWirtR	Zeitschrift für Wirtschaftsrecht (Wien)
Zs.europ.Priv.R	Zeitschrift für europäisches Privatrecht (München)
Zs.f.d.ges.Handels- u.Wirtsch.R	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht

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