

# Book Review

**Niamh Moloney (2008)**

***EC Securities Regulation*, 2<sup>nd</sup> edition**

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**Željko Šević**

*Glasgow Caledonian University*

The volume published in a highly acclaimed *Oxford EC Law Library* is certainly a comprehensive and authoritative source for the study of EU securitisation law and regulation. The book focuses not only on the most important EU regulations in the area of securities and security industry, *i.e.* financial services, but also on the less known sources and interpretations, including the positive practices. It presents in a highly comprehensive manner the 2003 *Prospectus Directive*, 2003 *Market Abuse Directive*, 2004 *Transparency Directive*, and 2004 *Markets in Financial Instruments Directive*, as the main legal sources, but also looks at the far-reaching and, at the time of its launch, somewhat radical EU Financial Services Action Plan.

The volume is organised in eight parts focusing on: Capital-raising, Collective-investment schemes, EC investment services regime, Trading markets, Market abuse and the Institutional structure of EC securities regulation. These eight parts comprise 14 chapters, most of which make the part on 'EC Investment-services regime'. The book begins with a very well written and extremely useful introductory chapter outlining in a very simple manner the nature and development of EC, *i.e.* EU, securities regulation. Like in all texts in good Anglo-Saxon tradition, a list of cases is prepared, and in this case a fairly good list covering the judiciary practice at European level. As the EU legal system is largely a hybrid model, it will prove useful to legal practitioners and scholars hailing not only from the Common Law countries, but also those who were educated and/or practised in Civil Law countries.

In the introductory part, the reader will find a very good and informative discussion of harmonisation aspects of EU securities legislation and to what extent it can really be a common weal within the EU economic space. The important Lamfalussy Report is also discussed, but within the larger framework of the Financial Services Action Plan (FSAP). It is emphasised, rightly, that EU/EC securities regulation should provide some harmonisation, but not necessarily hamper regulatory competition. Harmonisation should also lead to better regulatory cooperation and ensure that the risk challenges of modern times are met by the EU regulators. Better regulation is a must, and also a major challenge in implementing the post-FSAP agenda.

The focus of the volume is, as its very title says, the EC securities regulation, but the author goes, in our view, well beyond the classical coverage and discusses, fairly successfully (for a lawyer) the issues of financial reporting and the EU-wide adoption of International Financial Reporting Standards (which are replacing the International Accounting Standards) by the EU from 2005. The cover of accounting aspects is not very detailed, but it is presented in the chapter focussing on the 2004 Transparency Directive, and the dichotomy offered: periodical reporting and *ad hoc* disclosure. The author also offers an extensive study of the 1985

*Undertakings for Collective Investment in Transferable Security (UCITS) Directive*, giving a good background to the EC regulatory capture in the area and main reasons behind the Commission actions. The author rightly focuses on the current shortcomings of the older directive and emphasises that many of the regulatory requirements may not survive the test of the risk-based regulatory approach that has been enforced in most recent times. In the same part, the author also touches upon the prudential regulation of investment services, and also later the protective regulation and the role of gatekeepers.

The author also looks at the settlement systems, which has been labelled in the EU securities legislation as 'post-trading systems'. Any post-trading (securities-settlement) system is designed to transfer ownership over the security from a seller to the buyer in return for payment. The transfer has to be economical (controllable and acceptable transaction costs) and also trusted (or trustworthy) in its social reputation. The author claims that the settlement risks call for closer supervision, as clearing and settlement risks are vulnerable to systemic risk and are subject to supervision in the form of risk-management controls designed to ensure their stability and integrity and shore up confidence in the market-place (p. 861). The author in this matter goes somewhat beyond the study of EC regulation and looks at the national structure and national practices of Central Securities Depositories (CSDs), which play a second-to-none role in the settlement of securities transaction. This extension is also followed by *stricto sensu*, not a legal but public policy discussion of policy development in this area. The story begins with the Pre-FSAP 1998 Communication on Financial Services, and finishes with the current deliberations on regulatory capture by the EC in this rather important area of economic life. The Giovannini Barriers (*i.e.* Giovannini Reports) and the Parliament's 2005 Van den Burg Resolution have also been presented and used for explanations in issue building in the EU public policy process. In this context, the author also looks at the current policy tensions and for instance, the development of the 2006 Industry Code of Conduct and the 2004 ESCB-CESR Standards, developed by the European System of Central Banks and the Committee of European Security Regulators.

The book also considers the 2004 Market Abuse Directive (MAD), which is a key FSAP measure and was one of the first bigger successes of FSAP. The author rightly focuses on the issues of market abuse, as this is one of the issues that are very topical for the very essence of the existence of the EU, as a community promoting free movement of people, goods (and services) and capital amongst the member countries. The abuse of markets creates a systemic inefficiency and, in a longer run, leads to (systematic) market failure. Again, the very analysis of the MAD is comprehensive: it starts with the initial deliberations in the preparation process and finishes with the analysis of the future development in this area, in the times of Post-FSAP.

Whilst parts 2 to 6 are most likely to be of benefit to legal scholars and practitioners, parts 1 and 7 (the introduction and the last part of the book) will certainly attract the attention of those readers who may come from other backgrounds, but are interested in particular aspects of EC security regulation: practising and academic accountants, financial services specialist and academics, (economic) regulators, etc. Part 7 discusses in great detail the rule-making structure within the EU, and what may be (or rather is) the inter-relation between the EU bodies and the corresponding bodies in the member states. Focusing on an important Lamfalussy report, the chapter offers a good overview of the development of and practices of EU regulatory institutions.

This is an exceptionally well-written book that will not only satisfy the expectations of even the most requiring (legal) practitioner and/or scholar, but will also be well-received by students and those from non-legal backgrounds who may be interested in financial services and particularly in EU securities regulation. The book has been written with the rigour of a (research) monograph, but is also a very good compendium of EC securities regulation that

would find its place on the practitioners' desks and academics' bookshelves. Certainly, this is a book that one would expect to be widely used. It is likely to have many future editions, especially when considering that the EC/EU is widening its regulatory capture. This book captures incredibly well the past, present and future of EC/EU securities regulation, a feature that very few texts may boast of.

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