

National Reports on the Transfer of Movables in Europe

Volume 5:
Sweden, Norway and Denmark, Finland, Spain

edited by

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Schriften zur Europäischen Rechtswissenschaft /
European Legal Studies / Etudes juridiques européennes

Band 14 / Volume 14 / Volume 14

European Legal Studies Institute, Osnabrück

Molengraaff Institute for Private Law, Utrecht

Amsterdam Institute for Private Law

Institute of European and Comparative Law, Oxford

Institut für Zivilrecht, Ausländisches und Internationales Privatrecht, Graz


sellier.
european law
publishers

Schriften zur Europäischen Rechtswissenschaft /
European Legal Studies / Etudes juridiques européennes

herausgegeben

im European Legal Studies Institute, Osnabrück von Christian von Bar

im Molengraaff Institute for Private Law, Utrecht von Ewoud Hondius

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im Institute of European and Comparative Law, Oxford von Stefan Vogenauer

im Institut für Zivilrecht, Ausländisches und Internationales Privatrecht, Graz
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Linguistic revision and editorial support for all reports in this volume:

Pádraic McCannon

The reports published in this volume and a linguistic revision of the whole book are financed by the Fonds zur Förderung der wissenschaftlichen Forschung (FWF), Vienna.

Publication of the whole series of national reports is supported by:

Bundesministerium für Wissenschaft und Forschung (Vienna);

Bundesministerium für Justiz (Vienna);

Swiss Institute of Comparative Law (Lausanne);

Land Salzburg;

Evers-Marcic-Stiftung an der Rechtswissenschaftlichen Fakultät der
Universität Salzburg.

ISBN (print) 978-3-86653-136-9

ISBN (eBook) 978-3-86653-909-9

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available in the Internet at <http://dnb.d-nb.de>.

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Production: Karina Hack, Munich. Typesetting: fidus Publikations-Service GmbH, Nördlingen. Printing and binding: AZ Druck und Datentechnik GmbH, Kempten. Printed on acid-free, non-ageing paper. Printed in Germany.

Preface

This is the fifth volume of a series of national reports on basic issues concerning the acquisition and loss of ‘ownership’ of movable assets. After having read the reports on the Nordic countries contained in this volume, it will become apparent to the reader that there is indeed a valid reason for using quotation marks when referring to ‘ownership’ in this preface. A ‘transfer of ownership’ concept is not used in these legal systems. Scandinavian lawyers consider it to hide the real problems rather than solving them. Instead, the Nordic legal systems apply a ‘functional approach’. The last report of this volume, a detailed piece on Spanish law, will offer a contrast to this from a traditional civil law perspective. Readers will also see that Norway and Denmark are dealt with jointly in one report. This is due to the fact that it was not possible for the editors to find a Danish author within the given time frame. We are therefore grateful to Jan-Ove Færstad from Bergen University for solving this problem by writing a double report covering both Norway and Denmark.

The full series covers 28 European legal systems, distributed over six volumes and appears as a by-product of the research activities of the Graz & Salzburg working group on ‘Transfer of Movable’ within the ‘Study Group on a European Civil Code’,¹ which was in charge of preparing Book VIII of the Draft Common Frame of Reference (DCFR).²

Starting with general property law issues, like the concepts of ‘ownership’ and possession employed in the respective legal systems and the related means of protection, the reports primarily deal with the ‘derivative’ transfer of ‘ownership’, but extend to good faith acquisition from a non-owner, acquisitive prescription, processing and commingling, and to further related issues. Corresponding to the working group’s task within the Study Group, the reports are generally restricted to movable assets and basically leave aside fiduciary transfers, such as transfers for security purposes. However, ultimately they do not only cover issues exclusive to property law, but

¹ For further information on this project, see *Lurger*, Introduction to the Project ‘Transfer of Movable’: Organisational Framework, Basic Issues and Goals, in: Faber/Lurger (eds.), *Rules for the Transfer of Movable – A Candidate for European Harmonisation or National Reforms?* (2008), 1.

² *Von Bar/Clive* (eds.), *Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference (DCFR) Full Edition* (2009), Volume V. Book VIII is entitled ‘Acquisition and loss of ownership of goods’.

also much of the related law of obligations, enforcement and insolvency – in a generally accessible language, *i.e.* English.³

Publishing the whole series of national reports would not be possible without generous support from a number of institutions. Financial support was provided by the Austrian Federal Ministry of Science and Research (Bundesministerium für Wissenschaft und Forschung), the Austrian Federal Ministry of Justice (Bundesministerium für Justiz), the Swiss Institute of Comparative Law (Lausanne), the state of Salzburg (Land Salzburg) and the Evers-Marcic-Stiftung an der Rechtswissenschaftlichen Fakultät der Universität Salzburg. Both the reports themselves and their linguistic revision was financed by the Austrian Science Fund (Fonds zur Förderung der wissenschaftlichen Forschung, FWF). The editors wish to express their gratitude to all these institutions.

We also wish to thank Mrs Monika Lammer for formatting the manuscripts and, particularly, Mr Pádraic McCannon, LL.B. (Ling. Germ., Dub.), now at the University of Osnabrück, who carried out the linguistic revision of all reports in this volume with great care and diligence.

April 2010
Salzburg and Graz

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³ The concept of these reports is further described in the preface to the first volume of the series: Faber/Lurger (eds.), *National Reports on the Transfer of Movables in Europe – Volume I: Austria, Estonia, Italy, Slovenia* (2008).

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