

THE INTEGRATION OF EUROPEAN FINANCIAL MARKETS

The regulation of monetary obligations

Noah Vardi



Routledge-Cavendish
Taylor & Francis Group
LONDON AND NEW YORK

Contents |

<i>Acknowledgements</i>	x
<i>Table of Statutes and Cases</i>	xi
<i>Introduction</i>	xx
Chapter 1: The Root of Transactions in Financial Markets:	
Monetary Obligations	1
1. Introduction	1
2. Money	1
3. Means of payment	7
4. Financial instruments	12
5. Problems of legal integration of European financial markets: a need for general rules?	15
5.1. Recent historical developments in the law of monetary obligations	16
5.2. Harmonisation of general rules: Directives, Unidroit Principles and Principles of European Contract Law	22
5.3. Harmonisation of rules as a result of financial instruments governed by transnational commercial law	26
Chapter 2: The Process of Integration of European Financial Markets	35
1. The European Economic and Monetary Union and integration of markets	35
2. The free movement of capital	41
3. Financial markets	43
3.1. The money market	45
3.2. Bond markets	49
3.3. Equity markets	51
4. Payments: the Single Euro Payment Area and the Directive on Payment Services	52
Chapter 3: Legal Integration of the Markets and Harmonisation of Substantive Law: Clearing and Settlement of Securities and Payments	58
1. Perspectives of substantive law: options for harmonisation	58

2. Integration of the markets and legal barriers	59
2.1. A paradigm: cross-border clearing and settlement of securities and payments	62
2.2. The relevance of clearing and settlement under the perspective of monetary obligations	65
3. The Settlement Finality Directive	66
3.1. The role of financial <i>lex mercatoria</i> in settlement	72
3.2. Funds transfer in the United States: Article 4A of the Uniform Commercial Code	74
4. The Directive on Financial Collateral Arrangements	80
4.1. Impact of the <i>lex mercatoria</i> : master agreements, harmonised rules and monetary obligations	87
Chapter 4: Private International Law Perspective	92
1. Different instruments of legal harmonisation: uniform substantive law and private international law	92
2. Remaining substantive law barriers	93
2.1. Barriers to competition and the TARGET2-Securities Project	96
2.2. Legal certainty	101
3. The private international law approach to harmonisation: the Hague Convention on Securities	104
4. The Unidroit Convention on Substantive Rules for Intermediated Securities (the Geneva Securities Convention)	108
Chapter 5: Transfer of Monetary Sovereignty and Regulatory Issues	112
1. A regulatory perspective	112
1.1. The transfer of monetary sovereignty in the Economic and Monetary Union	113
2. The new regulators	117
2.1. New regulators, monetary policy and impact on harmonisation of the rules	122
2.2. New regulators, soft law and the impact on market regulation	125
3. The problem of regulation: risks and optional forms of intervention	128
3.1. Regulatory options and the EU legislator: harmonisation, regulatory competition and the Markets in Financial Instruments Directive	130
3.2. Reciprocity and the principle of the Most Favoured Nation	139
3.3. Legal sources for market operativeness: an overview	140

3.4. A further regulatory dilemma: the public/private divide	142
Chapter 6: Soft Law and Financial <i>Lex Mercatoria</i>	145
1. Soft law: subjects, rules, status	145
2. Examples of soft law: the European Code of Conduct on Clearing and Settlement	151
3. Effectiveness and efficiency of soft law mechanism; legitimization of privatised law-making	153
4. International financial standards applied as <i>lex mercatoria</i> ?	160
<i>Concluding remarks</i>	167
<i>Bibliography</i>	170
<i>Index</i>	180