

National Reports on the Transfer of Movable in Europe

Volume I:
Austria, Estonia, Italy, Slovenia

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

Wolfgang Faber
Brigitta Lurger (Eds.)


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edited by

Wolfgang Faber / Brigitta Lurger

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Preface

This is the first of a series of national reports on basic issues concerning the acquisition and loss of ownership of movable assets. The series is planned to cover 27 European legal systems, distributed over six volumes, and appears as a by-product of the research activities of the Graz & Salzburg working group 'Transfer of Movables' within the 'Study Group on a European Civil Code'.¹ The Study Group – as a successor of the Lando Commission on European Contract Law – has developed 'European' black letter rules with extensive comments and comparative notes (published in the years 2006-2009) for almost all areas of patrimonial law: contracts, torts, unjustified enrichment, benevolent intervention, security rights in movables, trusts, and acquisition and loss of ownership of goods. The key publication of our working group on ownership of movables (containing text, comments and notes), which will be published in 2009, is primarily based on the information provided to the group by the 27 national reports and its national reporters.

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 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. After all, they do, however, not only cover mere property law issues, but also much of the related law of obligations, enforcement law and insolvency law – in a generally accessible language, *i.e.* English.

The original purpose of these national reports was to provide the working group with detailed information about the respective rules, case law and legal literature, prepared by national property law experts, serving as a basis for the working group's own comparative research. But it was soon clear that these reports have a value of their own, worth being shared with the scientific community as a starting point for further comparative research in property law as well as with practitioners searching

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

for information on foreign legal systems. Although all reports are based on the same detailed questionnaire, we did not impose a strict structure on the authors, but regarded it important to allow for adaptations according to the – partly – fundamentally different starting points and structures followed by the national property law regimes. The idea was to present a complete picture of the respective part of law in each legal system, revealing that system's way of thinking and structural interdependencies, covering the subject matters determined by the questionnaire in an appropriate way. This way of discussing each legal system in detail and as a unified whole also aims at supplementing the working group's final publication in the 'Principles of European Law' series, where information about the single legal systems will necessarily be presented in a more compact form and structured according to the draft rules proposed there.

Where available and as far as reasonable, the reports include translations of the most important statutory provisions either in the text or in an annex. All reports include a table of literature and a table of abbreviations, which shall facilitate carrying out further research. However, it is inevitable that the reports will, to some degree, differ as to length and intensity, which will often reflect the number of material available.

Publishing the whole series of national reports would not be possible without generous support by a number of institutions. This first volume received particular funding from the Austrian Ministry of Science and Research (Bundesministerium für Wissenschaft und Forschung). For the whole series, financial support is granted by the Swiss Institute of Comparative Law (Lausanne), the Land Salzburg and the Evers-Marcic-Stiftung an der Rechtswissenschaftlichen Fakultät der Universität Salzburg. The editors wish to express their gratitude to all these institutions. We also wish to thank Mrs Monika Lammer for formatting the manuscripts and, in particular, our colleague Ernest Weiker, LLB, for his enormous efforts in linguistically improving all reports published in this volume.

May 2008
Salzburg and Graz

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National Report on the Transfer of Movables
in Austria

Wolfgang Faber

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