Dematerialised securities in EU Member States

Provisions of national law (as of August 1999)

Country	Does national legislation provide or allow for dematerialised securities?	Relevant statutory or regulatory provisions
Austria	Austria's legal order foresees dematerialised securities since 1987. The depository requirements are the same as for collective safe-keeping of securities. The Austrian CSD as well as the credit institution are responsible for the book-keeping, the latter with regard to the individual shares in a dematerialised security held by individual customers. For the transfer as well as for the pledging of a share in a dematerialised security the same formalities as for collective safekeeping are required, furthermore the general principles of civil law are to be applied. Securities deposited at the Austrian CSD by credit institutions can be transferred by order.	Article 24 Depotgesetz; Article 1.3 Depotgesetz (see BGBl. Nr. 424/1969, as amended by BGBl. Nr. 650/1987).
Belgium	All Belgian entities may issue securities under the bearer form (embodied in a physical paper). Those bearer securities may circulate on accounts and therefore be transferred without physical movement if they are deposited with the Belgian central depository "C.I.K." or its affiliates. Beyond those bearer securities circulating like dematerialised securities, Belgian law allows the issue of purely dematerialised securities for the Belgian State, local authorities and the Belgian companies. Furthermore, so-called "billets de tresorerie" and "certificats de depot" may be issued by respectively large companies and banks. Those purely dematerialised securities are represented by inscriptions in the accounts of the clearing system of the NBB, its participants and sub-participants. The Belgian Company Law has been modified in order to allow companies to issue purely dematerialised shares and bonds but this modification has not yet entered into force.	- Law of 2 January 1991 - Law of 22 July 1991 - Law of 6 August 1993 - Co-ordinated Belgian Company Law of 30 November 1935.
Denmark	Securities may be issued and transferred electronically/dematerialised form. Depository requirements are set up by each authorised central securities central. Such rules shall ensure that all parties involved are treated equally and shall	Articles 19-22, 59 and 66 of the Securities Trading Act.

	be approved by the Danish Financial Supervisory Authority. Legally responsible for book-keeping is the Boards of Directors of an authorised central securities depository. There are no special formalities required on how to establish an agreement of transfer or pledge of dematerialised securities. However, rights pertaining to dematerialised securities shall be registered with a central securities depository in order to be protected against legal proceedings and transferees.	
Finland	Finnish book-entry securities legislation came into effect on 1st August 1991. The principal laws are the Act on the Book-entry System and the Act on the Book-entry Accounts. Such Finnish companies whose shares are subject to public trade are required to transfer their shares to the book-entry securities system at the request of register holder representing the issuer. The new section 26a in the Act on Book-entry System allows the transference of debt securities to book-entries also in the situation when there has been given physical securities. The change of law allows the dematerialisation of old debt securities. Earlier the Act on Book-entry System applied only to new issuances of debt securities.	Section 26a of the Act on book-entry System (and 30 a of the Act on book-entry Accounts)
France	French legislation has been providing for a regime of dematerialised securities since 1941. SICOVAM is the central depositary for securities listed in the Paris stock exchange, Banque de France for Treasury Bills. SICOVAM, Banque de France or any credit institution may act as a book-keeper for short/medium term notes and non-listed/non-quoted securities. Securities are transferred from the securities account of one intermediary (only credit institutions, securities firms and a limited number of other institutions –e.g. central banks– may open securities accounts in central securities depositories) to the securities account of another intermediary on a transaction basis or on a net basis, whatever the underlying transaction may be (outright sales, repos, transfers). Transfer is not restricted by other formalities than registration in the account. Formalities for pledging have been lightened in 1996.	Article 94-II of the Law 81-1160, Article 19-II of the Law 91-716 and Article 102 of Law 96-597.
Germany	In general, German law provides for securities transferable by book-entry in an immobilised form ("Sammelverwahrung") rather than a dematerialised one, thus requiring the issue of a global note ("Globalurkunde"). The legal foundation for these securities are paragraphs 5 ff. of the German Deposit Act ("Depotgesetz").	Paragraphs 5 ff of the Depotgesetz. Reichsschuldbuchgesetz (1910). Anleihegesetz (1951) (which declared

	A special regime, allowing for full dematerialisation, is established for federal debt instruments which are registered in book-entry form with the German Federal Debt Office ("Bundesschuldenverwaltung"). Since the 1980's, the respective Federal Debt Register ("Bundesschuldbuch") is maintained as a fully electronic book-keeping systems. The Federal Debt Office is entitled to issue dematerialised securities by virtue of the Reichsschuldbuchgesetz and two respective Regulations. The same legal basis is applicable for Debt Certificates issued by the ECB through application of Article 10 (2) of the Headquarters Agreement and its subsequent implementation under German law. The transfer and the pledging of German book-entry securities is neither restricted nor falling under any specific additional formalities.	two Regulations from 1940 and 1942 applicable under the law of the Federal Republic of Germany).
Greece	The dematerialisation of stock was introduced with Articles 39-61 of Law 2396/1996. Stock, either in bearer or registered form, of corporations listed in the Athens Stock Exchange (ASE) must be in book-entry form. Records are kept by a central depository, the Depository Corporation (AEPOTH), which issues the shareholder's certificate. Transfer of ownership or creation and perfection of security interests must be registered with AEPOTH. On an exceptional basis, the transfer of ownership of stock may be transferred by bilateral contract outside the Stock exchange, upon written notification of the AEPOTH. The law provides for a procedure for the dematerialisation of the existing listed securities. The Capital Markets Committee, the supervisory authority of the ASE, supervises also the work of AEPOTH. Dematerialised government bonds are being traded and cleared in a separate system, HDAT.	Law 2396/1996
Ireland	Irish regulations make provision for the transfer without a written instrument, and the evidencing otherwise than by a certificate, of title to a unit of security in accordance with a computer-based system and procedures meeting certain defined criteria.	The Companies Act, 1990 (Uncertificated Securities) Regulations 1996
Italy	Dematerialisation was not provided for by Italian legislation. In 1998 this has changed, though, for the "Disposizioni per l'introduzione dell'Euro nell'ordinamento nazionale … della legge 17 dicembre 1997, n. 433" authorised the government to implement a set of rules regulating dematerialised securities. Those are now managed by brokering	Now: Decreto Legislativo 24 giugno 1998, n. 213

	companies; authorised brokers only may transfer them. Banca d'Italia and also CONSOB (Commissione nazionale per la societa' e la Borsa) are the two institutions which have supervisory competence and may adopt complementary legislation.	
Luxembourg	Most securities are dematerialised and no legal problem has arisen in this context. However, the Luxembourg legal order contains only few provisions that do explicitly mention dematerialised securities. However, the term has been introduced to Luxembourg legislation by the Regulation of 8 June 1994 according to which dematerialised securities are credited to the depositors' account and can be transferred to another account. Also the law of 24 December 1996 does allow the issuance of only written confirmations of registration, even though it principally foresees the issuance of certificates. Thought is given to the question whether a more detailed form of legal implementation could improve legal certainty.	Regulation of 8 June 1994 (Mem. A-52 du 27 June 1994, p. 1001); Law of 24 December 1996 (Mem. A 95 of 30 December 1996, p. 2911).
The Netherlands	National legislation allows for dematerialised securities. The Giro-based Securities Transfer System Act of 1977 put into effect a generally applicable giro-based securities transfer system. The implementation of the Act is in the hands of Necigef, the Central Securities Depository in the Netherlands. Member institutions – a large number of banks and brokers – maintain security deposits at Necigef . The Securities Transfer System Act was developed for securities under the bearer form. The introduction of this system eliminated deliveries in physical form for these securities. Since 1991 global notes/bonds (one bearer note embodying all securities) are also incorporated in the system of the Securities Transfer System Act. Investors have a right to delivery of securities that part of the global note. In case this right is exercised, a security is split off from the global note and it is registered in an annex to the global note. As from 1988 onwards, a fully dematerialised Giro -based system has been developed outside the scope of the Securities Transfer System Act for the deposit and clearing of registered securities like commercial paper and medium term notes. This system is administered by NIEC, a sister company of Necigef. The Securities Transfer System Act of 1977 is currently being revised. After discussion between the Ministries of Justice and Economic Affairs and Necigef, it has been decided to develop a fully dematerialised system for (registered) securities in the Securities Transfer System Act. There's no deadline yet for the current drafting work.	Securities Transfer Act of 1997 Civil Code

Portugal	Since 1991, Portuguese law allows for kinds of dematerialised securities. The issuer must register all dematerialised securities in an account with the Securities Central Body (INTERBOLSA). The registry shall contain all observations related to the securities including, but not limited to, any pledge. The issuer must keep, on its own registers, a control account representing all the issuance. The transfer of dematerialised securities is realised by debit on the owner's account and credit on the buyer's account. Physical securities can be transformed into dematerialised ones without limitation. When required for cross-border negotiation, dematerialised securities can also be converted into physical securities.	Main law: Securities Market Code, approved by Decree Law number 142-A/91, of 10 April 1991.
Spain	The Real Decreto 505/1987 of 3.4.1987 ("Creacion de un Sistema de Anotaciones en Cuenta para la Deuda del Estado") introduced the possibility of fully dematerialised public debt securities, with the Banco de Espana acting as central depository. Article 5 of the Law on Securities Markets of 28.7.1988 (Ley 24/1988 del Mercado de Valores - LMV- to a II) extended the possibility of dematerialisation to all kind of securities (public and private). A Royal Decree of 14.2.1992 made compulsory the dematerialization of any security to be admitted for trading in any organised market, and today all kind of negotiable securities (equity, debt securities, mortgage-backed securities, commercial paper and shares in collective investment funds) traded in organised markets in Spain are fully dematerialised. Issuance of fully dematerialised securities is subject to the following requirements (in addition to filing of prospectuses, disclosure obligations, register of mortgage bonds, and administrative clearances): - granting of an 'escritura pública' (i.e. notarial deed) by the issuer, where all particulars of the issuance are reflected, inclusive of the central depository on whose register the securities are to be recorded; - qualified issuers are exempted from the said 'escritura': public debt issuers and international organisations may substitute the 'escritura' by publishing in the Official Gazette the details of the issue; in addition, the legislative reform introduced in November 1998 to the LMV has authorized the Government by Royal Decree to extend the scope of exemptions from the requirement of the 'escritura', by instead allowing, like the public issuers, publication of all details of the issuance in the Official Gazette;	- Law on Securities Markets of 28.7.1988 (Ley 24/1988 del Mercado de Valores - LMV-) - Royal Decree of 14.2.1992

	- the constitutive effect of the issuance occurs when the issuance is registered with the central depository; - fully dematerialised securities pertaining to the same issuance are fungible (i.e. no individual identification of each security, but only by series of issues); - transmission and pledge of the security has effects *erga omnes* upon the registration of the operation in the registers of the central depository; - any registered holder of securities is entitled to obtain (i) from the acting Notary a copy of the 'escritura' of issuance, and (ii) from the central depository a certificate of his/her entitlement to the securities; both titles permit the holder to start summary judicial proceedings against the issuer in cases of default, and in the event of insolvency to rank the debt above non-notarised debts.	
Sweden	Already the Shares Account Act provided for dematerialised securities, which were held in dematerialised paperless form as book-entry rights in a securities settlement system, the VPC. At the request of a Swedish natural or juridical person who wished to issue unilateral instruments of debt intended for general trading, the Securities Register Centre determined that the instruments of debt were to be registered in a VPC-register. The securities Register Centre could decide that even other financial instruments than those referred to had to be registered in a VPC-register. Transactions were to be made through an account-operating institute only, for which VPC was legally responsible. Now the Act on Registration of Financial Instruments, which covers all types of financial instruments, has abolished the monopoly of VPC to register securities with legal effect. Companies that comply with the general conditions of the Act can now be authorised as central securities depositaries (CSDs) which are co-operating with VPC and other CSDs and with their correspondents in other countries under the framework of the New Act. Central Banks of other countries can therefore participate directly in the activities of VPC and other Swedish CSDs and they can also register ownership of financial instruments and collateral security arrangements directly, including pledges and liens. A National Central Bank and also the European Central Bank do first need to be appointed by the CSD concerned as a share account institution, though, which is an entity entitled by a CSD to effectuate registration measures in securities register – whereby the arrangement with Share Account Institutions can be compared to membership requirements in other securities settlement systems. The New Act allows the registration of foreign paper-based financial instruments. It defines registration as the relevant act for transfer of ownership of securities in order for that to become effective vis-à-vis third parties. It also	Act on Registration of Financial Instruments ("New Act')

	provides protection for a bona fides acquiror of securities from the point in time of registration.	
United Kingdom	In the UK, legislation does allow for certain categories of securities to be held and transferred in dematerialised form. For government bonds, and certain other sterling unregistered debt issues, the Stock Transfer Act 1982 permits dematerialisation and is the legal basis for the Central Gilts Office of the Bank. For certain other securities there are provisions in the Companies Act 1989 that allow the UK government to make legislative provision for dematerialisation. These powers have been used to permit paperless settlement of equities and certain debt securities in the CREST system (The Uncertified Securities Regulations 1995 are the relevant secondary legislation). Money market instruments (Treasury bills, bank bills, CD's, commercial paper) are in general immobilised rather than dematerialised (in the Bank's Central Money Markets Office), although in the case of some CD's, dematerialisation has been possible by contractual agreement between CMO members. In other cases, specific primary legislation setting out the terms of issue does not permit dematerialisation (e.g. the Treasury Bill and the Bills of Exchange Act). Debt securities subject to the ETRs or the Bank's Market Notice are generally currently required to be evidenced by a certificate in physical form, although, subject to certain conditions, this may be in the form of a global note. It is intended to remove these requirements. Dematerialised securities have to be held either in the Central Gilts Office (securities held and transferred under the Stock Transfer Act) or in an "approved system", of which CREST is the only example at present. Legally responsible for book-keeping is: the Bank of England for securities settled in CGO for which the Bank is also the registrar; CREST for equities (for which issuers or their agents are the registrars); the Bank of England for dematerialised money market instruments. The transfer of securities is in general governed by the terms of the issue concerned, by the rules of the system in which they are transferred and, in the case of registered securities, by the registration procedures. There may be specific formalities to be observed by the pledgor of securities over and above those imposed by the rules of the relevant system. In particular in some cases the pledge (where in the form of a charge) must be registered with the Registrar of Companies.	Stock Transfer Act 1982; Companies Act 1989; Uncertified Securities Regulations 1995.