

Giraal effectenverkeer na de wijziging van de Wge

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Per 1 januari 2011 is het toepassingsbereik van de Wet giraal effectenverkeer vergroot om de bescherming aan beleggers uit te breiden. Deze aanpassing heeft ook gevolgen voor het systeem van giraal effectenverkeer. Aan deze gevolgen heeft de wetgever nauwelijks aandacht besteed. In deze bijdrage worden de consequenties van de wetwijziging voor het giraal effectenverkeer doorgerekend. Een belangrijke wijziging is de aanpassing van de definitie van het begrip 'effect'. Vanwege het materiële karakter van deze definitie is onduidelijkheid mogelijk over de vraag of sprake is van een effect in de zin van de Wge. Hoewel de aangepaste definitie (wellicht) voordelen biedt in het kader van beleggersbescherming, is het giraal effectenverkeer allern minst gebaat bij dergelijke rechtsonzekerheid. Een andere belangrijke bijwerking van de wetwijziging is dat het centraal instituut zijn sleutelpositie heeft verloren doordat de toegang tot het Wge-systeem is opgebroken. Dit biedt interessante perspectieven voor concurrentie op de Nederlandse markt voor de bewaring van effecten en de afwikkeling van effectentransacties. Al met al heeft de wijziging van de Wge een behoorlijke impact op het (toekomstig) giraal effectenverkeer. Voor een wetwijziging die voornamelijk was gericht op de uitbreiding van beleggersbescherming en niet uitdrukkelijk een uitbreiding van het giraal effectenverkeer beoogde, is dat toch wel opmerkelijk te noemen.

1. Inleiding

Tot de wijziging van 1 januari 2011² was het toepassingsbereik van de Wet giraal effectenverkeer (Wge) beperkt tot bepaalde vormen van effectenbewaring. Ten eerste diende het centraal instituut te hebben bepaald of de effecten tot het girale systeem behoorden.³ Ten tweede dienden de effecten in bewaring te zijn gegeven aan het centraal instituut of bij dit instituut aangesloten instellingen. De Wge kende

daarmee een gesloten systeem. Met de wetwijziging van 2011 is de reikwijdte van de wet vergroot. Deze wijziging is ingegeven door de wens om de beleggersbescherming uit te breiden.⁴ In dit artikel beogen wij deze gevolgen van de wetwijziging door te rekenen voor het giraal effectenverkeer. Hoewel de wetgever en de rechtspraak dit nauwelijks lijken te beseffen, is met de wetwijziging ook het toepassingsbereik van het giraal effectenverkeer onder de Wge opgevekt. Dit heeft belangrijke consequenties voor de wijze van levering of bezwaring van de betrokken effecten. Daarnaast roept de wetwijziging vragen op met betrekking tot welke effecten nu precies binnen de reikwijdte van de wet zijn gebracht en wat de gevolgen zijn van de toelating van beperkt overdraagbare effecten tot het systeem. Een ander belangrijk effect van de wetwijziging is dat het centraal instituut zijn wettelijke sleutelpositie kwijt is. Dit biedt interessante perspectieven voor meer concurrentie op de Nederlandse markt voor effectenbewaring en de afwikkeling van effectentransacties. Voordat deze onderwerpen worden besproken, zullen eerst de systematiek van de Wge en de relevante onderdelen van de wetwijziging worden uiteengezet.

2. Het systeem van de Wge

2.1 Doelstellingen

Uitgangspunt bij het systeem van de Wet giraal effectenverkeer (het Wge-systeem) is dat de belegger zijn effecten aanhoudt via een bewaarinstelling. In dat kader heeft de Wge twee hoofd doelstellingen. De eerste doelstelling blijkt al uit de naam van de wet, namelijk het creëren van een wettelijke grondslag voor een systeem van giraal effectenverkeer. De tweede doelstelling houdt verband met het zogeheten *intermediary risk*.⁵ Het *intermediary risk* ontstaat wanneer effecten – zoals gebruikelijk – op collectieve basis worden bewaard. In die situatie dreigt de oneigenlijke vermenging van toondereffecten, waardoor de belegger deze effecten bijvoorbeeld niet kan opvorderen bij het faillissement van de bewaarinstelling.⁶ Ten aanzien van naameffecten ontstaat een risico wanneer deze, zoals eveneens gebruikelijk, op naam van de bewaarinstelling worden gesteld.⁷ Doelstelling van de Wge is de belegger tegen dit risico te beschermen.⁸

1. Mr. G.V. Naber is als promovendus verbonden aan het Instituut voor Ondernemingsrecht (IRO), onderdeel van het Onderzoeksinstituut voor Ondernemingsrecht & Recht (OOR&R) van de Radboud Universiteit Nijmegen. mr. B.A. Schuijting is werkzaam als promovendus bij het Onderzoeksinstituut voor Ondernemingsrecht & Recht van de Radboud Universiteit Nijmegen en wetenschappelijk medewerker bij een advocatenkantoor te Amsterdam.

2. Wet van 28 oktober 2010 tot wijziging van de Wet giraal effectenverkeer houdende uitbreiding van de bescherming aan cliënten van intermediairs inzake draagbare instrumenten en het bevestigen van een verdragende vorm van documentatie van effecten, IBR 2010, 771.

3. De minister heeft op grond van art. 1 Wge Besluit B.V. (promotor) landelijk onder de naam Effecten Nederland) aangewezen als centraal instituut. In het vervolg van dit stuk gebruiken we de wettelijke aanduiding 'centraal instituut'.

4. Door de vergrote reikwijdte van de Wge, het geval uit HR 23 september 1994, NJ 1994/461, met. W.M. Korte (Een-Accommodating) staat niet onder de bescherming van de Wge vallen.

5. Zie over dit risico onder meer B.F.L.M. Schen, *Giraal effectenverkeer en gendernotie* (diss. Nijmegen), Deventer: Kluwer 2006, p. 19-21.

6. Vgl. HR 12 januari 1968, NJ 1968/274, met. M. Driess (Société de Marine) en art. 3:169 en 3:169 BW.

7. Vgl. HR 23 september 1994, NJ 1994/461, met. W.M. Korte (Een-Accommodating).

8. Zie Kamerstukken II 1975/76, I: 786, nr. 1-4, p. 11.

Wet Giraal Effectenverkeer

**Netherlands (Kingdom, 1815-), A. J.
Kronenberg**

Wet Giraal Effectenverkeer:

Wet giraal effectenverkeer J. L. S. M. Hillen, Koninkrijk der Nederlanden, 2008 Wet giraal effectenverkeer Ch. W. Le Rûtte, Koninkrijk der Nederlanden, 1995 Wet giraal effectenverkeer A.J.. Kronenberg, 1991 , **De effectenbezitter en de Wet giraal effectenverkeer** Vereniging voor de effectenhandel, Amsterdam, 1977 **The Shareholder Rights Directive II** Hanne S. Birkmose, Konstantinos Sergakis, 2021-04-30 This Commentary is the first comprehensive work to analyse the revised EU Shareholder Rights Directive SRD II SRD II sets a new agenda for engaged shareholders and sustainable companies in the EU sparking a wider debate on the adoption of duties in company and capital markets law By providing a systematic and thorough framework for analysis this Commentary evaluates the purpose and aims of SRD II and further enriches the debate on the usefulness of the EU s drive to encourage long term shareholder engagement **European Banking and Financial Law 2e** Matthias Haentjens, Pierre de Gioia Carabellese, 2020-06-02 Over the last few decades banks insurers pension funds investments firms and other financial institutions have become subject to sometimes dramatically new but always substantially more legislation This is especially true for the EU Moreover Brexit has already caused profound changes to the dynamics of EU financial regulation and its effects will likely become ever more significant in the years to come This book serves as a comprehensive introduction to these developments and more generally to European banking and financial law It is organised around the three economic themes that are central to the financial industry i financial markets ii banking and financial institutions and iii financial transactions It covers not only regulatory law but also commercial law that is relevant for the most important financial transactions This Second Edition has been completely revised The basic structure of the First Edition has been maintained but all chapters have been thoroughly rewritten and restructured Attention is now also given to topics such as shadow banking and credit rating agencies As a matter of course all new relevant legislation and case law has been included In addition on the basis of real life classroom experience student questions and further reading suggestions have been updated and expanded Wet giraal effectenverkeer Koninkrijk der Nederlanden, 2003 **Banking Law and Financial Regulation in the UK and EU** Pierre de Gioia Carabellese, Camilla Della Giustina, 2024-06-28 Banking Law and Financial Regulation in the UK and EU seeks to blend orthodox topics covered within the banking and financial law syllabus such as sources of banking and financial law financial markets financial and banking institutions financial transactions and banking and financial insolvency with a careful analysis of emerging issues and more contemporary topics This advanced level textbook offers a new format for the study of banking and financial law placing it within the wider context of economic development As such two elements are integral to this new methodology the rise of techno banking and digitalisation of the financial sector and Brexit Departing from the approaches of more traditional textbooks in this area the book also takes a comparative approach to UK and EU banking law highlighting the legal consequences of the UK s exit from the EU Aspects of human rights are integrated throughout and

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Wet giraal effectenverkeer Netherlands (Kingdom, 1815-).A. J. Kronenberg,1978 Bijlagen van het verslag der handelingen Netherlands. Staten-Generaal. Tweede Kamer,1976 *Dalhuisen on International Commercial, Financial and Trade Law* Jan H Dalhuisen,2004-09-30 This work deals with a number of important issues in the formulation of modern international commercial and financial law **The Revised Act on the Supervision of the Credit System** Nederlandsche Bank,1979 ISSA Handbook: L-Z ,1990

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