

# Law applicable to the third-party effects of assignments of claims

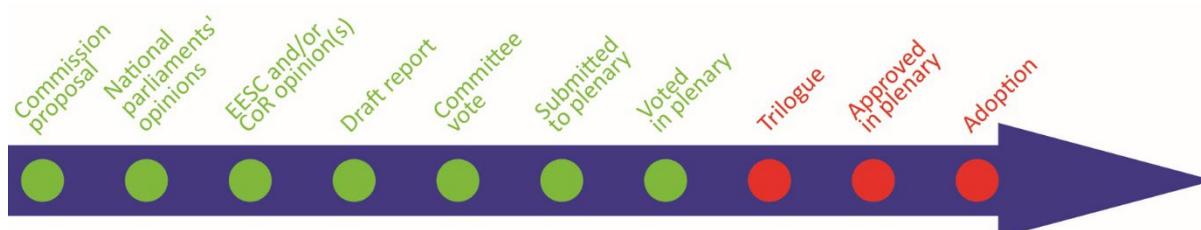
## OVERVIEW

The assignment of a claim refers to a situation where a creditor (the assignor) transfers the right to claim a debt from the debtor to another person (the assignee) who then becomes a creditor vis-à-vis the debtor (replacing in this role the original creditor). This mechanism is used by companies to obtain liquidity and access credit. At the moment, there is no legal certainty as to which national law applies when determining who owns a claim after it has been assigned in a cross-border case.

The new rules proposed by the Commission will clarify which national law is applicable for the resolution of such disputes. As a general rule, the law of the country where assignors have their habitual residence applies, regardless of which Member State's courts or authorities examine the case. This proposal will promote cross-border investment and access to cheaper credit, and prevent systemic risks.

Both Parliament and Council have adopted their positions, and the proposal is currently the subject of trilogue negotiations.

<b>Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims</b>		
<i>Committee responsible:</i>	Legal Affairs (JURI)	COM(2018) 96
<i>Rapporteur:</i>	Jiří Pospíšil (EPP, Czechia)	12.3.2018
<i>Shadow rapporteurs:</i>	René Repasi (S&D, Germany) Adrián Vázquez Lázara (Renew, Spain) Marie Toussaint (Greens/EFA, France) Gunnar Beck (ID, Germany) Raffaele Stancanelli (ECR, Italy) Emmanuel Maurel (The Left, France)	2018/0044 (COD)  Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Continuing trilogue negotiations	



## Introduction

In contract law, a **claim** gives a person (the creditor) the right to request from another person (the debtor) the performance of an obligation, such as the payment of a sum of money. According to the Commission, claims can be classified in three categories:

- **'traditional claims'** or receivables. If a retailer sells a product on credit, the product is acquired by the customer but the payment will only come in the future. This money to be received by the company is a traditional claim;
- **claims arising from financial instruments** (sometimes referred to as 'financial claims'). An investor buying a company's bond obtains the right to either fixed or variable instalments on a specific date or dates. The investor has a financial claim; and
- **cash credited to an account in a bank.** An account holder depositing money in a bank (the creditor) has a claim against the bank (the debtor).

The term **assignment** [describes](#) a transaction whereby a contractual right is transferred by its owner, called the assignor, with or without the concurrence of the other party to the contract, to another person, called the assignee.

The **assignment of a claim** is a legal mechanism allowing a creditor, the **assignor**, to transfer its right to claim a debt to another person, the **assignee**. Many well-established retailers allow consumers to purchase products on credit. For example, consumer 'A', who wants to purchase a TV but does not have the full amount in cash, can enter into a contract with retailer 'B' to pay for that TV in 10 instalments. The consumer and the retailer are the original parties to the contract, under which the TV is acquired by the consumer and the retailer has the right to obtain payment of a fixed or variable amount for a period of time from the consumer. The retailer can keep this right and manage its cash flow accordingly. It can also choose, however, to transfer that right to a third party, the assignee, e.g. a consumer credit company.

This mechanism is used by companies to obtain liquidity (factoring), gain access to credit (collateralisation), or optimise the use of their capital (securitisation).

## Factoring

Factoring is a crucial **source of liquidity** for many firms. In factoring, a company assigns its receivables to a *factor* – often a bank – at a discount price ([generally](#) equal to interest plus service fees) and in return receives immediate cash. The factor will collect the money owed for the invoices and accept, or not, the risk of bad debts (recourse and non-recourse). The majority of users of factoring are SMEs, as they may find sourcing traditional lending more challenging.

According to the Commission proposal, Europe as a region is the world's largest factoring market, representing 66% of the world market. According to the EU Federation for the Factoring and Commercial Finance Industry, factoring industry turnover [represented](#) 11.4% of EU gross domestic product in 2021.

## Example of factoring

An SME needs immediate cash to pay its suppliers. The invoices to its customers are only due for payment in three months. The SME (assignor) therefore decides to assign its invoices to a factor (a bank, the assignee) at a discount price in order to obtain immediate cash. The discount price at which the SME sells its invoices to the bank accounts for the bank's fees and commission.

## Collateralisation

[Financial collateral](#) (security) is an asset provided by a borrower to a lender to secure repayment of, for instance, a loan. In the event that the borrower fails to meet its obligations, collateral minimises the risk of financial loss to the lender. In collateralisation, claims such as cash credited to a bank

account (where the customer is the creditor and the bank is the debtor) or credit claims (that is, bank loans) can be used as financial collateral to secure a loan agreement (for example, a consumer can use cash credited to a bank account as collateral to obtain credit, and a bank can use a credit loan as collateral to obtain credit). According to the Commission proposal, about 22 % of Eurosystem [refinancing operations](#) are secured by credit claims as collateral.

## Example of collateralisation

An SME (assignor) wants to get a loan from a bank (assignee) to build a bigger warehouse, using the claims it has against its customers as collateral. If the SME goes bankrupt and cannot pay the loan back, the bank will be able to recover its debt by enforcing the claims that the SME had against its customers.

## Securitisation

Securitisation enables the assignor, called the 'originator', to refinance a set of its claims (for example, mortgage loan payments) by assigning them to a '[securitisation special purpose entity](#)' (SSPE). The SSPE (assignee) then issues debt securities (e.g. bonds) on the capital markets, reflecting the proceeds from these claims. As payments are made under the underlying claims, the SSPE uses the proceeds it receives to make payments on the securities to the investors. For companies, securitisation can provide access to credit at a lower cost than bank loans. For banks, securitisation is a way to put some of their assets to better use and free up their balance sheets to allow for further lending to the economy.<sup>1</sup>

## Example of securitisation

A large company (assignor) assigns its receivables arising from the use by customers of its in-house credit card to a SSPE (assignee), which then issues debt securities to investors on the capital markets. These debt securities are secured by the income stream flowing from the credit card receivables that have been assigned to the SSPE. As payments are made under the receivables, the SSPE uses the proceeds it receives to make payments on the debt securities.

## Third-party effects of claims

The **third-party effects of an assignment of claims** refer in general to the following questions: (i) which requirements must be fulfilled by the assignee in order to ensure that the assignee acquires legal title over the claim after the assignment (for example, registration of the assignment in a public register, written notification of the assignment to the debtor); and (ii) how to resolve priority conflicts, that is, conflicts between several competing claimants over who is entitled to the claim after a cross-border assignment (for example, between two assignees where the same claim has been assigned twice, or between an assignee and a creditor of the assignor in the event of an insolvency).

Ensuring the acquisition of legal title over the assigned claim is important for factors, collateral takers and originators, as other parties could claim legal title over the same claim. This would give rise to a situation in which it would need to be determined which of the two rights (of the assignee or a third party) should be applicable to the various aspects of the legal relationship. According to the Commission, such a situation can potentially arise (i) if a claim has been assigned twice by the assignor to different assignees, or (ii) in the event of assignor insolvency, where the assignor's creditors will want to know whether or not the assignment was effective and (therefore) the assignee has acquired legal title over the claim. In both cases, the law applicable to the third-party effects will resolve the conflict. But what is that law?

In domestic assignments of claims, the national substantive law is the one that will determine the third-party effects of the assignment of claims. However, in a cross-border assignment several national laws can potentially apply and assignees need clarity as to which laws they must observe in order to acquire legal title over the assigned claims.

## Existing situation

The national law that applies to a given situation with a cross-border element is determined by **conflict of laws rules (also known as private international law)**. In the absence of EU conflict of laws rules, the applicable law is determined by national conflict of laws rules (i.e. national legislation on private international law, enacted by each Member State).

However, currently, Member States' conflict of laws rules can be inconsistent, as they are based on different **connecting factors** to determine the applicable law: for example – according to the Commission proposal – the conflict rules of Spain and Poland are based on the *law of the assigned claim*, the conflict rules of Belgium and France are based on the law of the *assignor's habitual residence*, and the conflict rules of the Netherlands are based on the *law of the assignment contract*. This inconsistency across the EU means that Member States may designate the law of different countries as the law that should govern the third-party effects of the assignment of claims. This lack **of legal certainty** in turn creates a legal risk in cross-border assignments which does not exist in domestic assignments. The Commission has identified three problems linked to that risk: (i) if the assignee ignores (or chooses to ignore) the legal risk, it may end up facing unexpected financial losses; (ii) if the assignee decides to protect itself legally, it will incur extra costs; (iii) if the assignee chooses instead to avoid entering the assignment, there are lost opportunities and market integration at EU level is undermined.

Currently, at EU level, conflict of laws rules determine the law applicable to:

- the contractual obligations (the [Rome I Regulation](#));
- the proprietary effects of transactions in book-entry securities and instruments, whose existence or transfer presupposes their recording in a register, an account or a centralised deposit system.

However, no EU conflict of laws rules have been adopted on the law applicable to the proprietary effects of assignments of claims.

## Parliament's starting position

Parliament has not called specifically for action in this area.

## Preparation of the proposal

In 2004, the Commission set out a [roadmap](#) (communication) for future action, with a view to enhancing the safety and efficiency of post-trading arrangements across Europe. Among other things, the Commission communication advocated pursuing work in the field of legal barriers to a safe and efficient post-trading landscape. To that end, a group of legal experts – the Legal Certainty Group – was tasked with advising the Commission on whether legislation in the field of securities holding and dispositions should be improved and, if so, how it should be carried out. The Group presented its [advice](#) to the Commission in August 2008.

In that context, an [initial](#) public consultation on this issue was held between April and June 2009. It was followed in 2010 by a [second](#) consultation, which took place between February and June that year. At the same time, a second expert group – the Securities Law Directive Member States' Working Group – was set up to conduct discussions and assist the Commission with drafting a legislative proposal in the field of securities law. This led to the planning of a directive which was listed in the Commission's work programme for 2010.<sup>2</sup> The [stated aim](#) was to reduce the divergence between Member States' laws on book-entry securities and, as a result, contribute to the simplification of financial market operations and to their legal safety. Despite the fact that the proposal was also included in the Commission work programmes for [2011](#) and [2012](#), and despite Parliament [calling](#) for it, the proposal was never launched.

Instead, the 2015 Commission [action plan on building a capital markets union](#) envisaged a targeted action on securities ownership rules and third-party effects of assignments of claims.

In order to consult all interested parties, in February 2017 the Commission published an [inception impact assessment](#) providing an overview of the problems to be addressed and the possible solutions. It further launched, in April 2017, a [public consultation](#) on conflict of laws rules for third-party effects of transactions in securities and claims and established an [expert group](#) on conflict of laws regarding securities and claims, which assisted the Commission by providing specialist advice from experts on private international law and financial markets. The [proposal for a regulation](#) was finally published on 12 March 2018; it was accompanied by an [impact assessment](#), which is the subject of an [initial appraisal](#) by EPRS.

## The changes the proposal would bring

Article 1 states that the regulation will apply in situations involving cross-border conflicts, to the third-party effects of assignments of claims in civil and commercial matters. The article further specifies in which cases the regulation does not apply. Article 14 further stipulates that the regulation will apply to assignments of claims concluded on or after its date of application.

Article 2 defines the main concepts on which the proposed regulation is based, namely 'assignor', 'assignee' and 'assignment', 'claim' and 'third-party effects', 'habitual residence', 'credit institution', 'cash' and 'financial instrument'.

Article 3 establishes the universal character of the proposed regulation by providing that the national law designated as applicable by the proposed regulation can be the **law of a Member State or the law of a third country**.

Article 4 provides for uniform conflict of laws rules on the third-party effects of the assignment of claims. In paragraph 1, the article lays down a general rule ('the law of the country in which the assignor has its habitual residence at the material time'); in paragraph 2, it sets out two exceptions (the case of cash credited to a bank account, and claims arising from a financial instrument) based on the law of the assigned claim; in paragraph 3, it provides the possibility for the assignor and the assignee in a securitisation to choose the law of the assigned claim as the law applicable to the third-party effects of the assignment; and in paragraph 4 it lays down a rule applicable to priority conflicts between assignees arising from the application of the law of the assignor's habitual residence and the law of the assigned claim to the third-party effects of two assignments of the same claim.

According to Article 5, the law applicable to the third-party effects of assignments of claims pursuant to the regulation will govern: (a) the requirements to ensure the effectiveness of the assignment against third parties other than the debtor (registration or publication formalities); (b) the priority of the rights of the assignee over the rights of another assignee of the same claim; (c) the priority of the rights of the assignee over the rights of the assignor's creditors; (d) the priority of the rights of the assignee over the rights of the beneficiary of a transfer of contract in respect of the same claim; and (e) the priority of the rights of the assignee over the rights of the beneficiary of a [novation of contract](#) against the debtor in respect of the equivalent claim.

Articles 6 and 7 regulate cases in which the law of the forum (i.e. the legal system which is in force in the area where the court hearing the case is based) is applied instead of the law applicable under Article 4. The first of these cases regards **overriding mandatory provisions** of the law of the forum (respect for such provisions is regarded as crucial by a Member State for safeguarding its public interests). The other is when the application of a provision of the law of any country specified by this regulation is manifestly incompatible with the public policy (*ordre public*) of the forum.

### **Articles 8 to 12: General issues of application of conflict of laws rules:**

These articles deal with general issues involved in the application of conflict of laws rules in line with other Union instruments on applicable law, in particular the [Rome I Regulation](#).

Article 8 excludes *renvoi*,<sup>3</sup> by providing that the application of the law of any state specified by the regulation means the application of the rules of law in force in that state, other than its rules of private international law.

Article 9 provides that, when a state comprises several territorial units, each of which has its own rules of law in respect of the third-party effects of assignments of claims, each territorial unit must be considered as a state for the purposes of identifying the law applicable under this regulation. Furthermore, such a Member State will not be required to apply this regulation to conflicts of laws arising only between such units.

Article 10 stipulates that the regulation will not prejudice the application of provisions of EU law that, in relation to particular matters ('lex specialis'), lay down conflict of laws rules on the third-party effects of assignments of claims.

According to Article 11, the regulation will not prejudice the application of international conventions to which one or more Member States are parties at the time when this regulation is adopted and that lay down conflict of laws rules relating to the third-party effects of assignments of claims. However, it will take precedence over conventions concluded exclusively between two or more Member States, insofar as such conventions concern matters governed by this regulation. Article 12 sets out the obligation for Member States to notify the Commission of all conventions referred to in Article 11, as well as the denunciations of such conventions, and for the Commission to publish, within six months of receipt of the notifications, the list of conventions and denunciations.

## Advisory committees

The **European Economic and Social Committee** adopted its [opinion](#) on this proposal on 11 July 2018. The EESC welcomed the idea of eliminating the legal uncertainty described earlier by proposing uniform rules to determine which national law governs the ownership of a claim assigned on a cross-border basis. It also acknowledged that legal certainty in this area will help to strengthen cross-border investment, including by engaging small and medium-sized enterprises (SMEs).

## National parliaments

The proposal was examined by the parliaments of 15 [Member States](#); two political dialogues took place with those of Portugal and Spain. The subsidiarity deadline was 24 May 2018.

## Stakeholder views<sup>4</sup>

Christian Heinze and Cara Warmuth [note](#) that the Commission's objective of aligning the proposal with the legal framework of the Insolvency Regulation has predominantly been achieved and that, while some inaccuracies remain, they can be clarified in the further legislative process or by subsequent case law.

Herbert Kronke similarly [stresses](#) the importance of clarifying certain aspects of the Commission proposal, but broadly shares the view that it has laid the foundation for a sound solution that takes into consideration the needs and practices of the relevant industries.

Lastly, Lilian Welling-Steffens [is of the view](#) that, while the Commission proposal must be commended, there are still uncertainties and ambiguities regarding the applicable law that would prevent it from achieving the desired uniformity and legal certainty. To remedy this, she proposes allowing the assignor and assignee a limited option to choose the law to govern all proprietary aspects of an assignment of claims. In case there is no explicit choice of law, the law governing the claim should apply as the default position. Lastly, if there is a priority issue between two assignees of the same claim, and where the assignments are governed by different laws, priority should be determined by the law governing the assigned claim.

## Legislative process

The **European Central Bank** delivered its [opinion](#) on 18 July 2018. The ECB noted that, although the general rule under the proposed regulation (that the third-party effects of assignments of claims are to be governed by the law of the country of the assignor's 'habitual residence') is legally feasible, it has shortcomings, especially in scenarios where credit claims are used as [financial collateral](#). This is because the reference to the law of a third jurisdiction increases the legal due diligence burden on collateral takers where bank loans are mobilised as collateral on a cross-border basis. In addition, given that the proposal affects the interests of central banks as assignees of claims, the ECB invited the Council to consider introducing a refinement to proposed Article 4(2),<sup>5</sup> i.e. that the law applicable to the claim would also govern the third-party effects of assignments of bank loans. Lastly, the ECB invited the Council to consider an amendment to Directive 2002/47/EC to exclude the possibility of the debtor (or guarantor) of a credit claim provided as collateral to a central bank in the context of Eurosystem credit operations exercising any right of set-off it may have against the original lender under such a claim.

The **European Parliament** adopted its [first-reading position](#) on 13 February 2019, towards the end of Parliament's eighth term, on the basis of the JURI committee report (rapporteur: Pavel Svoboda, EPP, Czechia). Following the 2019 European elections, a new rapporteur (Jiří Pospíšil, EPP, Czechia) was appointed in January 2021. After the Council had reached its general approach, the JURI committee's decision to enter into interinstitutional negotiations was announced in plenary on 15 November 2021.

Many of Parliament's amendments (15 out of a total of 24) focus on the preamble. Parliament would note that the inconsistency of national conflict of laws rules leads to legal uncertainty as to which law applies to the third-party effects of the assignments. The lack of legal certainty creates a legal risk in cross-border assignments of claims, which can also act as a deterrent. Assignees and assignors may choose to avoid it, thereby allowing business opportunities to pass. This lack of clarity does not appear to be in line with the objective of market integration and the principle of free movement of capital enshrined in Articles 63 to 66 TFEU. In this context, the objective of this regulation is to provide legal certainty by laying down common conflict of laws rules designating which national law applies to the third-party effects of assignments of claims, increasing cross-border claims transactions, so as to encourage cross-border investment in the Union and facilitate access to finance for firms – including SMEs – and consumers. Parliament would stress, however, that the regulation is not intended to alter the provisions of Regulation (EC) No 593/2008 regarding the proprietary effect of a voluntary assignment as between assignor and assignee or as between assignee and debtor.

With regard to the articles of the regulation, Parliament would amend Article 1 to specify that the regulation would apply to the effects of assignments of claims in respect of third parties (e.g. a creditor of the assignor) but excluding the debtor (see also amendment to Article 2(e)). In addition, the regulation would be without prejudice to EU and national law on consumer protection. Also, registered partnerships would be added to the list of elements excluded from the scope of the regulation. Parliament would delete the definition of cash (Article 2(h)).

Article 4 would be amended to specify that the third-party effects of an assignment of claims shall be governed by the law of the country in which the assignor has its habitual residence at the *time of the conclusion of the assignment contract*. Point 3 of the same article – which would allow the assignor and assignee to choose the law applicable to the assigned claim as the law applicable to the third-party effects of an assignment of claims in view of a securitisation – would be deleted.

In Article 6, a point would be added, according to which the overriding mandatory provisions shall apply to the law of the Member State where the assignment has to be or has been performed, insofar as those overriding mandatory provisions render the performance of the assignment contract unlawful.

Lastly, regarding the application in time (Article 14), Parliament would add that, in the case of competing claims based on assignments, the law that is applicable pursuant to the regulation would determine the rights of the respective assignees, solely in respect of assignments concluded *after* the date of application of the regulation.

The **Council** agreed its [general approach](#) on 7 June 2021, opening the way to interinstitutional [negotiations](#).

In paragraph 14 of the preamble it would specify that Article 14(1) and 14(2) of the Rome I Regulation govern the contractual relationships between assignor and assignee, and between assignee and debtor respectively. Moreover, in paragraph 15 of the preamble it would note that the conflict of law rules in this regulation govern third-party effects of assignments of claims, without prejudice to the rights and obligations of debtors under Article 14(2) of the Rome I Regulation.

In paragraph 16(bis) it would add that the regulation should cover claims arising from assets, irrespective of the technology used for their issuance, transfer or storage, thus including claims arising from some crypto-assets. However, it should not apply to the third-party effects of the transfer of transferable securities, money market instruments and units in collective undertakings, independently of whether those claims arise from crypto-assets or not (paragraph 16a). Similarly, the regulation should cover the assignment of claims – whether outright or by way of security, pledges or other security rights over claims – but not the transfer of assets other than claims (paragraph 16ii).

The Council would propose to exclude from the scope of this regulation the assignment of claims separately from the security from which they arise and in intangible form (paragraph 16c), as well as claims arising under bills of exchange, cheques and promissory notes and other negotiable instruments, to the extent that the claims under such other negotiable instruments arise out of their negotiable character (paragraph 16d).

Also, the Council would add a 'whereas' on the relation between the regulation and the Insolvency Regulation, specifying what should apply in case a claim is assigned before or after insolvency proceedings have opened (paragraph 22).

In addition, the Council would propose that the third-party effects of the assignment of claims arising out of (i) financial contracts and associated collateral or netting arrangements (paragraph 27i), (ii) transactions on financial markets (whether OTC or on trading venues and exchanges – paragraph 27a), (iii) foreign exchange transactions (paragraph 27ii) and (iv) participation in financial markets infrastructure or systems, should be subject to the law governing the assigned claim.

Lastly, where a consumer is involved in the assignment of a claim as a third party, the EU's substantive rules on consumer protection should apply where the law designated by this regulation is the law of a Member State (paragraph 32a).

With regard to the operative part of the regulation (i.e. the articles of the legal act), the Council would propose (in Article 1) to exclude from the scope of the regulation **the third-party effects** of (i) the transfer of financial instruments – in particular of transferable securities, money-market instruments, or units in collective investment undertakings, (ii) the transfer of crypto-assets (independently of whether they qualify as financial instruments) and (iii) the transfer of security rights over assets other than claims, in particular immoveable property and moveable property subject to registration in a public register laid down by law.

It would further exclude from the regulation **the assignments of claims** (i) incorporated in a certificate or represented by a book-entry and (ii) arising out of a transferable security, a money-market instrument or a unit in a collective investment undertaking.

With regard to the definitions (in Article 2), the Council would exclude from the definition of 'assignment' the transfers of contracts, in which both rights and obligations are included, and the [novation of contracts](#). With regard to the definitions of specific terms,<sup>6</sup> it would cross-refer to the relevant regulations and directives which define those terms.

The Council would propose (in Article 4) that the third-party effects of an assignment of claims are governed by the law of the country in which the assignor has its habitual residence *at the time of the conclusion of the assignment contract*. It would further specify to which third-party effects of the assignment it applies.<sup>7</sup>

In Article 9 (states with more than one legal system), the Council would differentiate between states with internal conflict of laws rules, and those without. In the first case, the internal conflict of laws rules of that state would determine the relevant territorial unit whose rules of law are to apply. In the second, any reference to the law of that state would be construed as referring to the law in force in the relevant territorial unit, as determined under the rules of the regulation.

In Article 10 (relationship with other provisions of EU law), the Council would add a paragraph, according to which the regulation must not prejudice the application of the conflict of laws rules in Directive 2002/47/EC on financial collateral arrangements, Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2001/24/EC on the reorganisation and winding up of credit institutions, regarding the third-party effects of assignments of claims.

Lastly, the Council would delete point 2 of Article 14 (application in time), according to which the law that is applicable pursuant to this regulation determines whether the rights of a third party in respect of a claim assigned after the date of application of this regulation have priority over the rights of another third person acquired before this regulation becomes applicable.

Interinstitutional negotiations continue with a view to securing agreement on the text.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Dalli H., [Fostering cross-border investment – Law applicable to the third-party effects of assignments of claims](#), EPRS, European Parliament, June 2018.

## OTHER SOURCES

[Law applicable to the third-party effects of assignments of claims](#), Legislative Observatory (OEIL), European Parliament.

Heinze C. and Warmuth C., ['The law applicable to third-party effects of assignment and the conflict rules for insolvency according to EU law'](#), *Uniform Law Review*, Vol. 24(4), December 2019.

Kronke H., ['Assignment of Claims and Proprietary Effects: Overview of Doctrinal Debate and the EU Commission's Proposal'](#), *Oslo Law Review*, pp. 8-18, 14 May 2019.

Welling-Steffens L., ['Transfer of Claims: Harmonized EU Rules on the Law Applicable to the Assignment of Claims and the Quest for Legal Certainty'](#), NVR/II/NACIL, 2020.

Labonté H., ['Third-Party effects of the assignment of claims: new momentum from the Commission's Capital Markets Union Action Plan and the Commission's 2018 Proposal'](#), *Journal of Private International Law*, 2018.

## ENDNOTES

- <sup>1</sup> For more information on securitisation, see A. Delivorias, [Understanding Securitisation: Background – benefits – risks](#) EPRS, European Parliament, 2015.
- <sup>2</sup> See Directive on Legal Certainty in Securities Law in Annex II (indicative list of possible strategic and priority initiatives under consideration).
- <sup>3</sup> For more information on 'renvoi', see S. Stein, '[Choice of Law and the Doctrine of Renvoi](#)', *McGill Law Journal*, 1971.
- <sup>4</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.
- <sup>5</sup> The article seeks to create a special regime in the field of finance by providing for the application of the law of the claim in certain situations.
- <sup>6</sup> Those terms are: 'securitisation', 'covered bonds', 'cash', 'electronic money', 'crypto-asset' and 'financial instrument', 'transferable securities', 'financial contract', 'collateral arrangement', 'netting arrangement' and 'foreign exchange spot transaction'.
- <sup>7</sup> That is, to (i) claims and electronic money claims; (ii) claims arising from financial instruments, financial contracts (and associated collateral and netting arrangements) and foreign exchange spot transactions; (iii) claims arising out of crypto-assets that do not qualify as financial instruments or electronic money; (iv) claims arising out of transactions on financial markets or participation in financial markets infrastructure; and (v) claims arising out of agreements whereby credit is granted in the form of a loan.

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