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AMENDMENTS

17 - 69

Draft report
Pavel Svoboda
(PE621.985v01-00)

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

Proposal for a regulation
(COM(2018)0096 – C8-0109/2018 – 2018/0044(COD))

Amendment 17
Daniel Buda

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) Pursuant to Article 81 of the Treaty, these measures are to include those aimed at ensuring the compatibility of the rules applicable in the Member States concerning the conflict of laws.

Amendment

(2) Pursuant to Article 81 of the Treaty, these measures are to include those aimed at ensuring the compatibility of the rules applicable in the Member States concerning the conflict of laws **and competence**.

Or. ro

Amendment 18
Emil Radev

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) The proper functioning of the internal market requires, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict of law rules in the Member States to designate as the applicable law the same national law irrespective of the Member State of the court in which an action is brought.

Amendment

(3) The proper functioning of the internal market requires - in order to improve the predictability of the outcome of litigation, **legal** certainty as to the law applicable and the free movement **and recognition** of judgments - for the conflict of law rules in the Member States to designate as the applicable law the same national law irrespective of the Member State of the court in which an action is brought.

Or. bg

Amendment 19
Daniel Buda

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) **Conflict** of laws **rules** governing the third-party (or proprietary) effects of assignments of claims **do not** currently exist at Union level. These conflict of laws rules are laid down at Member State level, but they are inconsistent **and often** unclear. In cross-border assignments of claims, 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 does not exist in domestic assignments as different national substantive rules may be applied depending on the Member State whose courts or authorities assess a dispute as to the legal title over the claims.

Amendment

(11) **No harmonised set of rules on the conflict** of laws governing the third-party (or proprietary) effects of assignments of claims currently exist at Union level. These conflict of laws rules are laid down at Member State level, but they are inconsistent - **being based on different connecting factors to determine the applicable law - and therefore** unclear, **especially in those countries where such rules are not governed by separate legislative provisions**. In cross-border assignments of claims, 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 does not exist in domestic assignments as different national substantive rules may be applied depending on the Member State whose courts or authorities assess a dispute as to the legal title over the claims; **implicitly, the outcome of a priority conflict as to who owns a claim further to a cross-border assignment will vary, depending on the national law applied.**

Or. ro

Amendment 20

Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Conflict of laws rules governing the third-party (**or proprietary**) effects of assignments of claims do not currently exist at Union level. These conflict of laws

Amendment

(11) Conflict of laws rules governing the third-party effects of assignments of claims do not currently exist at Union level. These conflict of laws rules are laid down at

rules are laid down at Member State level, but they are inconsistent and often unclear. In cross-border assignments of claims, 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 does not exist in domestic assignments as different national substantive rules may be applied depending on the Member State whose courts or authorities assess a dispute as to the legal title over the claims.

Member State level, but they are inconsistent and often unclear. In cross-border assignments of claims, 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 does not exist in domestic assignments as different national substantive rules may be applied depending on the Member State whose courts or authorities assess a dispute as to the legal title over the claims.

Or. en

Amendment 21

Jean-Marie Cavada, António Marinho e Pinto

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) If assignees are not aware of the legal risk or choose to ignore it, they may face unexpected financial losses. Uncertainty about who has legal title over the claims assigned on a cross-border basis can have knock-on effects and deepen and prolong the impact of a financial crisis. If assignees decide to mitigate the legal risk by seeking specific legal advice, they will incur higher transaction costs not required for domestic assignments. ***If assignees are deterred by the legal risk and choose to avoid it, they may forego business opportunities and market integration may be reduced.***

Amendment

(12) If assignees are not aware of the legal risk or choose to ignore it, they may face unexpected financial losses. Uncertainty about who has legal title over the claims assigned on a cross-border basis can have knock-on effects and deepen and prolong the impact of a financial crisis. If assignees decide to mitigate the legal risk by seeking specific legal advice, they will incur higher transaction costs not required for domestic assignments.

Or. fr

Amendment 22

Jean-Marie Cavada, António Marinho e Pinto

**Proposal for a regulation
Recital 12 a (new)**

Text proposed by the Commission

Amendment

(12a) This legal risk 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 therefore 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.

Or. fr

**Amendment 23
Daniel Buda**

**Proposal for a regulation
Recital 13**

Text proposed by the Commission

Amendment

(13) 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.

(13) 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 EU and facilitate access to finance for firms - including SMEs - and consumers.**

Or. ro

**Amendment 24
Kostas Chrysogonos, Jiří Maštálka**

Proposal for a regulation

Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) This Regulation is not intended to alter the provisions of Rome I regarding the proprietary effect of a voluntary assignment as between assignor and assignee or as between assignee and debtor.

Or. en

Amendment 25

Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

(15) The conflict of laws rules laid down in this Regulation should govern the proprietary effects of assignments of claims as between all parties involved in the assignment (that is, between the assignor and the assignee and between the assignee and the debtor) as well as in respect of third parties (for example, a creditor of the assignor).

deleted

Or. en

Amendment 26

Gilles Lebreton

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

(15) The conflict of laws rules laid down in this Regulation should govern the proprietary effects of assignments of claims as between all parties involved in

15. The conflict of laws rules laid down in this Regulation **are intended to supplement the provisions of Regulation (EC) 593/2008 of 17 June 2008 on the law**

the assignment (that is, between the assignor and the assignee and between the assignee and the debtor) as well as in respect of third parties (for example, a creditor of the assignor).

applicable to contractual obligations (Rome I) and should govern the proprietary effects of assignments of claims as between all parties involved in the assignment (that is, between the assignor and the assignee and between the assignee and the debtor) as well as in respect of third parties (for example, a creditor of the assignor).

Or. fr

Amendment 27
Daniel Buda

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) The conflict of laws rules laid down in this Regulation ***should*** govern the ***proprietary*** effects of assignments of claims ***as between all parties involved in the assignment (that is, between the assignor and the assignee and between the assignee and the debtor) as well as*** in respect of third parties (for example, a creditor of the assignor).

Amendment

15. The conflict of laws rules laid down in this Regulation ***shall*** govern the effects of assignments of claims in respect of third parties (for example, a creditor of the assignor).

Or. ro

Amendment 28
Gilles Lebreton

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) The claims covered by this Regulation are trade receivables, claims arising from financial instruments as defined in Directive 2014/65/EU ***on***

Amendment

(16) The claims covered by this Regulation are ***taken to mean:***
- trade receivables
- claims arising from financial instruments

*markets in financial instruments*⁴³ and cash credited to an account in a credit institution. Financial instruments as defined in Directive 2014/65/EU include securities and derivatives traded on financial markets. **While securities are assets, derivatives are contracts which include both rights (or claims) and obligations for the parties to the contract.**

⁴³ *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.*

as defined in Directive 2014/65/EU *of the European Parliament and the Council*,
- and cash credited to an account in a credit institution.

Financial instruments as defined in Directive 2014/65/EU include:

- securities (**which are assets**),
- and derivatives traded on financial markets (**which are contracts including rights or claims, as well as obligations for the parties to the contract**).

Or. fr

Amendment 29

Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) The claims covered by this Regulation are trade receivables, claims arising from financial instruments as defined in Directive 2014/65/EU on markets in financial instruments⁴³ and cash credited to an account in a credit institution. Financial instruments as defined in Directive 2014/65/EU include securities and derivatives traded on financial markets. While securities are assets, derivatives are contracts which include both rights (or claims) and obligations for the parties to the contract.

⁴³ Directive 2014/65/EU of the European

Amendment

(16) The claims covered by this Regulation are ***inter alia*** trade receivables, claims arising from financial instruments as defined in Directive 2014/65/EU on markets in financial instruments⁴³ and cash credited to an account in a credit institution. Financial instruments as defined in Directive 2014/65/EU include securities and derivatives traded on financial markets. While securities are assets, derivatives are contracts which include both rights (or claims) and obligations for the parties to the contract.

⁴³ Directive 2014/65/EU of the European

Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

Or. en

Amendment 30
Mady Delvaux

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) This Regulation concerns the third-party effects of the assignment of claims. It does not cover the transfer of the contracts (such as derivative contracts), in which both rights (or claims) and obligations are included, or the novation of contracts including such rights and obligations. As this Regulation does not cover the transfer or the novation of contracts, trading in financial instruments, as well as the clearing and the settlement of these instruments, will continue to be governed by the law applicable to contractual obligations as laid down in the Rome I Regulation. *This law is normally chosen by the parties to the contract or is designated by non-discretionary rules applicable to financial markets.*

Amendment

(17) This Regulation concerns the third-party effects of the assignment of claims. It does not cover the transfer of the contracts (such as derivative contracts), in which both rights (or claims) and obligations are included, or the novation of contracts including such rights and obligations. As this Regulation does not cover the transfer or the novation of contracts, trading in financial instruments, as well as the clearing and the settlement of these instruments, will continue to be governed by the law applicable to contractual obligations as laid down in the Rome I Regulation.

Or. en

Amendment 31
Daniel Buda

Proposal for a regulation
Recital 18

(18) Matters governed by the Financial Collateral Directive⁴⁴, the Settlement Finality Directive⁴⁵, the Winding-Up Directive⁴⁶ and the Registry Regulation⁴⁷ should not be affected by this Regulation.

(18) Matters governed by the Financial Collateral Directive⁴⁴, the Settlement Finality Directive⁴⁵, the Winding-Up Directive⁴⁶ and the Registry Regulation⁴⁷ should not be affected by this Regulation, ***since the scope of the conflict of laws rules contained in this Regulation and that of the conflict of laws rules contained in the three Directives do not therefore overlap.***

⁴⁴ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168, 27.6.2002, p. 43–50.

⁴⁵ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, OJ L 166, 11.6.1998, p. 45–50.

⁴⁶ Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions, OJ L 125, 5.5.2001, p. 15–23.

⁴⁷ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, OJ L 122, 3.5.2013, p. 1–59.

⁴⁴ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168, 27.6.2002, p. 43–50.

⁴⁵ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, OJ L 166, 11.6.1998, p. 45–50.

⁴⁶ Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions, OJ L 125, 5.5.2001, p. 15–23.

⁴⁷ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, OJ L 122, 3.5.2013, p. 1–59.

Or. ro

Amendment 32
Emil Radev

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) In accordance with market practice and the needs of market participants, the third-party effects of certain assignments of claims should, as an exception, be governed by the law of the assigned claim, that is, the law that governs the initial contract between the creditor and the debtor *from which* the claim *arises*.

Amendment

(25) In accordance with market practice and the needs of market participants, the third-party effects of certain assignments of claims should, as an exception, be governed by the law of the assigned claim, that is, the law that governs the initial contract between the creditor and the debtor *which gives rise to* the claim.

Or. bg

Amendment 33

Mady Delvaux

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) *Flexibility should be provided in the determination of the law applicable to the third-party effects of assignments of claims in the context of a securitisation in order to cater for the needs of all securitisers and facilitate the expansion of the cross-border securitisation market to smaller operators. Whilst the law of the assignor's habitual residence should apply as the default rule to the third-party effects of assignments of claims in the context of a securitisation, the assignor (originator) and the assignee (special purpose vehicle) should be able to choose that the law of the assigned claim should apply to the third-party effects of the assignment of claims. The assignor and the assignee should be able to decide that the third-party effects of the assignment of claims in the context of a securitisation should remain subject to the general rule of the assignor's habitual residence or to choose the law of the assigned claim in*

Amendment

deleted

function of the structure and characteristics of the transaction, for example the number and location of the originators and the number of laws which govern the assigned claims.

Or. en

Amendment 34

Gilles Lebreton

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) *Flexibility should be provided in the determination of the law applicable to the third-party effects of assignments of claims in the context of a securitisation in order to cater for the needs of all securitisers and facilitate the expansion of the cross-border securitisation market to smaller operators.* Whilst the law of the assignor's habitual residence *should apply as* the default rule to the third-party effects of assignments of claims in the context of a securitisation, the assignor (originator) and the assignee (special purpose vehicle) should be able *to* choose that the law of the assigned claim should apply to the third-party effects of the assignment of claims. *The assignor and the assignee should be able to decide that the third-party effects of the assignment of claims in the context of a securitisation should remain subject to the general rule of the assignor's habitual residence or to choose the law of the assigned claim in function of the structure and characteristics of the transaction, for example the number and location of the originators and the number of laws which govern the assigned claims.*

Amendment

(28) Whilst the law of the assignor's habitual residence *is* the default rule to the third-party effects of assignments of claims in the context of a securitisation, the assignor (originator) and the assignee (special purpose vehicle) should be able, *in exceptional circumstances, to waive the rule and* choose that the law of the assigned claim should apply to the third-party effects of the assignment of claims. *This derogation is strictly regulated and may be justified: for example where the number and location of the originators and the number of laws which govern the assigned claims are such as to complicate excessively the application of the general principle.*

Or. fr

Amendment 35

Jean-Marie Cavada, António Marinho e Pinto

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Priority conflicts between assignees of the same claim may arise where the third-party effects of the assignment have been subject to the law of the assignor's habitual residence in one assignment and to the law of the assigned claim in another assignment. In such cases, the law applicable to resolve the priority conflict should be the law applicable to the third-party effects of the assignment of the claim which has first become effective against third parties under its applicable law.

Amendment

(29) Priority conflicts between assignees of the same claim may arise where the third-party effects of the assignment have been subject to the law of the assignor's habitual residence in one assignment and to the law of the assigned claim in another assignment. In such cases, the law applicable to resolve the priority conflict should be the law applicable to the third-party effects of the assignment of the claim which has first become effective against third parties under its applicable law.

Where assignment of both claims becomes effective against third parties at the same time, the law of the assignor's habitual residence should prevail.

Or. fr

Amendment 36

Daniel Buda

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) The scope of the national law designated by this Regulation as the law applicable to the third-party effects of an assignment of claims should be uniform. The national law designated as applicable should govern in particular (i) the effectiveness of the assignment against third parties, that is, the steps that need to be taken by the assignee in order to ensure

Amendment

(30) The scope of the national law designated by this Regulation as the law applicable to the third-party effects of an assignment of claims should be uniform. The national law designated as applicable should govern in particular (i) the effectiveness of the assignment against third parties, that is, the steps that need to be taken by the assignee in order to ensure

that he acquires legal title over the assigned claim (for example, registering the assignment with a public authority or registry, or notifying the debtor in writing of the assignment); and (ii) priority issues, that is, conflicts between several claimants as to who has title over the claim (for example, between two assignees where the same claim has been assigned twice, or between an assignee and a creditor of the assignor).

that he acquires legal title over the assigned claim (for example, registering the assignment with a public authority or registry, or notifying the debtor in writing of the assignment); and (ii) priority issues, that is, ***the resolution of conflicts*** between several claimants as to who has title over the claim ***following 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).

Or. ro

Amendment 37
Emil Radev

Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) The scope of the national law designated by this Regulation as the law applicable to the third-party effects of an assignment of claims should be uniform. The national law designated as applicable should govern in particular (i) the effectiveness of the assignment against third parties, that is, the steps that need to be ***taken*** by the assignee in order to ensure that he acquires legal title over the assigned claim (for example, registering the assignment with a public authority or registry, or notifying the debtor in writing of the assignment); and (ii) priority issues, that is, conflicts between several claimants as to who has title over the claim (for example, between two assignees where the same claim has been assigned twice, or between an assignee and a creditor of the assignor).

Amendment

(30) The scope of the national law designated by this Regulation as the law applicable to the third-party effects of an assignment of claims should be uniform. The national law designated as applicable should govern in particular (i) the effectiveness of the assignment against third parties, that is, the steps ***and procedures*** that need to be ***adopted*** by the assignee in order to ensure that he acquires legal title over the assigned claim (for example, registering the assignment with a public authority or registry, or notifying the debtor in writing of the assignment); and (ii) priority issues, that is, conflicts between several claimants as to who has title over the claim (for example, between two assignees where the same claim has been assigned twice, or between an assignee and a creditor of the assignor).

Or. bg

Amendment 38
Daniel Buda

Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 17 and 47 concerning, respectively, the right to property and the right to an effective remedy and to a fair trial.

Amendment

(34) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 17 and 47 concerning, respectively, the right to property and the right to an effective remedy and to a fair trial, ***as well as Article 16 concerning the freedom to conduct a business.***

Or. ro

Amendment 39
Gilles Lebreton

Proposal for a regulation
Article premier – paragraph 1 – subparagraph 1

Text proposed by the Commission

This Regulation shall apply, in situations involving a conflict of laws, to the third-party effects of assignments of claims in civil and commercial matters.

Amendment

This Regulation shall apply, in situations involving a conflict of laws, to the third-party effects of assignments of claims in civil and commercial matters ***that are manifestly cross-border in nature.***

Or. fr

Amendment 40
Mady Delvaux, Evelyne Gebhardt

Proposal for a regulation

Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This regulation is without prejudice to EU and national law on consumer protection.

Or. en

Amendment 41

Evelyne Gebhardt, Mady Delvaux

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) assignment of claims arising from matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, **and** wills and succession;

(b) assignment of claims arising from matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage **including registered partnerships**, wills and succession;

Or. en

Amendment 42

Gilles Lebreton

Proposal for a regulation

Article premier – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) assignment of claims in the course of collective proceedings under Regulation (EU) 2015/848.

Or. fr

Amendment 43
Răzvan Popa

Proposal for a regulation
Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) ‘assignor’ means a person who transfers his right to claim a debt against a debtor to another person;

Amendment

(a) ‘assignor’ means a person, ***company or entity*** who transfers his right to claim a debt against a debtor to another person;

Or. en

Amendment 44
Răzvan Popa

Proposal for a regulation
Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) ‘assignee’ means a person who obtains the right to claim a debt against a debtor from another person;

Amendment

(b) ‘assignee’ means a person, ***company or entity*** who obtains the right to claim a debt against a debtor from another person;

Or. en

Amendment 45
Răzvan Popa

Proposal for a regulation
Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) ‘claim’ means the right to ***claim*** a debt of whatever nature, whether monetary or non-monetary, and whether arising from a contractual or a non-contractual obligation;

Amendment

(d) ‘claim’ means the right to ***request*** a debt of whatever nature, whether monetary or non-monetary, and whether arising from a contractual or a non-contractual obligation;

Amendment 46

Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) ‘third-party effects’ means *proprietary effects, that is*, the right of the assignee to assert his legal title over a claim assigned to him towards other assignees or beneficiaries of the same or functionally equivalent claim, creditors of the assignor and other third parties;

Amendment

(e) ‘third-party effects’ means the right of the assignee to assert his legal title over a claim assigned to him towards other assignees or beneficiaries of the same or functionally equivalent claim, creditors of the assignor and other third parties;

Or. en

Amendment 47

Daniel Buda

Proposal for a regulation

Article 2 – paragraph 1 – point h

Text proposed by the Commission

(h) ‘cash’ means money credited to an account in a credit institution in any currency;

Amendment

deleted

Or. ro

Amendment 48

Răzvan Popa

Proposal for a regulation

Article 2 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) ‘cash’ means money credited to an account in a credit institution in any currency;

deleted

Or. en

Amendment 49

Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation

Article 2 – paragraph 1 – point i a (new)

Text proposed by the Commission

Amendment

(ia) ‘securitisation’ means -pursuant to Art. 2(1) Regulation(EU) 2017/2042- a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics:

(a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;

(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;

(c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013.

Or. en

Amendment 50

Daniel Buda

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

Any law specified *by* this Regulation shall

The law applicable that is specified *under*

be applied whether or not it is the law of a Member State.

the provisions of this Regulation shall be applied whether or not it is the law of a Member State.

Or. ro

Amendment 51
Gilles Lebreton

Proposal for a regulation
Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Unless otherwise provided for in this Article, 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 *material time*.

Amendment

Unless otherwise provided for in this Article, 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 at which the assignment of claims becomes effective against third parties*.

Or. fr

Amendment 52
Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation
Article 4 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The material time for determining the habitual residence of the assignor is the point in time that the assignment is made.

Or. en

Amendment 53
Mady Delvaux, Evelyne Gebhardt

Proposal for a regulation

Article 4 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Third-party effects of an assignment of claims where the assignee is acting as a natural person for a purpose which can be regarded as being outside his trade or profession (consumer) and where the assignor is acting in the exercise of his trade or profession shall be governed by the law of the country where the assignee has his habitual residence, provided that the assignor:

(a) pursues his commercial or professional activities in the country where the assignee has his habitual residence, or

b) by any means, directs such activities to that country or to several countries including that country.

Assignor and assignee may choose the law applicable which fulfils the requirements, in accordance with this Article. Such a choice may not, however, have the result of depriving the assignee of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of this paragraph.

Or. en

Amendment 54

Gilles Lebreton

Proposal for a regulation

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. *The* law applicable to the assigned claim shall govern the third-party effects of

2. *Notwithstanding paragraph 1 of this article, the* law applicable to the

the assignment of:

assigned claim shall govern the third-party effects of the assignment of:

Or. fr

Amendment 55

Răzvan Popa

Proposal for a regulation

Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) **cash** credited to an account in a credit institution;

Amendment

(a) **money** credited to an account in a credit institution;

Or. en

Amendment 56

Răzvan Popa

Proposal for a regulation

Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) claims arising from **a** financial **instrument**.

Amendment

(b) claims arising from financial **instruments**.

Or. en

Amendment 57

Mady Delvaux

Proposal for a regulation

Article 4 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The assignor and the assignee may choose the law applicable to the assigned claim as the law applicable to the third-

Amendment

deleted

party effects of an assignment of claims in view of a securitisation.

Or. en

Amendment 58
Gilles Lebreton

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The assignor and the assignee may 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*.

Amendment

In respect of assignment of claims referred to in paragraph 2 for the purpose of securitisation, the assignor and the assignee may choose *that* the law applicable to the *largest number of* assigned *claims shall apply* as the law applicable to the third-party effects of *all* claims *assignments*.

Or. fr

Amendment 59
Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The assignor and the assignee may 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.

Amendment

The assignor and the assignee may 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, *as well as in view of supply chain finance programs and secondary trading in syndicated loans*.

Or. en

Amendment 60
Mady Delvaux

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The choice of law shall be made expressly in the assignment contract or by a separate agreement. The substantive and formal validity of the act whereby the choice of law was made shall be governed by the chosen law.

deleted

Or. en

Amendment 61
Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The choice of law shall be made expressly in the assignment contract or by a separate agreement. The substantive and formal validity of the act whereby the choice of law was made shall be governed by the chosen law.

The choice of law shall be made expressly in the assignment contract or by a separate agreement. The substantive and formal validity of the act whereby the choice of law was made shall be governed by the chosen law. *Any assignment shall be formally valid if it satisfies the formal requirements of the law that applies to the contract between the assignor and assignee under Article 14(1) of Rome I.*

Or. en

Amendment 62
Jean-Marie Cavada, António Marinho e Pinto

Proposal for a regulation
Article 4 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The choice of law shall be made expressly in the assignment contract or by *a* separate agreement. The substantive and formal validity of the act whereby the choice of law was made shall be governed by the chosen law.

Amendment

The choice of law shall be made expressly in the assignment contract ***by an amendment to the contract of assignment*** or by separate agreement ***with the same purpose and concluded between the same parties***. The substantive and formal validity of the act whereby the choice of law was made shall be governed by the chosen law.

Or. fr

Amendment 63

Jean-Marie Cavada, António Marinho e Pinto

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

4. A priority conflict between assignees of the same claim where the third-party effects of one of the assignments are governed by the law of the country in which the assignor has its habitual residence and the third-party effects of other assignments are governed by the law of the assigned claim shall be governed by the law applicable to the third-party effects of the assignment of the claim which first became effective against third parties under its applicable law.

Amendment

4. A priority conflict between assignees of the same claim where the third-party effects of one of the assignments are governed by the law of the country in which the assignor has its habitual residence and the third-party effects of other assignments are governed by the law of the assigned claim shall be governed by the law applicable to the third-party effects of the assignment of the claim which first became effective against third parties under its applicable law. ***Where assignment of both claims becomes effective against third parties at the same time, the law of the country in which the assignor's habitual residence is situated shall prevail.***

Or. fr

Amendment 64

Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

If a notice of the assignment to the debtor is one of the requirements referred to in Article 5(a) or is relevant to any of the questions of priority referred to in Article 5(b) to (e), then any such notice shall be formally valid. This notice shall satisfy the formal requirements for such notices of the law that applies to the relationship between the assignee and the debtor under Article 14(2) of Rome I.

Or. en

Amendment 65
Emil Radev

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the *competent* forum.

Or. bg

Amendment 66
Kostas Chrysogonos, Jiří Maštálka

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

Collective Redress
In a collective redress procedure,

jurisdiction for a claim is governed, also when assigned or securitised, by the respective national lex fori until Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) will be complemented by specific consistent union-wide provisions for collective procedures.

Or. en

Amendment 67
Gilles Lebreton

Proposal for a regulation
Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Effectiveness against third parties shall be subject to the overriding mandatory provisions of the law of the Member State where the assignment has to be or has been performed, insofar as those provisions render the assignment contract unlawful.

Or. fr

Amendment 68
Emil Radev

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the **competent**

forum.

Or. bg

Amendment 69
Răzvan Popa

Proposal for a regulation
Article 9 – paragraph 1

Text proposed by the Commission

1. Where 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 shall be considered as a State for the purposes of identifying the law applicable under this Regulation.

Amendment

1. Where 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 shall be considered as a State for the purposes of identifying the law applicable under this Regulation. ***The habitual residence should therefore be defined by the territorial unit of central administration.***

Or. en