



**2018/0044(COD)**

3.5.2018

**\*\*\*I**

## **DRAFT REPORT**

on the 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  
(COM(2018)0096 – C8-0109/2018 – 2018/0044(COD))

Committee on Legal Affairs

Rapporteur: Pavel Svoboda

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	13



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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  
(COM(2018)0096 – C8-0109/2018 – 2018/0044(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0096),
  - having regard to Article 294(2) and Article 81(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0109/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **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 should govern the effects of assignments of claims in respect of third parties, for example, a creditor of the assignor, ***excluding the debtor***.

Or. en

## Amendment 2

### 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 instruments<sup>44</sup> 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.

---

<sup>44</sup> 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.

*Amendment*

(16) The claims covered by this Regulation **include** trade receivables, claims arising from financial instruments as defined in Directive 2014/65/EU **of the European Parliament and of the Council**<sup>44</sup> 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.

---

<sup>44</sup> 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).

Or. en

## Amendment 3

### 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**

*Amendment*

(17) This Regulation concerns the third-party effects of the assignment of claims. **In particular, it covers** 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

*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.*

obligations.

Or. en

#### **Amendment 4**

##### **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) *As regards assignments of claims in the context of a securitisation, they are normally from financial institutions to special purpose vehicles (SPV) created for the purpose of the securitisation. It is not common that several institutions from different Member States assign claims to the same SPV and that as a result the assignments to the SPV are subject to different legal orders. The general rule of the habitual residence of the assignor would give sufficient predictability in relation to assignment of claims for the purpose of securitisations.*

## Amendment 5

### Proposal for a regulation

#### Article 1 – 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 ***other than third-party effects to the debtor of the claim assigned.***

Or. en

## Amendment 6

### Proposal for a regulation

#### Article 1 – paragraph 2 – point f a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 7

### Proposal for a regulation

#### Article 2 – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

(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

(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;

the assignor and other third parties,  
*excluding the debtor;*

Or. en

## Amendment 8

### 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 9

### Proposal for a regulation

#### Article 4 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*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 *material* time.

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 *of the conclusion of the assignment contract*.

Or. en

## Amendment 10

### Proposal for a regulation

#### Article 4 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

Where the assignor has changed its

Where the assignor has changed its

habitual residence between two assignments of the same claim to different assignees, the priority of the right of an assignee over the right of another assignee shall be governed by the law of the habitual residence of the assignor at the time of the assignment which first became effective against third parties under the law designated as applicable pursuant to the first subparagraph.

habitual residence between two assignments of the same claim to different assignees, the priority of the right of an assignee over the right of another assignee shall be governed by the law of the habitual residence of the assignor at the time of the assignment which first became effective against *other* third parties under the law designated as applicable pursuant to the first subparagraph.

Or. en

## Amendment 11

### Proposal for a regulation

#### Article 4 – paragraph 2 – introductory part

*Text proposed by the Commission*

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

*Amendment*

2. *Notwithstanding paragraph 1 of this article, the* law applicable to the assigned claim shall govern the third-party effects of the assignment of:

Or. en

## Amendment 12

### 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 13

### 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 assignments 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 assignments of claims**.*

Or. en

## Amendment 14

### 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 **other** third parties under its applicable law.

Or. en

## Amendment 15

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

*Text proposed by the Commission*

*Amendment*

**2a.** *Effect shall be given 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 overriding mandatory provisions render the performance of the assignment contract unlawful.*

Or. en

## Amendment 16

### Proposal for a regulation Article 14 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The law applicable pursuant to this Regulation shall determine 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.

2. The law applicable pursuant to this Regulation shall determine 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. ***In case of competing claims based on assignments, the law applicable pursuant to this Regulation shall determine the rights of the respective assignees, solely in respect of assignments concluded after the date of application of this Regulation.***

Or. en

## EXPLANATORY STATEMENT

Rules relating to the law applicable to third party effects of assignments of claims were included in the Commission proposal that later became Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) but they did not end up in the final text. The clear intention of the legislators when lifting these questions out of the Rome I regulation was that the Commission should return with a proposal at a later stage.

The questions were raised again in the light of the 2015 Action Plan on Capital Markets Union (CMU). In May 2017 the Commission's Mid-term Review set out the remaining actions which will be taken to put in place the building blocks of the CMU by 2019, with the objective of removing barriers to cross-border investment and lowering the costs of funding.

### *Scope of the report*

The proposal of the Commission has fifteen articles. It follows closely the Rome I and II Regulations. In this report the provisions specific to this Proposal has been put in focus, whilst provisions only copied over from Rome I and II have been left unchanged. This position has been taken specifically with the view of possibly concluding this legislative file before the end of the Legislature.

### *The main rule*

In the Commission Proposal, the main rule for the applicable law to assignments is the law of the habitual residence of the assignor. This is the rule in place in some Member States, whilst others apply for instance the law applicable to the claim assigned. The main negative consequences of an assignment may appear for the creditors of the assignor or for other third parties related to the assignor. For this law of the habitual residence of the assignor will give a high degree of transparency and predictability for the third parties possibly concerned.

### *Explicit exclusion of debtors*

The law applicable to the consequences of an assignment for the debtor is regulated in Article 14 of the Rome I Regulation. Not explicitly excluding debtors from third parties under this Regulation would mean that the provision in Rome I applies by way of being *lex specialist* but that the question may arise to what extent this Regulation supplements Rome I. To make the third party consequences for debtors be solely regulated by Rome I, an explicit exclusion should be introduced in this Regulation.

### *Exclusion of insolvency proceedings*

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings contains rules relating to applicable law. For that reason, assignments done in the course of a collective proceeding according to that regulation should be excluded from the scope of application of this Regulation.

### *Securitisation*

The Commission has proposed that the assignor and assignee would be able to choose the law applicable to third party consequences of an assignment. Such a rule goes across one of the fundamental principles of European civil law: that the parties to an agreement may not

dispose over the rights of third parties by way of the agreement. To leave the parties to the assignment agreement in full discretion in the respect would, especially in the light of Article 3, go too far. However, a solution where the parties to the securitisation arrangement would be able to choose that the law applicable to the largest number of claims applies to all claims would achieve sufficient streamlining while it retains a sufficient level of protection for third parties.