

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

2018/0044(COD) - 12/03/2018 - Legislative proposal

PURPOSE: to establish common conflict of laws rules designating which national law applies to the third-party effects of assignments of claims, with a view to ensuring legal certainty.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: 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 **assignment of a claim** is a legal mechanism whereby a creditor ("assignor") transfers his right to claim a debt to another person ("assignee"). A claim gives a creditor the right to receive a sum of money or to the performance of an obligation by the debtor. This mechanism is used by companies to obtain liquidity and have access to credit, so-called factoring and collateralisation respectively, and by companies (most often banks) to optimise the use of their capital, also called securitisation.

Factoring is a crucial source of liquidity for many firms. The majority of users of factoring are SMEs: Small represent 76%, Medium 11% and Large 13%. Europe as a region is the largest factoring market world-wide and represents 66% of the world market.

As part of the Action Plan on [Capital Markets Union](#) (CMU) and the [Mid-Term Review](#), the Commission announced **targeted action** on rules on the ownership of securities and the third-party effects of assignments of claims to reduce legal uncertainty for cross-border transactions in securities and claims. This proposal and the [Communication](#) on the law applicable to the proprietary effects of transactions in securities, presented in parallel, implement this commitment.

IMPACT ASSESSMENT: five options have been studied in the impact assessment. The proposal is based on the option that the law of the assignor's habitual residence is a general rule but with certain assignments subject, as an exception, to the law of the assigned claim and with a choice of law possibility for securitisation.

CONTENT: the proposal for a Regulation concerns the **law applicable to cross-border transactions** involving claims or securities. It does not cover the transfer of the contracts (for example derivative contracts), in which both rights (or claims) and obligations are included.

The proposal aims to:

- contribute to the objective of **encouraging cross-border investment by reducing the legal uncertainty** that may discourage cross-border assignments of claims or lead to additional costs for those transactions;

- **protect investors** by reducing losses that may occur when market participants are unaware of the legal risk arising from legal uncertainty;
- **harmonise the conflict of law rules** on the third-party effects of assignments of claims, the proposal will provide legal certainty to parties involved in factoring, collateralisation and securitisation and thereby facilitate access to cheaper finance for SMEs and consumers.

The solution which the Commission proposes is a general rule that in conflict **situations the law of the assignor's habitual residence applies**.

The law of the assignor's habitual residence is easy to determine and most likely to be the place in which the main insolvency proceedings with respect to the assignor will be opened. The proposal is also particularly suitable for bulk assignments and assignments of receivables under future contracts, which are an important source of finance for SMEs. It is the only law which is consistent with the Union acquis on insolvency, that is, the [Insolvency Regulation](#).

The Commission proposes, however, that the **law of the assigned claim applies to two types of specific claims**, which are therefore exempted from the general rule:

- cash on the account of a credit institution (for example a bank, where the consumer is the creditor and the credit institution is the debtor);
- claims derived from financial instruments, such as derivatives.

In addition, for **securitisation** transactions, the Commission proposes a choice between the law of the assignor and the law of the assigned claim.