

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

2018/0044(COD) - 12/03/2018 - Document attached to the procedure

PURPOSE: to outline the Commission's view on the current conflict of laws rules for securities transactions.

BACKGROUND: following on from the [action plan on Capital Markets Union](#) (CMU), and the [mid-term review](#), the Commission announced **targeted action to reduce legal uncertainty** on cross-border transactions of securities and claims. The purchase and sale of securities, as well as their use as collateral, take place daily across the EU in large volumes. A significant part of these transactions, amounting to around **EUR 10 trillion per year**, involve a cross-border element.

Cross-border transactions in securities are important components of CMU. In order to promote cross-border transactions, clarity and predictability about which country's law applies to determine who owns the underlying assets of the transaction is of the essence.

The conflict of laws provisions in the [Settlement Finality Directive](#), [Financial Collateral Directive](#) and [Winding-up Directive](#) designate the applicable law based on a common approach. They all designate an applicable law based on the place of the relevant register or account (and in the case of the Settlement Finality Directive and the Winding-up Directive, the centralised deposit system). Nevertheless, the provisions differ in detail and there appear to be **some differences in how they are interpreted and applied across Member States**. In particular, this concerns the definition and determination of where the account is 'located' or 'maintained'.

The **lack of clarity** created by different interpretations of the existing rules might make cross-border transactions more costly due to some residual legal uncertainty around which law is applicable.

Given the volume of transactions concerned, the Commission is of the view that a **clarification of the rules** is necessary to help markets reduce redundant costs and increase legal certainty around the applicable law.

CONTENT: the Communication clarifies the Commission's views on important aspects of the existing EU acquis with regard to **the law applicable to proprietary effects of transactions in securities**. It covers the third-party effects of the transfer of financial instruments and accompanies the legislative proposal on third-party effects of assignment of claims.

Two elements of transactions in securities are governed by conflict of laws rules:

- **the proprietary element**, which refers to the transfer of rights in property and which affects third parties; and
- **the contractual element**, which refers to the parties' obligations towards each other under the transaction.

The Communication concerns the first aspect, **proprietary effects** of securities transactions. The [Rome I Regulation](#) already regulates the contractual element at EU level.

On the question of whether the terms '**maintained**' and '**located**' mean different things, the Commission is of the view that the difference in wording, referring to the place of the account or register, **does not imply any difference in substance**.

The Commission observes that under national implementation there are different ways to determine where a securities account is 'located' or 'maintained'. Without prejudice to potential future decisions of the Court of Justice of the European Union, these **different ways of interpretation all appear to be valid** under the Directives.

Member States should continue to observe if any legal discrepancies occur at the level of national interpretations that might cause market disruptions, and aim to converge in their interpretation and application of the existing EU rules.

The Commission will continue to **monitor developments in this area**. In consultation with stakeholders, it will assess how national interpretations and market practices evolve, in light of international and technological developments. Evidence from stakeholders on the impact of specific issues on the functioning of the internal market will be particularly assessed. Any possible future legislative initiative will be accompanied by an impact assessment.