

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

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OPINION OF THE EUROPEAN CENTRAL BANK on a 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.

The ECB takes note of the proposed regulation, which seeks to address the question of defining the law governing the effectiveness of the assignment of a claim against third parties, and the priority of the assigned claim over third party claims over the subject matter of the assignment. However, it recommends certain improvements to the proposal.

The general rule under the proposed regulation is 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'. The ECB notes that Article 14 of [Regulation \(EC\) No 593/2008](#) refers, for certain aspects, to the law of the assignment agreement and, for others, to the law of the assigned claim. The general rule under the proposed regulation refers to a third jurisdiction, that of the **assignor's habitual residence**. The ECB considers that, although legally feasible, the proposed rule has **shortcomings**, especially in scenarios where credit claims are used as financial collateral within the meaning of Article 1(4)(a) of [Directive 2002/47/EC](#) on financial collateral arrangements.

Furthermore, since the proposed regulation affects the interests of central banks as collateral takers, i.e. as assignees of claims, the ECB invites the Council to consider the introduction of an amendment to the effect that **the law applicable to the claim would also govern the third-party effects of assignments of credit claims**, i.e. bank loans.

The ECB makes reference to the *acquis* in matters of conflict of laws under Article 9(2) of [Directive 98/26/EC](#) on settlement finality in payment and securities settlement systems and feels there is a strong case for defining **a single applicable jurisdiction for credit claims** as the Union legislator has done for book entry securities. The most efficient way of minimising the number of laws applicable to credit claims would be to refer, also in the case of bank loans, to the law of the assigned claim.

The ECB also invites 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 claim. In order to minimise the amount of potential losses in the case of realisation, this exclusion should also cover any third party to whom the credit claim is subsequently assigned by a Eurosystem central bank.