

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

2018/0044(COD) - 13/02/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 546 votes to 35, with 62 abstentions, a 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.

The proposal for a Regulation concerns the law applicable to cross-border transactions involving claims or securities. It 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.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows.

Scope of application:

Parliament pointed out that matters governed by Directive 2002/47/EC of the European Parliament and of the Council (financial collateral arrangements), by Directive 98/26/EC of the European Parliament and of the Council (settlement finality), Directive 2001/24/EC of the European Parliament and of the Council (winding-up Directive) and Commission Regulation (EU) No 389/2013 on the register, 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 those three Directives do not therefore overlap.

By laying down common conflict of laws rules designating which national law applies to the third-party effects of assignments of claims, the Regulation shall increase cross-border claims transactions, so as to encourage cross-border investment in the Union and facilitate access to finance for firms - including small and medium-sized enterprises (SMEs) - and consumers.

Explicit exclusion of debtors

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.

Exclusion from insolvency proceedings

[Regulation \(EU\) 2015/848](#) of the European Parliament and of the Council 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.

Applicable law

The third-party effects of an assignment 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.

Members deleted the provisions of the proposal which provide that 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.

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 both assignments become effective against third parties at the same time, the law of the country in which the assignor's habitual residence is situated shall prevail.

Overriding mandatory provisions

The overriding mandatory provisions shall apply to 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.