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#### NOTE

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Subject:	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 - Presidency text

In preparation of the meeting of the Working Party on Civil Law Matters (Assignments of Claims) on 24 February 2020, the Presidency has prepared a revised text of the abovementioned proposal that delegations will find in the Annex to this Note.

This text takes into account the examination of the Commission proposal made by this Working Party at previous meetings and the comments put forward by delegations. This text does not cover the 'preamble' part of the Commission proposal which will be considered later on.

Deletions in comparison to the previous Presidency text (7889/19) are indicated by ~~striketrough~~ and new text is **bold**. Square brackets indicate alternative solutions.

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**

CHAPTER I  
SCOPE AND DEFINITIONS

*Article 1*

**Scope**

1. This Regulation shall apply, in situations involving a conflict of laws, to the third- party effects of voluntary<sup>1</sup> assignments of claims and contractual subrogation in civil and commercial matters.

\*2

It shall not apply, in particular, to revenue, customs or administrative matters.

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<sup>1</sup> In line with Article 14 Rome I Regulation and as opposed to legal subrogation according to Article 15 Rome I Regulation (this could also be clarified in a recital).

\*2 Regarding the position of the debtor, Recital 15 could be amended as follows: “The conflict of laws rules laid down in this Regulation should govern the 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). The obligations of the debtor as regards the assignor and the assignee and the correlative rights of the assignor and the assignee as regards the debtor are governed by the conflict of law rules laid down in Article 14(2) of the Rome I Regulation.”

2. The following ~~[assignments of claims]~~ shall be excluded from the scope of this Regulation:
- (a) assignment of claims arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;
  - (b) assignment of claims arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
  - (c) assignment of claims arising under bills of exchange, cheques and promissory notes ~~[and other negotiable instruments to the extent that the claims under such other negotiable instruments arise out of their negotiable character]~~; <sup>3</sup>
  - (d) ~~[assignment of claims arising out of]~~ questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body; <sup>4</sup>
  - (e) assignment of claims arising out of the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

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<sup>3</sup> **A Recital to explain that the expression "other negotiable instruments" do not include financial instruments capable of being traded on capital markets.**

<sup>4</sup> **A Recital to explain that point (d) of Article 1(2) does not include a claim separately assignable, such as a dividend after the resolution on the allocation of profits. That type of claim falls into the scope of the Regulation.**

- (f) assignment of claims arising out of life insurance contracts arising under operations carried out by organisations other than undertakings referred to in Article 2(1) and (3) of Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work;
- (g) ~~{transfer of~~ **transferable securities, money-market instruments, units in collective investment undertakings** by way of physical delivery of a certificate or by book entry **in a register, account or centralised deposit system;**<sup>5</sup>~~{transfer of securities title to which is evidenced by entries in a register, account or centralised deposit system maintained by or on behalf of an intermediary};~~

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<sup>5</sup> ~~The following A Recital to explain that could also be added:~~ “Certain contractual claims, in particular bonds, may be incorporated into a certificate or a book entry and become a transferable security. Where bonds or securities are transferred by way of physical delivery of a certificate or by book entry, the law applicable to the third-party effects of transfers of securities is not governed by this Regulation but by the instruments mentioned in the Communication on the applicable law to the proprietary effects of transactions in securities (COM/2018/089 final) and the otherwise applicable national conflict of laws rules.”

**[(h) assignment of claims falling within the scope of the conflict of law provisions in the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems and Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.]<sup>6</sup>**

(x)<sup>7</sup>

## *Article 2*

### **Definitions**

For the purposes of this Regulation:

- (a) ‘assignor’ means a person who transfers his right to claim a debt against a debtor to another person;
- (b) ‘assignee’ means a person who obtains the right to claim a debt against a debtor from another person;

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<sup>6</sup> A Recital to explain that the proposal does not apply to the third-party effects of the following assignments of claims: assignments of claims arising from or in connection with the provision of book entry securities financial collateral (as defined in Article 2(1)(g) of the FCD), as laid down in Article 9 of the FCD; assignments of claims arising from or in connection with the participation of a participant in a system (as defined in Article 2(a) of the SFD) where insolvency proceedings have been opened against that participant, as laid down in Article 8 of the SFD; assignments of claims arising from or in connection with the provision of collateral security (as defined in Article 2(m) of the SFD), as laid down in Article 9(2) of that Directive; assignment of claims arising from, or in connection with, the matters covered by Article 24 (Lex rei sitae) and Article 31 (Protection of third parties) of the WUD.

<sup>7</sup> Whether further exclusions are necessary will be subject to further discussion. It works as a placeholder for possible future exclusions.

- (c) ‘assignment’ means a voluntary transfer of a right to claim a debt against a debtor; it includes outright transfers of claims, contractual subrogation, transfers of claims by way of security and pledges or other security rights over claims, but does not cover transfers of contracts, in which both rights and obligations are included, or the novation of contracts including such rights and obligations;<sup>8</sup>
- (d) ‘claim’ means, the right to claim a debt of whatever nature, whether monetary or non-monetary, and whether arising out of a contractual or a non-contractual obligation;<sup>9 10</sup>

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<sup>8</sup> The second sentence of Recital 17 can be used here in order to clarify that novation and transfers of contracts are not covered by the definition of assignment. **This should be further discussed together with Article 5(e) (see footnote 42) and Article 2(e) (see footnote 12).**

<sup>9</sup> For further clarification Recital 16 could be amended as follows in order to reflect the comprehensive nature of the definition:

“(16) The claims covered by this Regulation include, without being limited to, trade receivables, claims arising out of financial instruments as defined in Directive 2014/65/EU on markets in financial instruments and cash **as defined in Directive 2002/47/EC** ~~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>10</sup> In order to make clear that claims arising out of certain areas will be excluded from the scope of this Regulation it could be also specified in a recital that non-contractual obligations referred to in the text are those governed by Rome II Regulation and also the fact that 'The patrimonial rights arising out of shares representing the economic value of the ownership or any other economic value of a company, corporated or incorporated are not affected by the Proposal'.

(e) 'third-party effects' means the right

*Option 1*

[ of the assignee to assert his legal title over a claim assigned to him towards other assignees or beneficiaries of the same or an equivalent claim, creditors of the assignor and other third parties; ~~other than the debtor~~];<sup>11</sup>

*Option 2*

[to assert a legal title over an assigned claim towards third parties ~~other than the debtor~~, such as assignees, beneficiaries of the same or an equivalent claim, creditors of the assignor or creditors of the assignee];<sup>12</sup>

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<sup>11</sup> Suggestions were made by some Member States that “other than the debtor” should be deleted because the debtor is also a third-party as the assignee’s rights in rem over the assigned claim have effects *erga omnes*. Indisputably, the contractual relationship between the assignee and the debtor and all the debtor’s obligations towards the assignee remain governed by Rome I (and are not governed by the new regulation). See footnote 2.

<sup>12</sup> Wording “or an equivalent claim” refers to priority conflicts arising where a claim has been first assigned and, then, the contract in which the (already assigned) claim was included is novated such that another person is now the owner of the claim clean of any prior charges. The priority conflict would arise between the first assignee of the claim and the new owner of the claim after the novation of the contract. As some Member States want to exclude all aspects related to novation from the scope of the new regulation, the reference to “the equivalent claim” would need to be deleted. The same could be discussed with regard to Article 5(d) where “same claim” refers to a situation in which a claim is first assigned and then the contract in which the (already assigned) claim is included is transferred. In this case the priority conflict would arise between the first assignee of the claim and the new owner of the claim with all its prior charges after the transfer of the contract. From a legal viewpoint, the assigned claim and the claim included in the transferred contract is the same claim as the contract has not been novated. This should be further discussed together with Article 5(e) (see footnote 42) and Article 2(c) (see footnote 8).

- (f) ‘habitual residence’ means, for companies and other bodies, corporate or unincorporated, the place of central administration; for a natural person acting in the course of his business activity, his principal place of business;<sup>13</sup>
- ~~(g) ‘credit institution’ means an undertaking [as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (Capital Requirements Regulation);<sup>14</sup>] [the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account];<sup>15</sup>~~
- (ga) ‘securitisation’ means a transaction or scheme as defined in Article 2(1) of Regulation (EU) 2017/2402 of the European Parliament and of the Council (Securitisation Regulation).<sup>16</sup> It includes ‘traditional securitisation’ and ‘synthetic securitisation’ as defined, respectively, in Article 2(9) and Article 2(10) of Regulation (EU) 2017/2402;

<sup>13</sup> This provision corresponds to Article 19(1) Rome I Regulation. In most cases, the concept of habitual residence will also coincide with the place of the registered office according to Article 3(1) Regulation (EU) 2015/848 (Insolvency Regulation). On the other hand, the inclusion of paragraph 2 of Article 19 Rome I Regulation would create legal uncertainty as to which law is applicable if the same claim were assigned by the assignor’s central management and also by the management of a branch located in a different country.

<sup>14</sup> ~~Article 4(1)(1) Regulation (EU) 575/2013 reads as follows: “credit institution means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.”~~

<sup>15</sup> **Since the definition of cash was aligned with the definition provided for in Directive 2002/47/EC, there is no need to define the term 'credit institution'.**

<sup>16</sup> Article 2(1) of Regulation (EU) 2017/2402 reads as follows: ‘securitisation’ means a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics: (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures; (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; (c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013. Article 2(9) reads as follows: ‘traditional securitisation’ means a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator. Article 2(10) reads as follows: ‘synthetic securitisation’ means a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator.



~~(gb) 'securities' means those instruments specified in Article 2(1)(e) of Directive 2002/47/EC (Financial Collateral Directive);<sup>17</sup>~~

(h) ~~{ 'cash' } { 'funds' } means money credited to an account in a credit institution or a central bank in any currency;<sup>18</sup>~~ **means money as defined in Article 2(1)(d) of the Directive 2002/47/EC (FCD);**

(i) 'financial instrument' means those instruments specified in Section C of Annex I to Directive 2014/65/EU **(MiFID);**

(j) 'financial contract' means those instruments specified in Article 2(1)(100) of the Banking Recovery and Resolution Directive (BRRD);

(k) 'credit claims' means those claims as defined in point (o) of Article 2(1) of Directive 2002/47/EC **(FCD);**

(l) 'spot foreign exchange transactions' means a contract as it is defined in Article 10 of Commission Delegated Regulation (EU) 2017/565.

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<sup>17</sup> The definition of 'financial instrument' **and 'financial contract'** ~~in (i)~~ could be understood as already including the concept of 'securities'. **Therefore there is no need to define the term 'securities'.**

<sup>18</sup> ~~Suggestions were made to align this definition with Article 2(1)(d) of the Financial Collateral Directive [ "cash" means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits]. This is a policy choice to be made. It must be kept in mind that if the definition were not limited to an account in a credit institution, the scope of the exception in Article 4(2)(a) would be broader.~~

CHAPTER II  
UNIFORM RULES

*Article 3*

**Universal application**

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

*Article 4*

**Applicable law<sup>19</sup>**

1. 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~~ **State**<sup>20</sup> in which the assignor has its habitual residence at the time of the conclusion of the assignment contract.

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.

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<sup>19</sup> The choice of the connecting factor in paragraph 1 is a policy decision. Some Member States have expressed a preference for the law of the assigned claim. If this connecting factor were chosen, other exceptions (in addition to the new paragraphs 2a and 2b) would be required in paragraph 2, since the law of the country of the habitual residence of the assignor is more appropriate in certain cases and should govern, for example, assignments related to a factoring contract, bulk assignments or the assignment of future claims.

<sup>20</sup> **Some Member States suggested that the text should be consistent and either “country” or “State” should be chosen to avoid interpretation questions. While “country” was used in Rome I, the most recent civil law instruments use “State” (eg Succession Regulation No 650/2012). Due to that and the fact that several Member States at the last WP meetings opted for the term “State” the text was amended accordingly.**

2. The law applicable to the assigned claim shall govern the third-party effects of the assignment of:
- (a) claims arising out of or in connection with ~~[cash]~~ ~~[funds]~~;<sup>21, 22 23 24</sup>
  - (b) claims arising out of or in connection with:
    - (i) financial instruments; and
    - (ii) financial contracts;<sup>25, 26 27</sup>

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<sup>21</sup> ~~It was suggested by several Member States that a different connecting factor would be more suitable in this case. The new paragraph 2a is meant to be an alternative to Article 4.2(a).~~

<sup>22</sup> ~~If "cash" is defined as it is proposed in Article 2 h) then the cash will include "money credited to an account in a credit institution or a central bank in any currency". So, the reference to "cash" from letter a) of Article 4 (2) and also from Article 4 (2.a) should be coherent with the definition of cash from Article 2 letter h).~~

<sup>23</sup> **A Recital to explain that, for the purposes of the new instrument, credit transfers would not be regarded as assignments of claims.**

<sup>24</sup> **A Recital to explain that assignment of cash claims in the context of financial markets (such as exchanges) and financial market infrastructures or systems (such as CCPs, CSDs and payment systems) would be covered by the law of the assigned claim pursuant to the exception for transactions on financial markets or participation in financial markets infrastructures**

<sup>25</sup> ~~Comments were made that this exception was not wide enough and should encompass, for example, financial contracts within the meaning of Article 2(1)(100) of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD). This is a policy choice to be made. It has to be kept in mind that if the exception were not limited to financial instruments as specified in Section C of Annex I of MiFID II, the scope of the exception would be much broader in Article 4(2)(b). Whether further exceptions are necessary because of a possible interference with financial market instruments will be subject to further discussion with financial experts of the Commission.~~

<sup>26</sup> **Recital 27 could be amended as to explain that the law of the assigned claim is also applicable to the third-party effects of the assignment of claim to interests (regarding bonds) and of claim separately assignable, such as a dividend (regarding shares) after the resolution on the allocation of profits.**

<sup>27</sup> **Article 4(2)(b) also includes claims arising from derivatives and the third-party effects of their assignment as well as master agreements in the BRRD list of financial contracts.**

**[(iii) associated financial collateral arrangements within the meaning of Article 2(1)(a) of the FCD; associated collateral security within the meaning of Article 2(m) of the SFD; and associated netting arrangements including close-out netting arrangements within the meaning of Article 2(1)(n) of the FCD;]**

~~(c) — claims arising out of or in connection with syndicated credit agreements;~~

**(dc) claims arising out of or in connection with credit claims and syndicated [credit agreements] [loans] as defined in point (o) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council (Financial Collateral Directive);<sup>28 29</sup>**

**(ed) claims arising out of or in connection with foreign exchange spot transactions;<sup>30</sup>**

**[(fe) claims arising out of or in connection with letters of credit, performance bonds and other independent guarantees;]**

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<sup>28</sup> As suggested by the ECB in their technical working document, page 1, produced in connection with ECB Opinion CON/2018/33.

<sup>29</sup> **A Recital to explain that credit agreements other than credit claims and syndicated loans are subject to the law of the assignor's habitual residence. Regarding syndicated loans, two different terms can be used, either "syndicated loans" (a broader term which is not limited to loans issued only by credit institutions) or "syndicated credit agreements" (a term which encompass only credit agreements issued by credit institutions). Please refer to point 6 of WK 5293/20.**

<sup>30</sup> **A Recital to explain that foreign exchange transactions with a settlement period of more than two days are derivatives and therefore, financial instruments, subject to Article 4(2)(b).**

(gf) claims arising out of or in connection with transactions on financial markets<sup>31</sup> or participation in financial market infrastructures<sup>32</sup> and other systems;

~~[(h) claims arising from Master Agreements for financial instruments.]<sup>33</sup>~~

~~[2a. The law of the country in which the account is maintained shall govern the third-party effects of the assignment of cash credited to an account in a credit institution. The country in which the account is maintained shall be the country indicated in the account's IBAN (International Bank Account Number) or, for an account which does not have an IBAN, the country in which the credit institution with which the account is held has its head office or, where the account is held with a branch, the law of the country in which the branch is located.]<sup>34</sup>~~

~~2b. Where a claim is secured by immovable property, the law of the country where the immovable property is situated shall govern the third-party effects of the [assignment] [collateral security].~~

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<sup>31</sup> A Recital to explain that transactions on 'financial markets' includes transactions executed on trading venues and exchanges, including EEA regulated markets, multilateral trading facilities (MTFs) and organized trading facilities (OTFs), or executed via an authorized systematic internaliser under MiFID, and in each case, any third-country equivalents.

<sup>32</sup> A Recital to explain that transactions on 'financial market infrastructures' include authorized or regulated financial market infrastructures, such as CCPs and CSDs, and any securities settlement and payment systems, and any systems that are designated or otherwise protected for the purposes of SFD, and in each case, any third-country equivalents.

<sup>33</sup> See footnote 24.

<sup>34</sup> If "cash" is defined as money credited to an account in a credit institution, it was suggested by several Member States that a different connecting factor would be more adequate in this case. The new connecting factor is inspired by the definition in Article 4(4) of Regulation (EU) 655/2014 (EAPO Regulation) which reads as follows:

'Member State in which the bank account is maintained' means:

(a) the Member State indicated in the account's IBAN (International Bank Account Number); or

(b) for a bank account which does not have an IBAN, the Member State in which the bank with which the account is held has its head office or, where the account is held with a branch, the Member State in which the branch is located.

### *Option 1*

3. [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~~ subject to a securitisation.]<sup>35</sup>

### *Option 2*

3. **[In securitisation and the issuance of covered bonds,** the assignor and the assignee may choose **the law of the habitual residence of the assignor or** the law applicable to the assigned claim as the **applicable** law.]<sup>36</sup>

The choice of law shall be made expressly in the assignment contract or by a separate written agreement concluded at the time of the conclusion of the assignment contract. The substantive and formal validity of the act whereby the choice of law was made shall be governed by the chosen law.

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~~ **State**<sup>37</sup> 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.

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<sup>35</sup> See ~~new~~ the definition of securitisation in Article 2(ga).

<sup>36</sup> **Some Member States raised concerns that covered bonds transactions are similar to securitisation, but slightly different and do not fall within the definition of securitisation laid down in the Article 2 of the proposal. Therefore, an exception comparable to the exception for securitisation may be required. This is a policy choice to be made. It must be kept in mind that in order to preserve the choice of law that is intended in the proposal for securitisation and which could be extended to covered bonds, when cash, credit claims or claims secured with registered assets are assigned as collateral assets, specific wording could be envisaged to that effect in a provision.**

<sup>37</sup> See footnote 18.

*Option 1*

5. [Where a claim is secured by immovable property or an asset subject to registration in a register laid down by law, the law applicable pursuant to this Regulation shall be without prejudice to the application of the law of the State within the territory of which the immovable property is situated or under the authority of which the register is kept, to either the perfection of the title over the security or priority.]<sup>38 39</sup>

*Option 2*

5. [Where a claim is secured by immovable property or an asset subject to registration in a public register laid down by law, the applicable law shall be the law of the State within the territory of which the immovable property is situated or under the authority of which the register is kept.]

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<sup>38</sup> It was suggested by several Member States that it is necessary to address the question of the law applicable to the third-party effects of assignments of claims secured by immovable property or registered assets.

<sup>39</sup> Please refer to point 10 of WK 5293/20.

## Article 5

### Scope of the applicable law

The law applicable to the third-party effects of assignment of claims pursuant to this Regulation shall govern, in particular:

- (a) the requirements to ensure the effectiveness of the assignment against third parties;<sup>40</sup>
- (b) the priority of the rights of the assignee over the rights of another assignee of the same claim ~~acquired from the same assignor;~~<sup>41</sup>
- (c) the priority of the rights of the assignee over the rights of the assignor's creditors;
- (d) the priority of the rights of the assignee over the rights of the beneficiary of a transfer of contract in respect of the same claim;
- (e) [the priority of the rights of the assignee over the rights of the beneficiary of a novation of contract against the debtor in respect of the equivalent claim.]<sup>42</sup>

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<sup>40</sup> Third-party effects do not extend to the debtor *per definitionem* (see changes in Article 2(e)). ~~Examples of such requirements are mentioned in Recital 30.~~

<sup>41</sup> **In previous meetings some Member States were of the opinion that this part is redundant because competing claims can only be assigned by the same assignor (otherwise there would be no priority conflict).**

<sup>42</sup> **This should be further discussed because some Member States have previously raised concerns regarding novation, in particular settlement novation and novation of derivatives. See also Article 2(e) footnote 12 and Article 2(c) footnote 8.**



## Article 6

### Overriding mandatory provisions

1. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.
2. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a Member State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the third-party effects of assignments of claims pursuant to this Regulation.
3. ~~This Regulation shall not prejudice the application of the provisions of the law of the country where the immovable property is situated to the third-party effects of security collaterals on immovable property.~~<sup>43</sup>

## CHAPTER III

### OTHER PROVISIONS

## Article 7

### Public policy (*ordre public*)

The application of a provision of the law of any ~~country~~ **State**<sup>44</sup> specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

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<sup>43</sup> ~~See footnote 19.~~

<sup>44</sup> **See footnote 18.**

## *Article 8*

### **Exclusion of renvoi**

The application of the law of any State specified by this Regulation means the application of the rules of law in force in that State other than its rules of private international law.

## *Article 9*

### **States with more than one legal system**

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of the third-party effects of assignments of claims, any reference to the law of such State shall be construed as referring to the law in force in the relevant territorial unit<sup>45</sup> for the purposes of identifying the law applicable under this Regulation.
2. A Member State which comprises several territorial units each of which has its own rules of law in respect of the third-party effects of assignments of claims shall not be required to apply this Regulation to conflicts of laws arising between such units only.

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<sup>45</sup> Presidency drafting suggestion in order to avoid any references to territories as States. The wording is taken from Article 14(a) Rome III Regulation.

## *Article 10*

### **Relationship with other provisions of Union law**

This Regulation shall not prejudice the application of provisions of Union law which, in relation to particular matters, lay down conflict-of-laws rules relating to the third-party effects of assignments of claims.<sup>46</sup>

## *Article 11*

### **Relationship with existing international conventions**

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-laws rules relating to the third-party effects of assignments of claims.
2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

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<sup>46</sup> In addition to Recital 9, the relationship of this proposal and Regulation (EU) 2015/848 (Insolvency Regulation) could be further elaborated upon in a separate recital along the following lines: “This Regulation deals with the third-party effects of assignments of claims, whereas the Insolvency Regulation deals with insolvency proceedings and their effects. The two instruments thus lay down conflict rules on different matters. This Regulation deals with preliminary issues relevant to insolvency proceedings, such as the ownership of a claim assigned by a debtor prior or during insolvency proceedings. Therefore, these two instruments do not overlap” (see Commission Non-Paper on the relationship between the proposal and other Union law instruments).

## *Article 12*

### **List of Conventions**

1. By [*six months before the date of application*], Member States shall notify the Commission of the conventions referred to in Article 11(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.
2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the *Official Journal of the European Union*:
  - (a) a list of the conventions referred to in paragraph 1;
  - (b) the denunciations referred to in paragraph 1.

## *Article 13*

### **Review clause**

By [*five years after the date of application*], the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If appropriate, the report shall be accompanied by proposals to amend this Regulation.

## Article 14

### Application in time

~~1.—This Regulation shall apply to assignments of claims where the assignment contract has been concluded on or after [date of application] [and shall not affect the third-party effects of the assignments of claims concluded before the date of application of this Regulation].~~<sup>47</sup>

~~[2.—The law applicable pursuant to this Regulation shall determine whether the rights of a third party in respect of a claim assigned on or after the date of application of this Regulation have priority over the rights of another third person party acquired before the date of application of this Regulation.]~~<sup>48 49</sup>

## Article 15

### Entry into force and date of application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*first day of the month corresponding to the month following the period of 18 months after the entry into force of this Regulation*].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at,

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<sup>47</sup> In previous meetings some MS were of the opinion that this part is redundant.

<sup>48</sup> ~~Discussions on retroactivity and priority conflicts should continue. Please refer to point 14 of WK 4189/2019.~~

<sup>49</sup> **Due to the fact that majority of Member States at the last WP meetings opted for the deletion of paragraph 2 the text was amended accordingly.**