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In preparation of the informal videoconference meeting of the Working Party on Civil Law Matters (Assignments of Claims) on 19 April 2021, the Presidency has prepared a revised text of the abovementioned proposal that delegations will find in the Annex to this Note.

Deletions in comparison to the previous Presidency text (7203/21) are indicated by ~~strikethrough~~ and new text is marked in **bold**. Square brackets indicate alternative solutions. The final text of the recitals will depend on the corresponding policy choices.

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 EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article
81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,¹

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications to the extent necessary for the proper functioning of the internal market.
- (2) Pursuant to Article 81 of the Treaty, these measures are to include those aimed at ensuring the compatibility of the rules applicable in the Member States concerning the conflict of laws.

¹ OJ C , , p. .

- (3) The proper functioning of the internal market requires, **certainty as to the law applicable** in order to improve the predictability of the outcome of litigation, ~~certainty as to the law applicable~~, and the free movement of judgments **requires**, ~~for the~~ conflict of laws rules in the Member States to designate ~~as the applicable law~~ the same national law **as the applicable law** irrespective of the Member State's ~~of the courts in~~ **before** which an action is brought.
- (4) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) does not ~~cover the question of~~ **designate the law applicable** to the third-party effects of assignments of claims. However, Article 27(2) of that Regulation required the Commission to submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person which should be accompanied, if appropriate, by a proposal to amend that Regulation and an assessment of the impact of the provisions to be introduced.
- (5) On 18 February 2015 the Commission adopted a Green Paper on Building a Capital Markets Union² which stated that achieving greater legal certainty in cases of cross-border transfer of claims and the order of priority of such transfers, particularly in cases of insolvency, is an important aspect in developing a pan-European market in securitisation and financial collateral arrangements, and also ~~of for~~ other activities such as factoring.

² COM(2015) 63 final.

- (6) On 30 September 2015 the Commission adopted a Communication with an Action Plan on Building a Capital Markets Union³. This Capital Markets Union Action Plan noted that differences in the national treatment of **the** third-party effects of assignments of debt claims complicate the use of these instruments as cross-border collateral, concluding that this legal uncertainty frustrates economically significant financial operations, such as securitisations. The Capital Markets Union Action Plan announced that the Commission would propose uniform rules to determine with legal certainty which national law should apply to the third-party effects of the assignment of claims.
- (7) On 29 June 2016 the Commission adopted a report on the appropriateness of Article 3(1) of Directive 2002/47/EC on financial collateral arrangements⁴ focusing on the question whether this Directive works effectively and efficiently as regards formal acts required to provide credit claims as collateral. The report concluded that a proposal for uniform rules regarding the third-party effects of assignments of claims would allow determining with legal certainty which national law should apply to the third-party effects of the assignment of claims, which would contribute to achieving greater legal certainty in cases of cross-border mobilisation of credit claims as collateral.
- (8) On 29 September 2016 the Commission adopted a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over the right of another person. The report concluded that uniform conflict of laws rules governing the effectiveness of assignments against third parties as well as questions of priority between competing assignees or between assignees and other right holders would enhance legal certainty and reduce practical problems and legal costs relating to the current diversity of approaches in the Member States.

³ COM(2015) 468 final.

⁴ COM(2016) 430 final.

- (9) The substantive scope and the provisions of this Regulation should be consistent with Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II),⁵ Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I),⁶ Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast),⁷ and Regulation (EU) 2015/848 on insolvency proceedings (Insolvency Regulation).⁸
- (10) This Regulation implements the Capital Markets Union Action Plan. It also fulfils the requirement laid down in Article 27(2) of the Rome I Regulation that the Commission should publish a report and, if appropriate, a proposal on the effectiveness of an assignment of a claim against third parties and the priority of the assignee over the right of another person.
- (11) Conflict of laws rules governing the third-party 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 differ from each other and are 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 lack of legal certainty creates a legal risk in cross-border assignments of claims which does not exist in domestic assignments, as different national substantive rules may be applied depending on the Member State whose courts or authorities assess a dispute as to the legal title over the assigned claims.

⁵ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40-49.

⁶ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6-16.

⁷ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1-32.

⁸ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015, p. 19-72.

- (12) If assignees are not aware of the legal risk or choose to ignore it, they may face unexpected financial losses. Uncertainty about who has legal title over the claims assigned on a cross-border basis can have knock-on effects and deepen and prolong the impact of a financial crisis. If assignees decide to mitigate the legal risk by seeking specific legal advice, they will incur higher transaction costs not required for domestic assignments. If assignees are deterred by the legal risk and choose to avoid it, they may forego business opportunities and market integration may be reduced.
- (13) The objective of this Regulation is to provide legal certainty by laying down common conflict of laws rules designating which national law applies to the third-party effects of cross-border assignments of claims.
- (14) A claim gives a creditor a right to the payment of a sum of money or the performance of a non-monetary obligation by the debtor. The assignment of a claim enables the creditor (assignor) to transfer its right to claim the debt against a debtor to another person (assignee). The laws that govern the contractual relationship between the creditor and the debtor, between the assignor and the assignee and between the assignee and the debtor are designated by the conflict of laws rules laid down in the Rome I Regulation. The conflict of laws rules laid down in Article 14(1) of the Rome I Regulation govern the contractual relationship between the assignor and the assignee, and the conflict of laws rules laid down in Article 14(2) of the Rome I Regulation govern the contractual relationship between the assignee and the debtor.
- (15) The conflict of laws rules laid down in this Regulation should govern the third-party effects of assignments of claims as between all parties involved in the assignment as well as in respect of third parties (such as a creditor of the assignor), without prejudice to the rights and obligations of the debtor **under Article 14(2) of the Rome I Regulation**.

(16) The claims covered by this Regulation include, without being limited to, trade receivables, credit claims, claims arising from financial instruments as defined in Directive 2014/65/EU and cash as defined in Directive 2002/47/EC. Financial instruments as defined in Directive 2014/65/EU include transferable securities, money-market instruments, units in collective investment undertakings and derivatives, **including when issued by means of distributed ledger technology.**

(16bis) In accordance with Regulation [XXX] on markets in crypto-assets, a crypto-asset is a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology. This Regulation should be based on a technology-neutral approach. Accordingly, this Regulation should cover claims arising from assets irrespective of the technology used for their issuance, trading or storage, thus including claims arising from crypto-assets. Some crypto-assets are qualified, under national law, as financial instruments falling within the scope of MiFID. In order to avoid characterisation problems as to whether a certain crypto-asset qualifies as a financial instrument or another type of crypto-asset, claims arising from all crypto-assets should be covered by this Regulation.

(16i) This Regulation should apply to the third-party effects of assignments of both existing claims and future claims. The assignability of claims, including the question whether future claims are assignable, is governed by the law of the assigned claim as laid down in Article 14(2) of the Rome I Regulation.

(16ii) The fulfilment of a claim (for example, the repayment of a loan) may be guaranteed by a security right (for example, a mortgage or a pledge). A security right can be created over claims or over assets other than claims. Assets other than claims include immoveable property; tangible moveable assets, whether or not registered in a public register laid down by law (such as a vehicle or machinery); and intangible moveable assets, whether or not registered in a public register laid down by law (such as intellectual property rights). This Regulation should cover the assignment of claims, whether outright (for example, the assignment of trade receivables to a factor) or by way of security, pledges or other security rights over claims (for example, a pledge over trade receivables). However, this Regulation should not cover the transfer of assets other than claims, either outright (for example, the transfer of transferable securities) or by way of security, pledges or other security rights over assets other than claims (for example, a mortgage over immoveable property or a pledge over transferable securities).

(16a) This Regulation should not apply to the third-party effects of **the transfer of financial instruments, including by way of security, pledges or other security rights over such financial instruments, also where the financial instruments are issued by means of distributed ledger technology. This Regulation should not apply, in particular, to the transfer of transferable securities, money market instruments and units in collective undertakings, including by way of security, pledges or other security rights over such financial instruments, whether such transfer is done by way of physical delivery of a certificate, by book-entry in a register, account or centralised deposit system or through the assignment of claims such as, for example, a claim to deliver these instruments. This Regulation should also not apply to the third party-effects of the transfer of crypto-assets that do not qualify as financial instruments, including by way of security, pledges or other security rights over such crypto-assets.**

(16aa) The law designated by this Regulation should apply to the third-party effects of the assignment of a claim where the assigned claim is secured by a right over immovable property or a moveable asset subject to registration in a public register laid down by law. However, this Regulation should not apply to the third-party effects of the transfer of the security right over immovable property or a moveable asset subject to registration in a public register laid down by law, including any ~~form or~~ registration requirements under the law of the State where the immovable property is situated or under the authority of which the register is maintained ~~regarding~~ **for** the effectiveness of the transfer of the security right. This Regulation should **also** not apply to any matters relating to the enforcement of security rights, including the entitlement to proceeds.

(16ab) Where the assigned claim is secured by a right over immovable property or a moveable asset subject to registration in a public register laid down by law, this Regulation should not apply to the effects of complying or failing to comply with any **registration** requirements ~~as to form or registration~~ for the effectiveness of the transfer of the security right when resolving priority conflicts over the secured claim. **[Such effects may exist where, according to the law of the State where the immovable property is situated or under the authority of which the register is maintained, the security right is inseparably linked to the claim that it secures such that, under that law, compliance with registration requirements for the effectiveness of the transfer of the security right is required to acquire title over the claim itself.]**

(16aba)The law applicable under this Regulation should not therefore apply to resolve priority conflicts over a claim secured by a right over immovable property or a moveable asset subject to registration in a public register laid down by law between (i) a claimant over the secured claim who has complied with the law applicable under this Regulation to acquire title over the assigned claim and also with the form or registration requirements under the law of the State where the immovable property is situated or under the authority of which the register is maintained to acquire title over the right securing the claim, and (ii) a claimant over the secured claim who has only complied with the law applicable under this Regulation to acquire title over the assigned claim. This Regulation should also not apply to the resolution of a priority conflict between two claimants over a secured claim where both have complied with the form or registration requirements under the law of the State where the immovable property is situated or under the authority of which the register is maintained.

However, the law applicable under this Regulation should apply to resolve priority conflicts over a claim secured by a right over immovable property or a moveable asset subject to registration in a public register laid down by law where both claimants over the secured claim have complied with the law applicable under this Regulation to acquire title over the assigned claim, but neither of the claimants over the secured claim has complied with the form or registration requirements under the law of the State where the immovable property is situated or under the authority of which the register is maintained to acquire title over the right securing the claim.⁹

⁹ **In the last WP meetings, some delegations have strongly supported and others have strongly opposed the last sentence of recital 16ab). The ones opposing defended that also a priority conflict where neither of the claimants over the secured claim has complied with the form or registration requirements under the law of the State where the immovable property is situated or under the authority of which the register is kept should be excluded from the Regulation. Deleting this last sentence would change the understanding this recital provides on the exclusion in article 1/1aa making it broader. This is a policy decision.**

(16b) A claim is an intangible asset. It can be assigned as an intangible asset or, where it is incorporated in a certificate or represented by a book-entry, it can be transferred as a tangible asset or by credits and debits. Whether a claim can be transferred as an intangible asset, incorporated in a certificate or represented ~~in~~ by a book-entry is determined by the substantive law governing the claim **under Article 14(2) of the Rome I Regulation**. This Regulation should be a horizontal instrument laying down general conflict of laws rules applicable to the third-party effects of the assignment of claims where the claims are assigned as intangible assets (*lex generalis*). Where claims are incorporated in a certificate or represented by a book-entry, the transfer of such claims should be excluded from the scope of this Regulation and the special conflict of laws rules applicable to the third-party effects of the transfer of claims as a tangible asset (**such as the rules governing negotiable instruments**) or by credits and debits (**such as the rules governing book-entry securities**) should apply (*lex specialis*). The exclusion of the assignment of claims which are incorporated in a certificate or represented by a book-entry should extend to situations where the claim is registered in a register maintained by the company issuing the securities from which the claim arises, such as registered shares.

(16c) Claims can arise from transferable securities, for example a claim for dividends arising from a share or a claim for interest arising from a bond. [These claims may, depending on the law applicable to the security, be assigned separately, that is, unattached to the security (for example, claims for dividends can be assigned as collateral by a company to obtain finance). The assignment of claims unattached to the security from which they arise, where they are neither incorporated in a certificate nor represented by a book-entry (that is, in intangible form), should be included in the scope of this Regulation. The assignment of claims attached to the security from which they arise should be excluded from the scope of this Regulation and be governed by the law applicable to the third-party effects of the transfer of transferable securities from which the claims arise. The law designated by this Regulation should not apply to a priority conflict between a claimant over a claim assigned unattached to the security from which it arises and which is neither incorporated in a certificate nor represented by a book-entry, and a claimant over the same claim assigned together with the security from which it arises.]

(16d) 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, should be excluded from the scope of this Regulation. The term "negotiable instruments" has a different meaning in private law and in the Union financial acquis. In the Union financial acquis, in particular in Directive 2014/65/EU on markets in financial instruments¹⁰, the term "negotiable instruments" is a broader concept encompassing instruments capable of being traded in capital markets, thereby including financial instruments such as transferable securities and derivatives. For the purposes of this Regulation, the term "negotiable instruments" should be understood as under Article 1(2) of the Rome I Regulation and as also including bills of lading, to the extent that the claims under the bill of lading arise out of its negotiable character, and bearer bonds, to the extent that the claims under the bearer bond arise out of its negotiable character.

(16e) The third-party effects of the assignment of claims 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, should, in line with the Rome I Regulation, not be covered by this Regulation. [Without prejudice to the scope of the Rome I Regulation, this Regulation should cover the third-party effects of the assignment of claims for dividends arising from shares where such claims are assigned unattached to the shares from which they arise and are neither incorporated in a certificate nor represented by a book-entry. The law under which the share has been constituted (company law) should determine the assignability of the claim for dividends.]

¹⁰ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

- (16f) The third-party effects of the assignment of a claim that an account holder or a third party may have in law, including to recovery, restitution or damages, in respect of a transaction in emission allowances under Directive 2003/87/EC that has become final in the Union Registry, for instance in case of fraud or technical error, should be covered by this Regulation. This should not lead to the reversal, revocation or unwinding of the transaction in the Union Registry.
- (17) This Regulation should concern the third-party effects of the assignment of claims. It should not cover the transfer of contracts (such as derivative contracts), in which both rights (or claims) and obligations are included, or the novation of contracts including such rights and obligations. This Regulation should also not apply to potential priority conflicts arising from the assignment of a claim included in a contract and the novation of that contract. As this Regulation should not cover the transfer or the novation of contracts, trading in financial instruments, as well as the clearing and the settlement of these instruments, should continue to be governed by the law applicable to contractual obligations as laid down in the Rome I Regulation. This law is normally chosen by the parties to the contract within the framework of the regulatory rules applicable to financial markets.
- (18) This Regulation should be universal: the law designated by this Regulation should apply even if it is not the law of a Member State.
- (19) Predictability is essential for third parties interested in acquiring legal title over the assigned claim. Applying the law of the State where the assignor has its habitual residence to the third-party effects of assignments of claims enables the third parties concerned to easily know in advance which national law will govern their rights. The law of the assignor's habitual residence should thus apply as a rule to the third-party effects of assignments of claims. This rule should apply, in particular, to the third-party effects of the assignment of claims in factoring, collateralisation and, where the parties have not chosen the law of the assigned claim, to the third-party effects of the assignment of claims in the context of securitisation and the issuance of covered bonds.

- (20) The law chosen as a rule to apply to the third-party effects of assignments of claims should enable the determination of the applicable law where future claims are assigned or where claims are assigned in bulk, both of which are a common practice, such as in factoring. The application of the law of the assignor's habitual residence as a rule facilitates the determination of the law applicable to the third-party effects of the assignment of future claims and of bulk assignments of claims subject to different laws.
- (21) The need to determine who has legal title over an assigned claim is particularly important where the assignor becomes insolvent, as claims are assets that can be included in the insolvency estate and creditors need to know whether the assigned claims are still part of it. Coherence between the conflict of laws rules in this Regulation and those laid down in the Insolvency Regulation (Regulation (EU) 2015/848 on insolvency proceedings) is therefore desirable. Coherence should be achieved through the application as a rule of the law of the assignor's habitual residence to the third-party effects of assignments of claims, as the use of the assignor's habitual residence as connecting factor usually coincides with the debtor's centre of main interest used as connecting factor for insolvency purposes.
- (22) This Regulation and the Insolvency Regulation lay down complementary conflict of laws rules. The applicable law designated by this Regulation should apply first to determine whether an assignment of claims made before the opening of the insolvency proceedings has become effective against third parties, including the assignor's creditors. If this is the case, the law applicable under the Insolvency Regulation should then determine whether the assignment was a detrimental act to the general body of creditors and govern the voidness, voidability or unenforceability of the assignment. If a claim is **to be** assigned after the insolvency proceedings have been opened, the applicable law under the Insolvency Regulation should determine whether, or under which conditions, the assignment can be made. Subject to the conditions laid down in the law applicable to the insolvency, the law applicable under this Regulation should then determine the effectiveness of the assignment against third parties.

- (23) The 2001 United Nations Convention on the Assignment of Receivables in International Trade provides that the priority of the right of an assignee in the assigned receivable over the right of a competing claimant is governed by the law of the State in which the assignor is located. The compatibility between the law that applies as a rule under this Regulation and the solution favoured at the international level by the Convention should facilitate the resolution of international disputes.
- (24) Where the assignor changes its habitual residence between multiple assignments of the same claim, the applicable law should be the law of the assignor's habitual residence at the time at which one of the assignees first makes its assignment effective against third parties by completing the requirements under the law applicable on the basis of the assignor's habitual residence at that time. It should therefore be determined, under the law applicable to each of the assignments when each assignment became effective against third parties.
- (25) In accordance with market practice and the needs of market participants, the third-party effects of certain assignments of claims should, as an exception, be governed by the law of the assigned claim, that is, the law that governs the initial contract between the creditor and the debtor from which the claim arises.
- (26) The law of the assigned claim should govern the third-party effects of the assignment by an account holder of cash credited to an account, where the account holder is the creditor/assignor and the provider of the account is the debtor. Greater predictability is provided to third parties, such as creditors of the assignor and competing assignees, if the law of the assigned claim applies to the third-party effects of these assignments as it is generally assumed that the claim that an account holder has over cash credited to an account is governed by the law of the State where the provider of the account is located (rather than by the law of the habitual residence of the account holder/assignor). This law is normally chosen in the account contract between the account holder and the account provider. **In accordance with a technology-neutral approach, the law of the assigned claim should also apply to electronic money claims as defined in Directive 2009/110/EC.**

(26a) For the purposes of this Regulation, a transfer of funds from one account to another does not constitute an assignment of a claim.

(27) To preserve the stability and smooth functioning of financial markets, the third-party effects of the assignment of claims arising out of financial instruments, such as securities (for example, shares and bonds) and derivative contracts, **including where issued by means of distributed ledger technology**, should be subject to the law governing the assigned claim. **The law of the assigned claim, that is, the law governing the derivative contract, should determine the assignability of the claims arising out of the derivative contract.** [In the case of securities, this means that the third-party effects of the assignment of claims for dividends when assigned unattached to the share, or of the assignment of claims for interest when assigned unattached to the bond, would be subject to the law under which the share or the bond have been constituted (company law for the share and contract law for the bond).] In the case of derivative contracts, this means that the third-party effects of the assignment of claims arising out of the derivative contract (for example, a claim for the close-out amount on termination of the derivative contract) would be subject to the law chosen by the parties to govern their derivative contract on the basis of the Rome I Regulation within the framework of the regulatory rules applicable to financial markets.

(27bis) The law of the assigned claim should also govern the third-party effects of the assignment of claims arising out of crypto-assets that do not qualify as financial instruments or as electronic money.

(27i) The third-party effects of the assignment of claims arising out of financial contracts (such as a master agreement) and associated collateral arrangements and associated netting arrangements as defined in this Regulation, and out of transactions on financial markets and participation in financial markets infrastructures (also referred to as systems) should be subject to the law governing the assigned claim, **without prejudice to the application of the regulatory rules applicable to financial markets**. This means that the third-party effects of the assignment of claims arising out of the above contracts and arrangements, out of trading contracts concluded on financial markets and out of contracts related to clearing and settlement concluded within financial markets infrastructures, would be subject to the law chosen by the parties (the parties to the financial contract and associated arrangement, the parties to the trading contract, and the parties to the contract concluded within a financial markets infrastructure, that is, a participant in the financial markets infrastructure and the operator of such infrastructure) to govern their contract on the basis of the Rome I Regulation within the framework of the regulatory rules applicable to financial markets. In the case of trading contracts concluded on financial markets and of contracts concluded within a clearing or settlement financial markets infrastructure, the stability and smooth functioning of financial markets is ensured as the law applicable to the third-party effects of the assignment of claims arising out of contracts concluded on financial markets or within a financial markets infrastructure (the law of the assigned claim) would be the same law as the law applicable to such contracts (the law of the claim or the law of the financial markets infrastructure or system).

(27ii) The third-party effects of **the** assignments of claims arising out of foreign exchange transactions, **without prejudice to the application of the regulatory rules applicable to financial markets**, should also be governed by the law of the assigned claim, either as claims arising ~~from~~ **out of** derivatives and, therefore, as claims arising ~~from~~ **out of** financial instruments, or as claims arising ~~from~~ **out of** foreign exchange spot transactions under the conditions set out in point (a) of Article 10(2) of Commission Delegated Regulation (EU) 2017/565.

(27a) For the purposes of this Regulation, transactions on financial markets should be understood as including ~~{transactions entered into over the counter (OTC),}~~ transactions executed on trading venues and exchanges, including EEA regulated markets, multilateral trading facilities (MTFs) and organised trading facilities (OTFs), or executed via an authorised systematic internaliser under MiFID, and, in each case, any third-country financial markets functionally equivalent. Participation in financial markets infrastructures should be understood as including any securities settlement and payment systems, authorised or regulated financial market infrastructures such as a central counterparty (CCP) and a central securities depository (CSD), and any systems that are designated or otherwise protected for the purposes of the Settlement Finality Directive¹¹ (SFD); and, in each case, any third-country financial market infrastructures functionally equivalent.

(27b) The third-party effects of ~~the~~ assignments of claims arising out of agreements whereby credit is granted in the form of a loan should be governed by the law of the assigned claim. This should include credit claims as defined in point (o) of Article 2(1) of Directive 2002/47, often used as financial collateral within the Eurosystem. In order to facilitate the cross-border assignment of claims arising ~~from~~ **out of** syndicated loans and lending-based crowdfunding on secondary financial markets, the third-party effects of the assignment of claims arising out of syndicated loans and lending-based crowdfunding should also be subject to the law of the assigned claim.

¹¹ 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, OJ L 166, 11.6.1998, p. 45–50.

- (28) Flexibility should be provided in the determination of the law applicable to the third-party effects of assignments of claims in the context of a securitisation in order to cater for the needs of all securitisers and facilitate the expansion of the cross-border securitisation market to smaller operators. Securitisation should be defined in accordance with Regulation (EU) 2017/2402.¹² Given that the issuance of covered bonds presents features which are similar to those of a securitisation and insofar as the issuance of covered bonds involves the assignment of claims, the same flexibility should apply to the issuance of covered bonds. **This should be without prejudice to the application of the regulatory rules applicable to financial markets.** Covered bonds should be defined in accordance with Directive (EU) 2019/2162.¹³
- (28a) Where the law of the assignor's habitual residence applies as the default rule to the third-party effects of the assignment of claims in the context of a securitisation or the issuance of covered bonds, the assignor (the originator in a securitisation) and the assignee (the special purpose vehicle in a securitisation) should be able to choose that the law of the assigned claim should apply to the third-party effects of the assignment of claims. Where, on the other hand, the law of the assigned claim applies as the default rule to the third-party effects of the assignment of claims, the assignor and the assignee in the context of a securitisation or the issuance of covered bonds should be able to agree that the law of the assignor's habitual residence should apply to the third-party effects of the assignment of claims. Thus, the assignor and the assignee should be able to decide that the third-party effects of the assignment of claims in the context of a securitisation or the issuance of covered bonds should be subject to the general rule of the assignor's habitual residence or to the law of the assigned claim in function of the structure and characteristics of the transaction, for example the number and location of the originators and the number of laws that govern the assigned claims.

¹² Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

¹³ Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU.

- (28b) For reasons of legal certainty and in order to enable the verification of the existence of a choice of law, an agreement on choice of law should be documented in writing or by electronic means that provide a durable record of the agreement.
- (29) Priority conflicts between assignees of the same claim may arise where the third-party effects of the assignment have been subject to the law of the assignor's habitual residence in one assignment and to the law of the assigned claim in another assignment. In such cases, the law applicable to resolve the priority conflict should be the law applicable to the third-party effects of the assignment of the claim which has first become effective against third parties under its applicable law.
- (30) The scope of the national law designated by this Regulation as the law applicable to the third-party effects of an assignment of claims should be uniform. The national law designated as applicable under this Regulation should govern in particular (i) the effectiveness of the assignment of the claim against third parties, that is, the steps that need to be taken in order for the assignee to acquire legal title over the assigned claim (for example, notifying the debtor in writing of the assignment); and (ii) priority issues, that is, conflicts between several competing claimants as to who has acquired title over the assigned claim (for example, between two assignees where the same claim has been assigned twice, or between an assignee and a creditor of the assignor). For the purposes of this Regulation, legal title over a claim includes ownership of the claim and also other entitlement rights under national law, such as the entitlement of a pledgee.
- (31) Given the universal character of this Regulation, the laws of States with different legal traditions may be designated as the applicable law. Where, further to the assignment of a claim, the contract from which the claim arises is transferred, the law designated by this Regulation as the law applicable to the third-party effects of the assignment of the claim should also govern a priority conflict between the assignee of the claim and the new beneficiary of the same claim further to the transfer of the contract from which the claim arises.

- (32) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions, which should be interpreted restrictively.
- (32a) Where a consumer is involved in the assignment of a claim as a third-party, the Union substantive rules on consumer protection should apply where the law designated by this Regulation is the law of a Member State. Where the law designated by this Regulation is the law of a State other than a Member State, the court resolving a dispute should be entitled to apply, in accordance with Articles 6 and 7 of this Regulation and under the conditions specified therein, the overriding mandatory provisions of the forum or to reject the application of a provision of the applicable law contrary to its public policy. Where a consumer is the debtor of the assigned claim, their position should be governed by the law of the assigned claim in accordance with Article 14(2) of the Rome I Regulation. The Union substantive rules on consumer protection, including those on consumer credit and mortgage credit, should not be affected by this Regulation.
- (32b) Since there are States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States.

- (32c) This Regulation should not prejudice the application of other provisions of Union law which lay down conflict of laws rules on the third-party effects of assignments of claims in relation to specific matters. In particular, the conflict of laws provisions in Article 9 of the Financial Collateral Directive¹⁴ (FCD), Article 8 and 9 of the Settlement Finality Directive (SFD), Articles 24 and 31 of the Winding-Up Directive¹⁵ (WUD) and the matters governed by the Union Registry Regulation¹⁶ should not be affected by this Regulation.
- (33) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the *Official Journal of the European Union* **and the European e-Justice Portal** on the basis of information supplied by the Member States.
- (33a) This Regulation should be without prejudice to the application of the 2001 Cape Town Convention on International Interests in Mobile Equipment and the Protocols thereto.
- (33b) In order to prevent any retroactive effects of this Regulation, this Regulation should only apply to assignments of claims where the assignment contract has been concluded on or after the date of application of this Regulation.

¹⁴ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, OJ L 168, 27.6.2002, p. 43–50.

¹⁵ 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, OJ L 125, 5.5.2001, p. 15–23.

¹⁶ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, OJ L 122, 3.5.2013, p. 1–59.

- (34) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 17 and 47 concerning, respectively, the right to property and the right to an effective remedy and to a fair trial.
- (35) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. The desired uniformity of the conflict of laws rules on the third-party effects of assignments of claims can only be achieved through a Regulation as only a Regulation ensures a consistent interpretation and application of the rules at national level. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (36) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (37) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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 assignments of claims and contractual subrogation in civil and commercial matters.

*17

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

- 1a. This Regulation shall not apply to the third-party effects of the transfer of **financial instruments**, including by way of security and pledges or other security rights **over such financial instruments, also where the financial instruments are issued by means of distributed ledger technology. This Regulation shall not apply, in particular, to the third-party effects of the transfer**, of transferable securities, money-market instruments, units in collective investment undertakings¹⁸, **including by way of security and pledges or other security rights over such financial instruments.** [~~and crypto-assets~~].¹⁹

*17 See Recitals 14 and 15.

¹⁸ See Recital 16a.

¹⁹ ~~The choice to refer to crypto-assets is a policy decision. To be considered in relation to Commission's non-paper on e-money and crypto-assets (ST-7211/21).~~

1ab. This Regulation shall not apply to the third-party effects of the transfer of crypto-assets that do not qualify as financial instruments, including by way of security, pledges or other security rights over such crypto-assets.

1aa. This Regulation shall not apply to the third-party effects of the transfer of security rights over assets other than claims^{20 21 22}, including any **registration** requirements ~~as to form or registration~~ for the effectiveness of the transfer of the security right and the effects of complying or failing to comply with such requirements for the resolution of priority conflicts over the secured claim.

2. The assignments of the following claims shall be excluded from the scope of this Regulation:

- (a) claims arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;

²⁰ **Some delegations have raised doubts on the meaning of “other than claims”. In order to make it more clear the scope of article 1/1aa, and if delegations consider appropriate, this expression could be substituted by “immovable property and movable assets subject to registration in a public register laid down by law” in line with what is in the accompanying recitals.**

²¹ **Some delegations have also raised concerns on the delimitation of the type of assets given as security which may trigger the application of this exclusion, asking that only immovable property or certain type of tangible movable assets of higher value be in this exclusion. This is a policy decision.**

This issue should also be read together with the amendment in recital 16 ab) which proposes that the exclusion should focus on the existence of an inseparable link between the claim and the security rights and the consequential effects of the registration of the security right on the resolution of priority conflicts over the secured claim, instead of delimiting the nature of the assets that may be given as security.

²² **Although this Regulation is of universal application, in what relates to Member States’ registrations, it could be considered, for the purpose of ensuring predictability to the best extent possible, to introduce a provision along these lines: “The Member States shall provide in the E-Justice Portal a description of national registration rules relevant for the resolution of priority conflicts over claims secured by assets subject to registration. The Member States shall keep this information regularly updated.”**

- (b) 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) 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;²³
- (d) claims governed by the law of companies and other bodies, corporate or unincorporated, such as claims arising out of 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[, other than claims for dividends arising from shares where such claims are assigned unattached to the shares from which they arise and are neither incorporated in a certificate nor represented by a book-entry];²⁴
- (e) claims arising out of the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

²³ See Recital 16d.
~~Further explanations of the term ‘negotiable instruments’ which has different meanings in private law and in the financial acquis can be found in the COM non paper 7722/20. It seems worth noting that MiFID does not seem to contain a definition of “negotiable” but rather uses the term when defining “transferable securities” and “depository receipts” (Article 4 (1)(44) and (45) of Directive 2014/65/EU).~~

²⁴ See Recital 16e.
Cf. also Article 1(2)(g) and (h).

- (f) 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) claims incorporated in a certificate or represented by a book-entry;²⁵
- (h) claims arising out of a transferable security, a money-market instrument or a unit in a collective investment undertaking [unless such claims are assigned unattached to the transferable security, money-market instrument or unit in a collective investment undertaking from which they arise and are neither incorporated in a certificate nor represented by a book-entry];²⁶
- ~~[(i) claims arising out of crypto-assets, unless the crypto-assets qualify as financial instruments.]²⁷~~
- (x)²⁸

²⁵ See recital 16b.

For further explanations, please refer to COM non-paper ST 7722/20.

²⁶ See recital 16c. For further explanations, please refer to COM non-paper ST 7722/20. The final text of the Recital will depend on the policy choice made in Article 1(2)(d) and (h). From the *tour the table* conducted on the WP meeting of February 23rd has resulted that a majority of delegations does not oppose the exclusion of the assignment of claims arising out of transferable securities, money-market instruments or units in collective investment undertakings, when such claims are assigned unattached. Therefore, both letter (d) and letter (h) and the correspondent recitals shall be reviewed accordingly.

²⁷ ~~See Footnote 18 above.~~

²⁸ Whether further exclusions are necessary will be subject to further discussion. It works as a placeholder for possible future exclusions.

Article 2

Definitions

For the purposes of this Regulation:

- (a) ‘assignor’ means a person who transfers their 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;
- (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;
- (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;²⁹
- (e) ‘third-party effects’ means the right of a person to assert legal title over an assigned claim ~~towards~~ **against** third parties, including assignees or beneficiaries of the same³⁰ claim, creditors of the assignor and other third parties, without prejudice to the rights and obligations of the debtor under the law applicable ~~under~~ **pursuant to Article 14(2)** of the Rome I Regulation;³¹

²⁹ See amendment to Recital 16 in order to reflect the comprehensive nature of the definition.

³⁰ See Recital 17.

³¹ See Recital 30.

- (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 their business activity, their principal place of business;³²
- (g) ‘securitisation’ means a transaction or scheme as defined in Article 2(1) of Regulation (EU) 2017/2402 (Securitisation Regulation);³³
- (ga) ‘covered bonds’ means a debt obligation as defined in Article 3(1) of Directive (EU) 2019/2162;³⁴

³² 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.

³³ 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.

³⁴ Article 3(1) of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU reads: “ ‘covered bond’ means a debt obligation that is issued by a credit institution in accordance with the provisions of national law transposing the mandatory requirements of this Directive and that is secured by cover assets to which covered bond investors have direct recourse as preferred creditors”.

- (h) ‘cash’ means money as defined in point (d) of Article 2(1) of Directive 2002/47/EC (FCD);
- (ha) ‘transferable securities’ means the instruments specified in Article 4 (1)(44) of Directive 2014/65/EU (MiFID);³⁵
- (hb) ‘electronic money’ means electronically stored monetary value as defined in Article 2(2) of Directive 2009/110/EC;**
- (i) ‘financial instrument’ means the instruments specified in Section C of Annex I to Directive 2014/65/EU (MiFID);
- (j) ‘financial contract’ means the instruments specified in Article 2(1)(100) of Directive 2014/59/EU (BRRD);
- (ja) ‘collateral arrangement’ means a financial collateral arrangement within the meaning of Article 2(1)(a) of Directive 2002/47/EC (FCD) and collateral security within the meaning of Article 2(m) of Directive 98/26/EC (SFD);
- (k) 'netting arrangement' means an arrangement as defined in Article 2(1)(47) of the Regulation (EU) 2021/23 of the European Parliament and of the Council on a framework for the recovery and resolution of central counterparties³⁶;
- (l) ‘foreign exchange spot transaction’ means a contract as defined in point (a) of Article 10(2) of Commission Delegated Regulation (EU) 2017/565.

³⁵ This definition is consistent with the concept of "transferable securities" in the Rome I Regulation which in Recital 30 refers to the definitions in Article 4 of Directive 2004/39 (MiFID I), now replaced by Article 4 (1) (15) and (44) of Directive 2014/65/EU (MiFID).

³⁶ Article 2(1)(47) of the CCP RRR reads: “ 'netting arrangement' means an arrangement under which a number of claims or obligations can be converted into a single net claim, including a close-out netting arrangement under which, on the occurrence of an enforcement event (however or wherever defined), the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim, including a close-out netting provision as defined in point (n)(i) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council and netting as defined in point (k) of Article 2 of Directive 98/26/EC”.

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 law³⁷

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 State 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.

³⁷ Following a proposal by the Italian delegation (WK 7674/2020), the Working Party discussed the merits of using the law of the assigned claim for the main rule on the applicable law and using the law of the habitual residence of the assignor as the connecting factor for assignments of future claims, assignments of multiple claims governed by different laws (so called, bulk assignments), and factoring. While there was support for this proposal by several delegations, others voiced objections and a number of delegations expressed flexibility. It emerged at this stage that the general rule as proposed by the Commission, the law of the habitual residence of the assignor, was considered the appropriate connecting factor in general. It was also acknowledged that appropriate exceptions were crucial to the smooth functioning of financial markets.

2. The law applicable to the assigned claim shall govern the third-party effects of the assignment of:
- (a) cash claims **and electronic money claims**;^{38,39}
 - (b) claims arising out of:
 - (i) financial instruments;
 - (ii) financial contracts, associated collateral arrangements and associated netting arrangements; and
 - (iii) foreign exchange spot transactions;⁴⁰
 - (ba) claims arising out of crypto-assets that do not qualify as financial instruments or electronic money;**
 - (c) claims arising out of transactions on financial markets⁴¹ or participation in financial market infrastructures;⁴²
 - (d) claims arising out of agreements whereby credit is granted in the form of a loan⁴³

³⁸ See Recital 26a regarding credit transfers.

³⁹ ~~The choice to refer to electronic money is a policy decision. To be considered in relation to Commission's non paper on e-money and crypto-assets (ST 7211/21).~~

⁴⁰ See Recital 27.

⁴¹ See Recital 27a.

⁴² See Recital 27a.

⁴³ See Recital 32a.

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.

The choice of law shall be made expressly and in writing either in the assignment contract or by a separate agreement concluded at the time of the conclusion of the assignment contract. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing. The existence and substantive validity of the agreement or of any term thereof shall be determined by the law which would govern the third-party effects of the assignment of claims under this Regulation if the agreement or term were valid. If that law imposes additional formal requirements, those requirements shall apply.⁴⁴

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 State 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.

⁴⁴ ~~It is a policy choice whether additional formal requirements shall apply or whether the choice of law being “in writing” would suffice. Cf. further WK 9642/2020. Option 2 of that document, which is in substance equivalent to Option 3 (text in square brackets), is not retained.~~

Article 5

Scope of the applicable law

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

- (a) the requirements to ensure the effectiveness of the assignment against third parties, without prejudice to the rights and obligations of the debtor under the law applicable ~~under~~ **pursuant to Article 14(2)** of the Rome I Regulation;⁴⁵
- (b) the priority of the rights of the assignee over the rights of another assignee of the same claim;
- (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 the same claim as a result** of a **the** transfer of **the** contract ~~in respect of the same claim~~ **from which the claim arises.**

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

⁴⁵ See Article 2(e).

CHAPTER III

OTHER PROVISIONS

Article 7

Public policy (*ordre public*)

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

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 system⁴⁶

1. Where the law specified by this Regulation is that of a 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 in civil and commercial matters, the internal conflict of laws rules of that State shall determine the relevant territorial unit whose rules of law are to apply.
2. In the absence of such internal conflict of laws rules, any reference to the law of ~~such~~ **that** State shall be construed as referring to the law in force in the relevant territorial unit for the purposes of identifying the law applicable under this Regulation.

⁴⁶ See also WK 8232/2020.

3. 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.

Article 10

Relationship with other provisions of Union law

1. 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.⁴⁷
2. In particular, this Regulation shall not prejudice the application of the conflict of laws rules in 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, regarding the third-party effects of assignments of claims.

Article 11

Relationship with existing international conventions⁴⁸

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.

⁴⁷ In addition to Recital 9, the relationship of this proposal and Regulation (EU) 2015/848 (Insolvency Regulation) could be further elaborated upon in Recitals 22 and 22a. See Commission non-paper on the relationship between the proposal and other Union law instruments (WK 10105/2018).

⁴⁸ See Recital 33a.

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.

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* **and the European e-Justice Portal**:
 - (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

This Regulation shall apply to assignments of claims where the assignment contract has been concluded on or after [*date of application*].

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 24 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,
