



Brussels, 28 May 2021  
(OR. en)

9050/21

LIMITE

JUSTCIV 92  
ECOFIN 471  
EJUSTICE 56  
COMPET 388  
CODEC 747  
IA 98

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**Interinstitutional File:  
2018/0044(COD)**

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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
No. Cion doc.:	7222/18 + ADD 1 + ADD 1 REV 1 + ADD 2 + ADD 2 REV 2 + ADD 3
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 - General approach

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**I. INTRODUCTION**

1. The proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims<sup>1</sup> (the ‘proposed Regulation’) was adopted by the Commission on 12 March 2018 as part of the Capital Markets Union (CMU) Action Plan.
2. The proposal is based on Article 81(2) of the Treaty on the Functioning of the European Union and is subject to the ordinary legislative procedure.

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<sup>1</sup> 7222/18.

3. In line with the objectives of the CMU Action Plan, the proposed Regulation intends to promote cross-border investment in the EU and, thereby, to facilitate access to finance for firms, including SMEs, and consumers. The specific objective of the proposed Regulation is to help increase cross-border transactions in claims by providing legal certainty through the adoption of uniform conflict-of-laws rules at EU level, thus eliminating legal risks and potential systemic consequences and enabling cross-border investment, access to cheaper credit and market integration.
4. The European Parliament adopted its first-reading position<sup>2</sup>, which included 24 amendments to the Commission proposal, on 13 February 2019.
5. The European Economic and Social Committee adopted its opinion<sup>3</sup> on this proposal on 11 July 2018 and the European Central Bank delivered its opinion<sup>4</sup> on 18 July 2018.
6. Ireland has not made use of the possibility set out in Article 3 of Protocol (No 21) to the Treaties on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice to take part in the adoption and application of the proposed measure. In application of Protocol (No 22) to the Treaties on the Position of Denmark, Denmark is not taking part in the adoption of the proposed measure.

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<sup>2</sup> 6217/19.  
<sup>3</sup> 11427/18.  
<sup>4</sup> CON/2018/33.

## **II. MAIN ELEMENTS OF THE COMPROMISE PACKAGE**

7. The discussions in the informal video conference of Ministers of Justice on 4 June 2020 provided valuable political guidance as to the confirmation of the principle of universality, the exclusion of priority conflicts involving novation and the non-retroactive application of the proposed Regulation. Three progress reports were submitted to the Council in December 2018,<sup>5</sup> June 2019<sup>6</sup> and December 2020<sup>7</sup>.
8. Building on the work of the past Presidencies, the Portuguese Presidency has included this file among its legislative priorities. As a result, the Working Party on Civil Law Matters (Assignment of Claims) continued its deliberations on the proposed Regulation at an intensive pace. In light of the substantial progress made in the discussions of the Working Party on Civil Law Matters (Assignment of Claims), the Presidency is of the opinion that a general approach can be achieved on the text.

### **A. Scope of the Regulation**

9. There are currently no conflict-of-laws rules governing the third-party effects of assignments of claims at EU level, and the conflict-of-laws rules on this matter laid down at Member State level (where such rules exist) differ from each other. 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.

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<sup>5</sup> 14498/18.

<sup>6</sup> 9562/19.

<sup>7</sup> 13122/20.

10. The proposed Regulation is intended to provide legal certainty by laying down common conflict-of-laws rules designating the law which is to apply to the third-party effects of voluntary cross-border assignments of claims and contractual subrogation in civil and commercial matters.
11. The Regulation concerns the third-party effects of the assignment of claims, which are assets in intangible form. This implies that certain matters are not included in the scope of the Regulation as they do not relate to the assignment of claims in intangible form. However, following extensive technical discussions, the Working Party considered that it was important to clarify that such matters are not covered by the Regulation. These matters are the following:
  - the transfer of financial instruments, including securities and derivatives;
  - the transfer of crypto-assets; and
  - the assignment of claims where the claims are not in intangible form but incorporated in a certificate or represented by a book entry.
12. In particular, for the sake of clarity and coherence with other EU legal acts, the Working Party agreed to expressly indicate that the third-party effects of the transfer of financial instruments, including by way of security, pledges or other security rights over such financial instruments, are not covered by the Regulation. Consequently, the Regulation does not govern the transfer of financial instruments (such as transferable securities, money market instruments and units in collective undertakings), whether or not they are issued by distributed ledger technology and whether such transfer is done by way of: (i) physical delivery of a certificate, (ii) book-entry in a register, account or centralised deposit system, or (iii) the assignment of claims (such as, for example, a claim for the delivery of these instruments from the next intermediary in a chain of intermediaries). The proposed Regulation should also not apply to the third-party effects of the transfer of crypto-assets, whether or not they qualify as financial instruments, including by way of security, pledges or other security rights over such crypto-assets.

13. As derivatives are financial instruments and also contracts, and as the proposed Regulation does not cover the transfer of financial instruments or contracts or novation, the Working Party agreed to clarify in a recital that the third-party effects of the transfer of derivatives are also not governed by the Regulation.
14. The Working Party also agreed to clarify that the assignment of claims where the claims are not in intangible form but incorporated in a certificate or represented by a book-entry are not covered by the Regulation.
15. For reasons of consistency with the law applicable to securities and given the existence of different practices in Member States, the Working Party ultimately agreed to exclude from the scope of the Regulation the assignment of claims arising out of transferable securities, money-market instruments or units in a collective investment undertaking even where the claims are assigned in intangible form.
16. To make the proposed Regulation technologically future-proof, the Working Party considered the issue of the inclusion of claims arising out of crypto-assets<sup>8</sup> and e-money. As a technology-neutral instrument, the proposed Regulation should cover claims arising from assets irrespective of the technology used for their issuance, transfer or storage, thus including claims arising out of crypto-assets that are not financial instruments. 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 the Regulation, with the exception of claims arising out of crypto-assets that qualify as transferable securities, money-market instruments or units in a collective investment undertaking.

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<sup>8</sup> Crypto-assets are defined in the proposed Regulation by reference to the definition which will be introduced in the *acquis* by the future Regulation on markets in crypto-assets (MiCA).

17. Due to the fundamentally different characteristics of some Member States' legal systems, regarding in particular the link between a claim and the security right, and the role of public registers, the Working Party agreed to exclude the third-party effects of the transfer of security rights, in particular security rights over immovable property and moveable property subject to registration in a public register laid down by law, including any requirements as to form or registration for the effectiveness of the transfer of the security rights and the effects of complying or failing to comply with such requirements for the resolution of priority conflicts over the secured claims.
18. Thus, where the security right is linked to the claim it secures in such a way that, under the law of the State where the immovable property is situated or under the authority of which the register is maintained, compliance with certain form or registration requirements for the effectiveness of the transfer of the security right is required for the assignee to acquire title over the claim itself, the Regulation should not apply to the effects of complying or failing to comply with any requirements as to form or registration for the effectiveness of the transfer of the security right when resolving priority conflicts over the secured claim.
19. The compromise solution draws attention to the effects that may stem from strong registration systems, emphasising their importance, whilst not imposing the application of the *lex registrationis* to all situations.

## **B. Applicable law**

20. The Working Party had lengthy and technical discussions on the merits of designating the law of the assignor's habitual residence as the law that should apply as a rule to the third-party effects of the assignment of claims. In line with the Commission proposal, the law of the assignor's habitual residence received more support than the assigned-claim law as it would lead to more predictability for third parties. The law of the assignor's habitual residence was deemed suitable for bulk assignments subject to different laws and future claims and consistent with Regulation (EU) 2015/848 (Insolvency Regulation).

21. It was pointed out nevertheless that appropriate exceptions would be important to the smooth functioning of financial markets. It was concluded that for certain assignments set out in Article 4(2) of the compromise text, such as the assignment of cash claims, claims in financial markets and credit claims, the law of the assigned claim would be more suitable than the law of the assignor's habitual residence.
22. In line with the Commission proposal, the compromise text keeps a choice of law between the assignor's law and the assigned-claim law for securitisation. The aim of this flexibility is to not affect the current practice of large operators while, at the same time, facilitating the expansion of the cross-border securitisation market to smaller operators.

### **C. Universal application**

23. As proposed by the Commission and confirmed by the Ministers of Justice on 4 June 2020, in line with other EU instruments harmonising conflict-of-laws rules, the national law designated as applicable by the proposed Regulation can be the law of a Member State or the law of a third country.

### **D. Relationship with other provisions of EU Law**

24. The proposed Regulation is intended to be a *horizontal* instrument designating the law applicable to the third-party effects of assignments of claims in all cases unless otherwise provided in other, more specific, instruments of EU law. Its application shall not prevent the application of other EU instruments designating the law applicable to the third-party effects of assignments of claims *in particular areas*. In that regard, Article 10 of the compromise text includes a non-exhaustive list of EU legal acts that take precedence over the new instrument.

### III. CONCLUSION

25. The final compromise text as set out in the Annex should be considered as a package which reflects a delicate balance between the interests and concerns of different Member States. It aims to establish a well-balanced regime, taking into account the interests of financial markets and the fundamental characteristics of Member States' legal orders.
26. In view of the above, the Permanent Representatives Committee is invited to:
- (a) endorse the compromise package presented by the Presidency as set out in Annex to this note, and
  - (b) invite the Council on 7 and 8 June 2021 (Justice and Home Affairs) to approve the text as set out in Annex<sup>9</sup> to this note as a general approach constituting the basis for the negotiations with the European Parliament.
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<sup>9</sup> Additions compared to the Commission proposal (7222/18) are marked in **bold underlined** and deletions are marked in ~~striketrough~~.



2018/0044 (COD)

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,<sup>1</sup>

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.

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<sup>1</sup> 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~~ law 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 courts before** ~~State of the court in~~ 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 **designate** ~~cover~~ the **law applicable to the** ~~questions of~~ third-party effects of **assignments** ~~assignment 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 **the** 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 Union<sup>2</sup> 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 **for** ~~of~~ other activities such as factoring.

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<sup>2</sup> COM(2015) 63 final.

- (6) On 30 September 2015 the Commission adopted a Communication with an Action Plan on Building a Capital Markets Union<sup>3</sup>. ~~The~~This Capital Markets Union Action Plan noted that differences in the national treatment of ~~the~~ third-party effects of ~~assignments~~ assignment 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 arrangements<sup>4</sup> 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~~ of uniform rules regarding the third-party effects of ~~assignments~~ assignment 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~~ law 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.

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<sup>3</sup> COM(2015) 468 final.

<sup>4</sup> 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),<sup>5</sup> Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I),<sup>6</sup> Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast),<sup>7</sup> and Regulation (EU) 2015/848 on insolvency proceedings (**Insolvency Regulation**).<sup>8</sup> ~~The interpretation of this Regulation should as much as possible avoid regulatory gaps between these instruments.~~
- (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 ~~(or proprietary)~~ effects of assignments of claims do not currently exist at Union level. **Where** ~~These~~ conflict of laws rules **on this matter** are laid down at Member State level, ~~but they~~ **differ from each other** ~~are inconsistent and 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.

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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** ~~his~~ 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**<sup>9</sup>.

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<sup>9</sup>——— In particular Articles 3, 4 and 14.

- (15) The conflict of laws rules laid down in this Regulation should govern the **third-party** proprietary 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 (~~such as for example, 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,** ~~are~~ trade receivables, **credit claims, cash as defined in Directive 2002/47/EC, electronic money as defined in Directive 2009/110/EC and claims arising out of** ~~claims arising from financial instruments as defined in Directive 2014/65/EU on markets in financial instruments<sup>10</sup> and cash credited to an account in a credit institution~~ **with the exception of claims arising out of transferable securities, money-market instruments or units in a collective investment undertaking –, whether or not they are issued by means of distributed ledger technology.**

**(16bis) In accordance with Regulation [XXX] on markets in crypto-assets (MiCA), distributed ledger technology (DLT) is a type of technology that supports the distributed recording of encrypted data. This Regulation should be based on a technology-neutral approach.**

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<sup>10</sup> — 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.

As a technology-neutral instrument, this Regulation should cover claims arising from assets irrespective of the technology used for their issuance, transfer or storage, thus including claims arising from crypto-assets. Some crypto-assets, defined as ‘electronic money tokens’ or ‘e-money tokens’ in Regulation [XXX] on markets in crypto-assets (MiCA), are intended primarily as a means of payment and their function is very similar to the function of electronic money as defined in Directive 2009/110/EC on electronic money (EMD2). Other 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, with the exception of claims arising out of crypto-assets that qualify as transferable securities, money-market instruments or units in a collective investment undertaking.

(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 pursuant to Article 14(2) of the Rome I Regulation.

**(16a) This Regulation should not apply to the third-party effects of the transfer of financial instruments, whether or not they are issued by distributed ledger technology, including by way of security, pledges or other security rights over such financial instruments. This Regulation should not apply, in particular, to the third party effects of 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 for the delivery of these instruments from the next intermediary in a chain of intermediaries.** 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. **As derivatives are financial instruments and also contracts, and as this Regulation should not cover the transfer of contracts or novation, this Regulation should not apply to the third-party effects of the transfer of derivatives. This Regulation should also not apply to the third party-effects of the transfer of crypto-assets, whether or not they qualify as financial instruments, including by way of security, pledges or other security rights over such crypto-assets.**



**(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).**

**(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 immoveable property or moveable property 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 immoveable property or moveable property 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 immoveable property is situated or under the authority of which the register is maintained 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.**

**(16aaa) The law applicable under this Regulation may not coincide with the law of the State where the immovable property is situated or under the authority of which the register is maintained (for example, because the assignor’s habitual residence is situated in State A and the immovable property is situated in State B). In these cases, (i) for the assignee to acquire title over the claim, the requirements under the law designated by this Regulation should be complied with and, (ii) for the assignee to acquire title over the right over the immovable or registered moveable property securing the claim, the requirements for the transfer of such a security right laid down in the law designated by the national conflict rules of the State where the immovable property is situated or under the authority of which the register is maintained (typically the *lex rei sitae* or the *lex registrationis*), including any form or registration requirements, should be complied with.**

**(16ab) However, in some legal systems, the security right is linked to the claim it secures in such a way that, under the law of the State where the immovable property is situated or under the authority of which the register is maintained, compliance with certain form or registration requirements for the effectiveness of the transfer of the security right is required for the assignee to acquire title over the claim itself, and complying or failing to comply with such form or registration requirements to acquire title over the security right may have an impact on the resolution of possible priority conflicts over the secured claim.**

**In these cases, this Regulation should not apply to the effects of complying or failing to comply with any requirements as to form or registration for the effectiveness of the transfer of the security right when resolving priority conflicts over the secured claim. Therefore, the law applicable under this Regulation should not apply to resolve priority conflicts over a claim secured by a right over immovable property or moveable property subject to registration in a public register laid down by law, in particular 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.**

**(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 assigned as an intangible asset, incorporated in a certificate or represented by a book-entry is determined by the substantive law governing the claim pursuant to 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 (as in the case of, for example, bearer bonds or coupons for interest physically detachable from the bearer bond) or represented by a book-entry (as in the case of, for example, bonds in book-entry form or separate coupons for interest in book-entry form), the third-party effects of 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 financial instruments) or by credits and debits (such as the rules governing financial instruments in book-entry form) 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 from the security from which they arise and in intangible form (for example, a shareholder can assign claims for dividends to a bank as collateral to obtain finance). The assignment of claims separately from the security from which they arise and in intangible form (that is, where they are not incorporated in a certificate, represented by a book-entry or recorded by means of DLT) should, for consistency reasons with the law applicable to the securities and given the existence of different practices in Member States, also be excluded from the scope of this Regulation.**

**(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 instruments<sup>11</sup>, 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.**

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<sup>11</sup> 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.

**(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.**

**(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 (the Emissions Trading System Directive) that has become final in the Union Registry of emission allowances accounts and transactions, 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** ~~concerns~~ the third-party effects of the assignment of claims. It **should** ~~does~~ not cover the transfer of ~~the~~ 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 possible priority conflicts arising from the assignment of a claim included in a contract and the novation of that contract.** As this Regulation **should** ~~does~~ 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** ~~will~~ 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 or is designated by non-discretionary rules applicable to financial markets.~~

(18) ~~Matters governed by the Financial Collateral Directive<sup>12</sup>, the Settlement Finality Directive<sup>13</sup>, the Winding-Up Directive<sup>14</sup> and the Registry Regulation<sup>15</sup> should not be affected by this Regulation.~~

(19) 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)~~(20) Predictability is essential for third parties interested in acquiring legal title over the assigned claim. Applying the law of the State ~~country~~ 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, collateral arrangements ~~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.

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<sup>12</sup> ~~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.~~

<sup>13</sup> ~~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.~~

<sup>14</sup> ~~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.~~

<sup>15</sup> ~~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.~~

~~(2021)~~ 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, a common~~ practice where multiple 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 enables 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.

~~(2122)~~ The need to determine who has legal title over an assigned claim is particularly important often arises when defining the insolvency estate 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** ~~Union conflict of laws rules laid down in~~ 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 his assignment~~ **which first became** effective against third parties ~~by completing the requirements under the law applicable on the basis of the assignor's habitual residence~~ **applicable to it. It should therefore be determined, under the law of the assignor's habitual residence applicable to each of the assignments, the moment at which each assignment became effective against third parties** ~~at that time.~~
- (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 ~~in a credit institution~~, where the account holder is the creditor/assignor and the **provider of the account** ~~credit institution~~ 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 ~~in a credit institution~~ is governed by the law of the **State** ~~country~~ where the **provider of the account** ~~credit institution~~ 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** ~~credit institution~~. **In accordance with a technology-neutral approach, the law of the assigned claim should also apply to ‘electronic money’ as defined in Directive 2009/110/EC (EMD2) and to ‘electronic money tokens’ or ‘e-money tokens’ as defined in Regulation [XXX] on markets in crypto-assets (MiCA).**

**(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 smooth functioning of financial markets, the** ~~The~~ third-party effects of the assignment of claims arising ~~out of~~ ~~from~~ financial instruments, **such as claims arising from derivative contracts, including where issued by means of distributed ledger technology,** should also be subject to the law governing the assigned claim, ~~that is, the law governing the contract from which the claim arises (such as a derivative contract).~~ Subjecting the third-party effects of assignments of claims arising from financial instruments to the law of the assigned claim rather than the law of the assignor's habitual residence is essential to preserve the stability and smooth functioning of financial markets. These are preserved as the law that governs the financial instrument from which the claim arises is the law chosen by the parties to the contract or the law determined in accordance with non-discretionary rules applicable to financial markets. **Claims arising out of derivative contracts can be a claim for intermediate payments during the life of the derivative contract and the claim for the close-out amount on termination of the derivative contract. The application of the law of the assigned claim means that the third-party effects of the assignment of such claims would be subject to the law chosen by the parties to govern their derivative contract pursuant to Article 3 of the Rome I Regulation (where the derivative positions are transferred over-the counter) or, where the derivative positions are transferred on a trading venue (that is, exchange-traded derivatives), to the law of the trading venue pursuant to Article 4(1)(h) of the Rome I Regulation in the absence of a choice of law. Likewise, where claims arising out of derivative contracts are transferred within financial market infrastructures or systems, the third-party effects of the assignment of the claims would be subject to the law chosen by the participants in the financial market infrastructure or system as required by Article 2(a) of the Settlement Finality Directive. In accordance with Article 14(2) of the Rome I Regulation, the law of the assigned claim, whether chosen by the parties or, in the absence of choice, as set out by the rules of the trading venue, should determine the assignability of the claim.**

**(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 smooth functioning of financial markets also requires that the third-party effects of the assignment of claims arising out of (i) financial contracts (such as a master agreement), associated collateral arrangements and associated netting arrangements as defined in this Regulation; (ii) transactions on financial markets (that is, the transfer of financial instruments over the counter or on trading venues); and (iii) participation in financial markets infrastructures or systems, such as central counterparty clearing systems (CCPs) and settlement systems should be subject to the law governing the assigned claim. 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 or systems, would be subject to the law chosen by the parties or to the law applicable by default in the absence of a choice of law. 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 or system would choose the law to govern their contract pursuant to Article 3 of the Rome I Regulation for transactions over-the counter and, as required by Article 2(a) of the Settlement Finality Directive, for contracts concluded within a financial market infrastructure or system. For transactions concluded on a trading venue, pursuant to Article 4(1)(h) of the Rome I Regulation, the law applicable to the trading venue would apply in the absence of a choice of law. In the case of trading contracts concluded on financial markets (over the counter or on trading venues) and of contracts concluded within a clearing or settlement financial markets infrastructure or system, the smooth functioning of financial markets is ensured as the law applicable to the third-party effects of the assignment of claims arising out of such contracts (the law of the assigned claim) would be the same law as the law applicable to such contracts, that is, the law chosen by the parties to the contract for transactions over the counter (pursuant to Article 3 of the Rome I Regulation), the law chosen by the participants in a system for contracts concluded within the system (as required by Article 2(a) of the Settlement Finality Directive), or the law of the trading venue for transactions concluded on the trading venue in the absence of a choice of law (pursuant to Article 4(1)(h) of the Rome I Regulation).**

**(27ii) The third-party effects of the assignment of claims arising out of foreign exchange transactions should also be governed by the law of the assigned claim, either as claims arising out of derivatives and, therefore, as claims arising out of financial instruments, or as claims arising 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 Directive<sup>16</sup> (SFD) and, in each case, any third-country financial market infrastructures functionally equivalent.**

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<sup>16</sup> 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.

**(27b) The third-party effects of 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 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.**

(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. **This should be without prejudice to the application of the regulatory rules applicable to financial markets. Securitisation should be defined in accordance with Regulation (EU) 2017/2402.<sup>17</sup> 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. Covered bonds should be defined in accordance with Directive (EU) 2019/2162.<sup>18</sup>**

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<sup>17</sup> 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.

<sup>18</sup> 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.

**(28a) Where** ~~Whilst~~ the law of the assignor's habitual residence **applies** ~~should apply~~ as the default rule to the third-party effects of **the assignment** ~~assignments~~ 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** ~~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** ~~remain~~ subject to the ~~general~~ rule of the assignor's habitual residence or to ~~choose~~ 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** ~~which~~ govern the assigned claims.

**(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~~ **became** ~~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** by the assignee ~~in order to **acquire** ensure that he acquires~~ legal title over the assigned claim (for example, ~~registering the assignment with a public authority or registry, or 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** ~~countries~~ 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 a claim~~ 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. ~~For the same reason, the law designated by this Regulation as the law applicable to the third party effects of a claim assignment should also apply, where novation is used as a functional equivalent of the transfer of a contract, to resolve a priority conflict between an assignee of a claim and the new beneficiary of the functionally equivalent claim further to the novation 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 **construed** ~~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, its 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 Directive<sup>19</sup> (FCD), Article 8 and 9 of the Settlement Finality Directive (SFD), Articles 24 and 31 of the Winding-Up Directive<sup>20</sup> (WUD) and the matters governed by the Union Registry Regulation<sup>21</sup> 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.**

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<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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 the 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 ~~in order~~ 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, ~~the [United Kingdom] [and] [Ireland] [have/has notified their/its wish to take part in the adoption and application of the present Regulation] [are/is not taking part in the adoption of this Regulation and are/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~~ **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.

HAVE ADOPTED THIS REGULATION:

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.

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. 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 undertakings, including by way of security and pledges or other security rights over such financial instruments.**

**1ab. This Regulation shall not apply to the third-party effects of the transfer of crypto-assets, whether or not they 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, in particular immoveable property and moveable property subject to registration in a public register laid down by law, including any requirements as to form or registration for the effectiveness of the transfer of the security rights 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)** ~~assignment of claims arising~~ **out of** ~~from~~ 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** ~~from~~ 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** ~~from~~ bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the **claims** ~~obligations~~ under such other negotiable instruments arise out of their negotiable character;

**(d)** ~~assignment of claims arising from questions~~ 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;

**(e)** ~~assignment of claims arising~~ **out of** ~~from~~ the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

**(f)** ~~assignment of claims arising out of~~ ~~from~~ life insurance contracts arising **under** ~~out of~~ 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),<sup>†</sup> 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;**

**(h) claims arising out of a transferable security, a money-market instrument or a unit in a collective investment undertaking.**

## *Article 2*

### **Definitions**

For the purposes of this Regulation:

**(a)** ‘assignor’ means a person who transfers **their** ~~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>†</sup> ~~Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1–155.~~

- (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** ~~from~~ a contractual or a non-contractual obligation;
- (e)** ‘third-party effects’ means ~~proprietary effects, that is, the right of~~ **a person** ~~the assignee to assert his legal title over~~ **an** ~~a claim assigned~~ **claim against third parties, including** ~~to him towards other assignees or beneficiaries of the same or functionally equivalent claim, creditors of the assignor and other third parties,~~ **without prejudice to the rights and obligations of the debtor under the law applicable pursuant to Article 14(2) of the Rome I Regulation;**
- (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** ~~his~~ business activity, **their** ~~his~~ principal place of business;

- (g) ‘credit institution’ means an undertaking as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013<sup>2</sup>, including branches, within the meaning of point (17) of Article 4(1) of that Regulation, of credit institutions having their head offices inside or, in accordance with Article 47 of Directive 2013/36/EU<sup>3</sup>, outside the Union where such branches are located in the Union; **‘securitisation’ means a transaction or scheme as defined in Article 2(1) of Regulation (EU) 2017/2402 (Securitisation Regulation);**
- (ga) ‘covered bonds’ means a debt obligation as defined in Article 3(1) of Directive (EU) 2019/2162 (Covered bonds Directive);**
- (h) ‘cash’ means money credited to an account in a credit institution in any currency as defined in point (d) of Article 2(1) of Directive 2002/47/EC (FCD);**
- (ha) ‘electronic money’ means electronic money as defined in Article 2(2) of Directive 2009/110/EC (EMD2);**
- (hc) ‘crypto-asset’ means a crypto asset as defined in Article [3(1)(2)] of Regulation [XXX] on markets in crypto-assets (MiCA);**
- (i) ‘financial instrument’ means ~~the~~ those instruments specified in Section C of Annex I to Directive 2014/65/EU <sup>4</sup> (MiFID);**

<sup>2</sup> — Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1-337.

<sup>3</sup> — Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338-436.

<sup>4</sup> — 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.



- (ia) ‘transferable securities’ means the instruments specified in Article 4 (1)(44) of Directive 2014/65/EU (MiFID);**
- (i) ‘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 Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties (CCP RRR);**
- (l) ‘foreign exchange spot transaction’ means a contract as defined in point (a) of Article 10(2) of Commission Delegated Regulation (EU) 2017/565.**

## 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**

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 ~~country~~ in which the assignor has its habitual residence at the **time of the conclusion of the assignment contract** ~~material time~~.

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.

2. The law applicable to the assigned claim shall govern the third-party effects of the assignment of:
  - (a) ~~cash credited to an account in a credit institution~~ **claims and electronic money claims;**
  - (b) claims arising ~~from a~~ **out of:**
    - (i) ~~financial instrument.~~ **financial instruments;**
    - (ii) **financial contracts, associated collateral arrangements and associated netting arrangements; and**
    - (iii) **foreign exchange spot transactions;**
  - (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 markets or participation in financial markets infrastructures;**

**(d) claims arising out of agreements whereby credit is granted in the form of a loan.**

3. **In securitisation and the issuance of covered bonds, the** ~~The assignor and the assignee may choose the law of applicable to the habitual residence of the assignor or assigned claim as the law applicable to the assigned claim as the applicable law. ~~third-party effects of an assignment of claims in view of a securitisation.~~~~

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** ~~The substantive and formal validity of the agreement or act whereby the choice of any term thereof law was made shall be determined governed by the chosen 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.~~

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** ~~country~~ in which the assignor has its habitual residence and the third-party effects of other assignments are governed by the law of the assigned claim shall be governed by the law applicable to the third-party effects of the assignment of the claim which first became effective against third parties under its applicable law.

## Article 5

### Scope of the applicable law

The law applicable to the third-party effects of assignments ~~assignment~~ 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 other than the debtor under the law applicable pursuant to Article 14(2) of the Rome I Regulation**, ~~such as registration or publication formalities;~~
- (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 a ~~transfer of contract in respect of~~ the same claim **as a result of the transfer of the contract from which the claim arises**;
- ~~(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.~~

## 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.

## CHAPTER III

### OTHER PROVISIONS

#### *Article 7*

#### **Public policy (*ordre public*)**

The application of a provision of the law of any State ~~country~~ 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 system**

1. Where **the law specified by this Regulation is that of** a State **which** comprises several territorial units, each of which ~~with~~<sup>has</sup> 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,** ~~each~~ 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 that State** shall be **construed** ~~considered~~ as **referring to the law in force in the relevant territorial unit** ~~a State~~ for the purposes of identifying the law applicable under this Regulation.

32. 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.
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 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.

## 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

~~1.~~—This Regulation shall apply to assignments of claims **where the assignment contract has been** concluded on or after [*date of application*].

~~2. The law applicable pursuant to this Regulation shall determine whether the rights of a third party in respect of a claim assigned after the date of application of this Regulation have priority over the rights of another third person acquired before this Regulation becomes applicable.~~

*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** ~~18-months~~ **after the** ~~from date of 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 ~~Brussels~~,

~~*For the European Parliament*~~ ————— ~~*For the Council*~~

~~*The President*~~ ————— ~~*The President*~~

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