

Wednesday 13 February 2019

P8_TA(2019)0086

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

European Parliament legislative resolution of 13 February 2019 on the proposal for a regulation of the European Parliament and of the Council on the law applicable to the third party effects of assignments of claims (COM(2018)0096 — C8-0109/2018 — 2018/0044(COD))

(Ordinary legislative procedure: first reading)

(2020/C 449/41)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0096),
 - having regard to Article 294(2) and Article 81(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0109/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 18 July 2018 ⁽¹⁾,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018 ⁽²⁾,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0261/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2018)0044

Position of the European Parliament adopted at first reading on 13 February 2019 with a view to the adoption of Regulation (EU) .../... 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,

⁽¹⁾ OJ C 303, 29.8.2018, p. 2.

⁽²⁾ OJ C 367, 10.10.2018, p. 50.

Wednesday 13 February 2019

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

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.
- (3) The proper functioning of the internal market requires, in order to improve the predictability of the outcome of litigation, **legal** certainty as to the law applicable and the free movement **and recognition** of judgments, for the conflict of law rules in the Member States to designate as the applicable law the same national law irrespective of the Member State of the court in which an action is brought. [**Am. 1**]
- (4) Regulation (EC) No 593/2008 of the European Parliament and of the Council ⁽⁴⁾ does not cover the questions of third-party effects of 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 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 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 other activities such as factoring.
- (6) On 30 September 2015 the Commission adopted a Communication with an Action Plan on Building a Capital Markets Union. This Capital Markets Union Action Plan noted that differences in the national treatment of third-party effects of 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 of the European Parliament and of the Council ⁽⁵⁾ on financial collateral arrangements 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 of uniform rules regarding the third-party effects of 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.

⁽¹⁾ OJ C 303, 29.8.2018, p. 2.

⁽²⁾ OJ C 367, 10.10.2018, p. 50.

⁽³⁾ Position of the European Parliament of 13 February 2019.

⁽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) (OJ L 177, 4.7.2008, p. 6).

⁽⁵⁾ 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).

Wednesday 13 February 2019

- (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 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.
- (9) The substantive scope and the provisions of this Regulation should be consistent with Regulation (EC) No 864/2007 of the European Parliament and of the Council⁽⁶⁾, Regulation (EC) No 593/2008 and Regulations (EU) No 1215/2012⁽⁷⁾, and (EU) 2015/848 of the European Parliament and of the Council⁽⁸⁾. 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~~ **No harmonised set of rules on the conflict** of laws rules governing the third-party ~~(or proprietary)~~ 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 are inconsistent and often **- being based on different connecting factors to determine the applicable law — and therefore unclear, especially in those countries where such rules are not governed by separate legislative provisions.** 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 claims; **implicitly, the outcome of a priority conflict as to who owns a claim further to a cross-border assignment will vary, depending on the national law applied.** [Am. 2]
- (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.~~ [Am. 3]
- (12a) **This legal risk can also act as a deterrent. Assignees and assignors may choose to avoid it, thereby allowing business opportunities to pass. This lack of clarity does not therefore appear to be in line with the objective of market integration and the principle of free movement of capital enshrined in Articles 63 to 66 Treaty on the Functioning of the European Union.** [Am. 4]

⁽⁶⁾ 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).

⁽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).

⁽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).

Wednesday 13 February 2019

- (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 assignments of claims, **increasing cross-border claims transactions, so as to encourage cross-border investment in the Union and facilitate access to finance for firms — including small and medium-sized enterprises (SMEs) — and consumers.** [Am. 5]
- (14) A claim gives a creditor a right to the payment of a sum of money or the performance of an obligation by the debtor. The assignment of a claim enables the creditor (assignor) to transfer 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.
- (14a) **This Regulation is not intended to alter the provisions of Regulation (EC) No 593/2008 regarding the proprietary effect of a voluntary assignment as between assignor and assignee or as between assignee and debtor.** [Am. 6]
- (15) The conflict of laws rules laid down in this Regulation should govern the ~~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, for example, a creditor of the assignor, **excluding the debtor.** [Am. 7]
- (16) The claims covered by this Regulation ~~are~~ **include** trade receivables, claims arising from financial instruments as defined in Directive 2014/65/EU **of the European Parliament and of the Council** ⁽⁹⁾ and cash credited to an account in a credit institution. Financial instruments as defined in Directive 2014/65/EU include securities and derivatives traded on financial markets. While securities are assets, derivatives are contracts which include both rights (or claims) and obligations for the parties to the contract. [Am. 8]
- (17) This Regulation concerns the third-party effects of the assignment of claims. ~~It does not~~ **In particular, it covers** the transfer of the contracts (such as derivative contracts), in which both rights (or claims) and obligations are included, and the novation of contracts including such rights and obligations. ~~As this Regulation 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, 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.~~ [Am. 9]
- (18) Matters governed by the ~~Financial Collateral Directive~~ **Directive 2002/47/EC**, the ~~Settlement Finality Directive~~ **Directive 98/26/EC of the European Parliament and of the Council** ⁽¹⁰⁾, the ~~Winding-Up Directive~~ **Directive 2001/24/EC of the European Parliament and of the Council** ⁽¹¹⁾ and the ~~Registry Regulation~~ **Commission Regulation (EU) No 389/2013** ⁽¹²⁾ should not be affected by this Regulation, **since the scope of the conflict of laws rules contained in this Regulation and that of the conflict of laws rules contained in those three Directives do not overlap.** [Am. 10]
- (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.
- (20) Predictability is essential for third parties interested in acquiring legal title over the assigned claim. Applying the law of the 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, collateralisation and, where the parties have not chosen the law of the assigned claim, securitisation.

⁽⁹⁾ 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).

⁽¹⁰⁾ 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).

⁽¹¹⁾ 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).

⁽¹²⁾ 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).

Wednesday 13 February 2019

- (21) 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, a common practice where multiple claims are assigned, such as in factoring. The application of the law of the assignor's habitual residence enables the determination of the law applicable to the third-party effects of the assignment of future claims.
- (22) The need to determine who has legal title over an assigned claim often arises when defining the insolvency estate where the assignor becomes insolvent. Coherence between the conflict of laws rules in this Regulation and those laid down in 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 coincides with the debtor's centre of main interest used as connecting factor for insolvency purposes.
- (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 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 effective against third parties by completing the requirements under the law applicable on the basis of the assignor's habitual residence 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~~ **which gives rise to** the claim ~~arises~~. [Am. 11]
- (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 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 country where the 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 credit institution.
- (27) The third-party effects of the assignment of claims arising from financial instruments 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.
- (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. Whilst the law of the assignor's habitual residence should apply as the default rule to the third-party effects of assignments of claims in the context of a securitisation, the assignor (originator) and the assignee (special purpose vehicle) should be able to choose that the law of the assigned claim should apply to the third-party effects of the assignment of claims. 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 should 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 which govern the assigned claims. [Am. 12]~~

Wednesday 13 February 2019

- (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. **Where both assignments of claims become effective against third parties at the same time, the law of the assignor's habitual residence should prevail.** [Am. 13]
- (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 should govern in particular (i) the effectiveness of the assignment against third parties, that is, the steps **and procedures** that need to be ~~taken~~ **followed** by the assignee in order to 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, **the resolution of** conflicts between several claimants as to who has title over the claim **following a cross-border assignment** (for example, between two assignees where the same claim has been assigned twice, or between an assignee and a creditor of the assignor). [Am. 14]
- (31) Given the universal character of this Regulation, the laws of 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 a claim assignment 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 interpreted restrictively.
- (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 on the basis of information supplied by the Member States.
- (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, **as well as Article 16 concerning the freedom to conduct a business.** [Am. 15]
- (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 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 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.

Wednesday 13 February 2019

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 assignments of claims in civil and commercial matters **other than third-party effects to the debtor of the claim assigned.** [Am. 16]

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

1a. This Regulation is without prejudice to Union and national law on consumer protection. [Am. 17]

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

- (a) assignment of claims arising 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 from matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, **and including registered partnerships,** wills and succession; [Am. 18]
- (c) assignment of claims arising from bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the 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 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 from the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
- (f) assignment of claims arising from life insurance contracts arising 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⁽¹³⁾ 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.

(fa) assignment of claims in the course of a collective proceeding under Regulation (EU) 2015/848. [Am. 19]

Article 2

Definitions

For the purposes of this Regulation:

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

⁽¹³⁾ 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).

Wednesday 13 February 2019

- (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;
- (d) 'claim' means the right to claim a debt of whatever nature, whether monetary or non-monetary, and whether arising from a contractual or a non-contractual obligation;
- (e) 'third-party effects' means ~~proprietary effects, that is,~~ the right of the assignee to assert his legal title over a claim assigned to him towards other assignees or beneficiaries of the same or functionally equivalent claim, creditors of the assignor and other third parties, **excluding the debtor**; [Am. 20]
- (f) 'habitual residence' means, for companies and other bodies, corporate or unincorporated, the place of central administration; for a natural person acting in the course of his business activity, his principal place of business;
- (g) 'credit institution' means an undertaking as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁴⁾, 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 of the European Parliament and of the Council ⁽¹⁵⁾, outside the Union where such branches are located in the Union;
- ~~(h) 'cash' means money credited to an account in a credit institution in any currency;~~ [Am. 21]
- (i) 'financial instrument' means those instruments specified in Section C of Annex I of Directive 2014/65/EU of the European Parliament and of the Council ⁽¹⁶⁾.

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 country in which the assignor has its habitual residence at the ~~material~~ 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 **other** third parties under the law designated as applicable pursuant to the first subparagraph.

⁽¹⁴⁾ 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.

⁽¹⁵⁾ 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.

⁽¹⁶⁾ 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.

Wednesday 13 February 2019

2. ~~The~~ **Notwithstanding paragraph 1 of this Article, the** law applicable to the assigned claim shall govern the third-party effects of the assignment of:

- (a) ~~cash~~ **money** credited to an account in a credit institution;
- (b) claims arising from financial ~~instrument~~ **instruments**.

3. ~~The assignor and the assignee may choose the law applicable to the assigned claim as the law applicable to the third party effects of an assignment of claims in view of a securitisation.~~

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

4. A priority conflict between assignees of the same claim where the third-party effects of one of the assignments are governed by the law of the country in which the assignor has its habitual residence and the third-party effects of other assignments are governed by the law of the assigned claim shall be governed by the law applicable to the third-party effects of the assignment of the claim which first became effective against third parties under its applicable law. **Where both assignments become effective against third parties at the same time, the law of the country in which the assignor's habitual residence is situated shall prevail.** [Am. 22]

Article 5

Scope of the applicable law

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

- (a) the requirements to ensure the effectiveness of the assignment against third parties other than the debtor, 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;
- (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.

2a. Effect shall be given to the overriding mandatory provisions of the law of the Member State where the assignment has to be or has been performed, insofar as those overriding mandatory provisions render the performance of the assignment contract unlawful. [Am. 23]

CHAPTER III

OTHER PROVISIONS

Article 7

Public policy (ordre public)

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

Wednesday 13 February 2019

Article 8

Exclusion of renvoi

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

Article 9

States with more than one legal system

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of the third-party effects of assignments of claims, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Regulation.

2. A Member State which comprises several territorial units each of which has its own rules of law in respect of the third-party effects of assignments of claims shall not be required to apply this Regulation to conflicts of laws arising between such units only.

Article 10

Relationship with other provisions of Union law

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

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 [date of application], Member States shall notify the Commission of the conventions referred to in Article 11(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the Official Journal of the European Union:

(a) a list of the conventions referred to in paragraph 1;

(b) the denunciations referred to in paragraph 1.

Article 13

Review clause

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

Wednesday 13 February 2019

Article 14

Application in time

1. This Regulation shall apply to assignments of claims 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. **In the case of competing claims based on assignments, the law applicable pursuant to this Regulation shall determine the rights of the respective assignees, solely in respect of assignments concluded after ... [the date of application of this Regulation]. [Am. 24]**

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 ... [18 months from date of entry into force].

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

Done at ...,

For the European Parliament

The President

For the Council

The President
