

Assignments of claims: Council approves mandate for negotiations



The Council today approved its general approach on the proposal for a regulation on the law applicable to the third-party effects of assignments of claims. The draft regulation aims to ensure greater legal certainty for businesses and citizens when it comes to cross-border transfers of claims, thereby facilitating access to finance and promoting cross-border investment in the EU.

The assignment of a claim refers to a situation where a creditor transfers the right to claim a debt to another person in exchange for a payment. This system is used by companies, for instance, to obtain liquidity and access to credit. At the moment, there is not enough legal certainty as to which national law applies when determining who owns a claim after it has been assigned in a cross-border case because member states' substantive rules governing the third-party effects of assignments of claims are divergent.

By adopting uniform conflict-of-laws rules at EU level, the proposed regulation will eliminate legal risks and potential systemic consequences of cross-border transactions in claims, enabling cross-border investment, access to cheaper credit and further market integration. This will contribute to increasing legal certainty throughout the EU.

Applicable law

In line with the Commission proposal, the law of the country where creditors ("assignors") have their habitual residence would apply regardless of which member state's courts or authorities examine the case, as it would lead to more predictability for third parties. Nevertheless, the Council concluded that for certain assignments set out in the text, such as the assignment of cash claims and claims in financial markets, the law of the assigned claim would be more suitable. The text keeps a choice of law between the two for securitisation.

In line with other EU conflict-of-law rules the scope of the draft regulation is universal, which means that the law designated as applicable by the regulation can be the law of an EU member state or the law of a third country.

Scope of the regulation

The draft regulation concerns the third-party effects of the assignment of claims, which are assets in intangible form. This implies that the following matters are not included in the scope of the draft regulation: 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.

In order to make the draft regulation technologically future-proof and align it with the future market in crypto-assets regulation, the Council mandate includes within the scope of the regulation claims arising from all crypto-assets, with the exception of those arising out of crypto-assets that qualify as transferable securities, money-market instruments or units in a collective investment undertaking.

Background

This proposal was presented by the Commission in March 2018 as part of the Capital Markets Union (CMU) launched in 2015. It supplements the rules in the Rome I regulation which deal with the law applicable to the contractual aspects of assignments of claims.

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