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Abstract:

The assignment of claims is the basis of many financial instruments used by entrepreneurs both in national and international trade in order to obtain liquidity and have access to credit, as in factoring and collateralisation, and in order to optimise the use of their capital, as in securitisation. The effectiveness of the above-mentioned instruments, and thus the development of commercial transactions, largely depends on ensuring the acquisition of legal title over the assigned claim. It is important for the assignee (for example, a factor, a collateral taker or an originator) as third parties could claim legal title over the same claim. The effects of an assignment vis-à-vis third parties and the determination of the rules of priority between parties asserting rights to the same claim is one of the most important issues in the system governing contractual transfer of claims and largely determines the effectiveness of this system. The national substantive laws provide different rules applicable to the resolution of the priority conflict between competing assignees. In this respect, the rules of the EU model law contained in the European Principles of Contract Law offer an interesting alternative. Nevertheless, different approaches of national laws to this issue have resulted in the failure to adopt a uniform mechanism used to determine priority at the level of international uniform substantive law with regard to international trade. In this respect, a compromise solution is provided by the UNCITRAL Convention on the Assignment of Receivables in International Trade, based on the application of the conflict of laws’ connecting factor and the substantive law applicable on the basis of an opt-in rule.

The issue of the effects of an assignment vis-à-vis third parties is also being discussed at the level of private international law. Legal uncertainty as to which national law determines

who owns a claim further to a cross-border transaction is not conducive to the cross-border transactions in claims. In the EU dimension, the postulate that the applicable law should be determined in a manner ensuring legal certainty and predictability was accepted in the European Commission's proposal for a regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignment of claims. It looks like the uniform provisions contained in this regulation offer a mechanism that should at least contribute to reducing legal risk and facilitating access to cheaper credit, and, thus, increasing foreign investment, as well as strengthening and integrating financial markets.