



BANKING AND FINANCE

Public consultation on the conflict of laws rules for third party effects of transactions in securities and claims

Fields marked with * are mandatory.

Introduction

Factoring, securitisation, acceptance of collateral are transactions that financial markets heavily rely on. But the rules determining whether proprietary rights have been validly transferred in a transaction in securities or claims differ across Member States. In order to have certainty about the effects of a cross-border transaction on third parties, it is crucial to know which country's law is applicable. However, the rules that designate the applicable law (so-called "conflict of laws" rules) are also different, uncertain and sometimes even inconsistent across the EU. As a result, there is legal uncertainty in cross-border transactions as to which law applies and whether a transaction has validly transferred ownership or not.

To facilitate cross-border investing the CMU Action Plan envisages action on securities ownership and thirdparty effects of assignment of claims. The CMU Communication further specifies that the Commission will propose a legislative initiative to determine with legal certainty which national law shall apply to securities ownership and to third party effects of the assignment of claims.

The purpose of this public consultation is to gather stakeholders' views on the practical problems and types of risks caused by the current state of harmonisation of the conflict of laws rules on third party effects of transactions in securities and claims and to gather views on possibilities for improving such rules.

This consultation document and the accompanying questionnaire are structured along four subject matters: book-entry securities (Section 3), certificated securities (Section 4 – both sections being mainly relevant for the securities industry), claims (Section 5 - primarily relevant for the factoring and banking industry), and a specific subset of claims that might need different solutions (Section 6 - primarily relevant for securitisation, banking and the derivative market industry).

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-securities-and-claims@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

1. Information about you

*Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

*Name of your organisation:

Swedish Securities Dealers Association

Contact email address:

The information you provide here is for administrative purposes only and will not be published

lars@fondhandlarna.se

*Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
 No

*If so, please indicate your Register ID number:

7777147632-40

*Type of organisation:

- | | |
|---|---|
| <input type="radio"/> Academic institution | <input type="radio"/> Company, SME, micro-enterprise, sole trader |
| <input type="radio"/> Consultancy, law firm | <input type="radio"/> Consumer organisation |
| <input checked="" type="radio"/> Industry association | <input type="radio"/> Media |
| <input type="radio"/> Non-governmental organisation | <input type="radio"/> Think tank |
| <input type="radio"/> Trade union | <input type="radio"/> Other |

*Where are you based and/or where do you carry out your activity?

Sweden

*To which member State(s) will your replies relate to?

Sweden

*Field of activity or sector (*if applicable*):

at least 1 choice(s)

- Accounting
- Auditing
- Legal consulting
- Banking
- Credit rating
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- CCP
- CSD
- Regulated market
- Issuer
- Investor
- Academia
- Other
- Not applicable



Important notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see [specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

2. Your opinion

Section 2: what is the issue and how do markets deal with it?

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 1: Do you observe in practice that legal opinions on cross-border transactions in securities and claims contain an analysis of which law is applicable (conflict of laws)?

- Yes, always where relevant
- In general yes, but not in all relevant situations
- In rare cases yes, but often not
- No, in general legal opinions do not include an analysis of which law applies
- I don't know / I am not familiar with legal opinions

Please elaborate on your reply to Question 1 if you have further information:

Yes, always when relevant/in general, but not in all situations. In particular is legal opinion or equivalent legal documentation of great importance for security or collateral transactions. But it is cumbersome and costly to have legal opinions in a cross-border context. Usually a law firm only will produce a legal opinion regarding one national law (basic assumption) and you have to complement that opinion with one or two more legal opinion depending on the cross-border situation. There is a clear lack of legal certainty and stability regarding conflict of laws questions. The answer is regarding securities. Our knowledge and information about claims is limited. However, we assume that legal opinions or equivalent documentation is also needed in many cases because of the legal uncertainty.

Question 2: Do you think that default of a large participant in the financial market who holds assets in various Member States could possibly create difficult conflict of laws questions, putting in doubt who owns (or has entitlement to) which assets?

- Yes
- No
- Don't know / no opinion / not relevant

If you answered YES to question 2, please provide concrete examples or specify in which legal context this problem might arise, pointing also to relevant national provisions where possible:

The probability is quiet high because of the differences in national legislation regarding the implementation of the conflict of laws rules and the lack of harmonization of securities laws as well as insolvency laws in the EU.

This lack of harmonization and maybe also interpretation means that interested parties like creditors and insolvency administrators will have reason to scrutinize many, if not all, transactions made by the default party.

Market participants could deal with such legal uncertainty in several ways, the first one is of course to avoid doing the deal or transaction, a second one is to try to do the transaction in such a way (perfect a security transaction for example) that all thinkable requirements is complied with. Another one is to limit the counterparties to deal with.

It goes without saying that a limitation of those risks would be of great importance for an efficient and well-functioned securities market in the EU.

If you answered YES to question 2, please give an estimate of the magnitude of the issue (e.g. number or value of transactions that might be concerned):

If you answered YES to question 2, please explain how market participants deal with such legal uncertainty:

Section 3: book-entry securities (primarily relevant for the securities industry)

3.1 Shortcomings of the current situation

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

3.1.1 Unclear location of securities accounts

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 3: Are you aware of actual or theoretical situations where it is not clear how to apply EU conflict of laws rules, or their application leads to outcomes that are inconsistent?

- Yes
- No
- Don't know / no opinion / not relevant

If you answered YES to question 3, please explain which rules leads to outcomes that are inconsistent, what is their interpretation and in which Member State(s)? What is the impact of such ambiguity? How does the market deal with this ambiguity?

One of the main problem is that the personal, material and geographical scope in the EU-legislation – SFS, FCD and WUD – differs and also is limited. For example the rules do not cover all transactions with book-entry securities and not all participants in the financial markets. Furthermore, those legislations are in the form of directive which means that the national implementation could differ and in reality the implementation of Settlement Finality Directive (SFD) and Financial Collateral Directive (FCD) is far from harmonized.

3.1.2 Unclear which assets are credited to a “securities account”

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 4 a): In your Member State, which financial instruments are considered to be covered by the EU conflict of laws rules? Please provide references to relevant statutory rules, case law and/or legal doctrine.

The Swedish rule is based on the definition of financial instruments in MiFID, see Financial Instruments Trading Act Chapter 5 Section 3 and Chapter 1.
It should cover such derivatives as exchange traded one.
When it comes to registered shares there could be some doubt if such shares are registered in a securities account by a Swedish intermediary. Could such registration be deem to be done in accordance to law is the question.

Question 4 b): In particular, are registered shares considered to be covered by the EU conflict of laws rules in your Member State?

- Yes
- No
- Don't know / no opinion / not relevant

Question 4 c): In particular, are exchange-traded derivatives considered to be covered by the EU conflict of laws rules in your Member State?

- Yes
- No
- Don't know / no opinion / not relevant

3.1.3 Unclear which is the relevant account

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 5): In your Member State, how do statutory rules, case law and/or legal doctrine answer the question which is the relevant 'record' for conflict of laws purposes? Please provide references.

According to the preparatory work (of great legal value according to the Swedish doctrine) the relevant factor is where the right to the securities are registered, be a securities account held by an intermediary or by a CSD, se governmental proposal 1999/2000:18 page 88-96.

3.1.4 Unclear how many laws apply in a holding chain and how they interact

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 6 a): Please describe how exactly you define and apply in practice the Place of the Relevant Intermediary Approach (PRIMA) in your Member State? If appropriate, please provide references to relevant case law and/or legal doctrine that corroborate your interpretation.

As stated in question 5 the place of the relevant intermediary is where the right to the securities are registered.

Are you aware of any case law?

- Yes
- No
- Don't know / no opinion / not relevant

Question 6 b): In your experience, do different substantive laws in one cross-border holding chain interact smoothly or do they create problems in practice? Please provide examples.

One of the results in the differences between substantive laws in the EU regarding securities and securities transactions, lack of a harmonized securities law legislation, is the increase importance of well- functioning conflict of laws rule.

3.1.5 Fragmented legal framework

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 7: In your experience, what is the scale of difficulties encountered because of dispersal of conflict of laws rules in EU directives and national laws? Please provide examples.

The legal uncertainty have an impact on the function of financial markets in the EU, in particular the lack of a harmonized substantive securities law. Trades are not done and if done, trades to often require that the legal requirements under all possibly applicable laws are complied with, which of course have an impact on the costs of those transactions and the administrative burden.

3.2 Possible ways forward

3.2.1 Status quo

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 8: Do you see added value in Union action to address issues identified in Section 3.1. of this public consultation?

- Yes
- No
- Don't know / no opinion / not relevant

3.2.2 Targeted amendments to EU rules

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 9: Do you think that targeted amendments to the relevant EU legislation containing conflict of laws rules would solve the identified problems?

- Yes
- No
- Don't know / no opinion / not relevant

Question 10: If there was a targeted solution clarifying which record is relevant for determining the applicable law, do you expect problems if within one Member State the legal relevance of record(s) for conflict of laws purposes does not coincide with the legal relevance of record(s) under substantive law?

- Yes
- No
- Don't know / no opinion / not relevant

If no, please explain your opinion:

As stated before, as long as the substantive law is not harmonized. The best solution according to our opinion to adopt a general solution for the conflict of laws regarding securities. A first priority is to adopt the Hague Securities Convention. If not political feasible an alternative can be PRIMA without the subjective factor. But, as we have stated before, the main problem is the lack of a harmonized securities law legislation in the EU. A single, comprehensive conflict of laws rule could be a huge step forward.

3.2.3 Overarching reform of EU rules

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 11: Do you think that an overarching reform of conflict of laws rules on third party effects of transactions in book-entry securities is needed to provide for legal certainty?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your reply to question 11:

The reasons have been stated i previous questions.

Question 12: If you prefer an overarching reform, what would be the appropriate connecting factor in your view?

(You can select more than one option in response to Question 12)

- Option 1: the law of the Place of the Relevant Intermediary Approach (PRIMA)
- Option 2: the law governing the contract
- Option 3: the law under which the security is constituted
- Option 4: other option(s)

Option 1: the law of the Place of the Relevant Intermediary Approach (PRIMA)

When you choose option 1, please also explain:

a) the reasons for your preference,

In the opinion of SSSA the law of the Place of the Relevant Intermediary Approach (PRIMA)is the preferred approach and the best way is for the Union to adopt the Hague Securities convention. In our opinion choice 2 and 3 should be out of question.

b) which classes of book-entry securities you think each selected option should cover,

c) in which scenario the selected option should apply in your view.

If you choose option 1, please also select how should PRIMA be determined:

- separately at each level of the holding chain
- globally for the whole holding chain (Super-PRIMA)

If you choose option 1, please also select how would you determine the place of the relevant intermediary?

- the intermediary's registered office
- the intermediary's central administration
- the intermediary's branch through which the account agreement is handled
- other

If you choose intermediary's branch, please also select whether the branch should be identified:

- by an account number, code or other objective means of identification or
- as contractually stipulated in the account agreement

Question 13: For each of the options 1 to 4 in Question 12 above, as you defined these in your answers, please indicate the scale of advantages – disadvantages

Option 1: the law of the Place of the Relevant Intermediary Approach (PRIMA)

Option 1: please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase /decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase /decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase /decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Question 14: In your view, on which of the following issues would options (1)-(4) in Question 12 above have any positive or negative impact:

**Option 1: the law of the Place of the Relevant Intermediary Approach
(PRIMA)**

Option 1: please quantify if possible:

	-2 (Very NEGATIVE)	-1 (NEGATIVE)	0 (no impact)	+1 (POSITIVE)	+2 (very POSITIVE)
a) taxation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) transfer of risks between central depositaries, banks and depositors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) the effectiveness of clearing and settlement systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) the identification of credit institutions' insolvency risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

e) the exercise of voting rights attached to securities	<input type="radio"/>				
f) the remuneration of the ultimate owners of securities	<input type="radio"/>				
g) combating market abuse	<input type="radio"/>				
h) combating money laundering and terrorist financing	<input type="radio"/>				

Question 15: Which issues should be covered by the scope of the applicable law determined by such conflict of laws rules on third party effects of transactions in book-entry securities (e.g. the steps necessary to render rights in book-entry securities effective against third parties, priority issues, etc.)?

- the steps necessary to render rights in certificated securities effective against third parties
- priority issues
- other

Question 16: Do you have other suggestions for conflict of laws rules for third party effects of transactions in book-entry securities or opinions on this topic that you have not expressed yet above?

From a Conflict of Laws perspective it is of utmost importance to clearly recognize those system in which the owner of securities could be registered in an account with the CSD. The account in the CSD should in such a case be the relevant account to use the wording of both the FCD and the Hague Convention. The possibility for a CSD to be recognize as the relevant intermediary is accepted in SFD, The Hague Convention and the Geneva Securities Convention and should of course also be a part of a forthcoming new or amended legislation on Conflict of Laws for securities and claims in the EU.

For the Nordic countries, in particular Sweden and Finland, a special problem is that the day to day administration of those accounts is not done by the CSD. Instead specific entities, called account operators, intervene to operate those accounts. The account operator regularly makes entries in the securities accounts that are maintained by the CSD, according to information given by the account holder to the account operator. In a system with dematerialized or immobilized securities the owner of securities always need assistance from an account operator to exercise his or hers rights relating to securities credited in an account. That division of duties in the Nordic mixed (direct) holding systems have been recognized and accepted in CSDR (article 31). It also important that the future legislation recognize the role of the account operator and in such cases clearly point out the CSD as the relevant intermediary.

Section 4: certificated securities (primarily relevant for the securities industry)

4.1 Shortcomings of the current situation

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 17 a): Do transactions in certificated securities still play an important role in your Member State?

- Yes, very important
- Yes, important
- Neutral
- No
- Don't know / no opinion / not relevant

Question 17 b): How often are certificated securities being used as collateral in practice?

- Very frequently
- Frequently
- Sometimes
- Rarely
- Never
- Don't know / no opinion / not relevant

Question 18: Are conflict of laws rules on third party effects of transactions in certificated securities easily identified in your Member State?

- Yes, there are statutory rules
- Yes, there is case law
- Yes, there is legal doctrine
- No
- Don't know / no opinion / not relevant

4.2 Possible ways forward

4.2.1 Status quo

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 19: Do you see added value in Union action to address the identified issues with regard to certificated securities?

- Yes
- No
- Don't know / no opinion / not relevant

4.2.2 Harmonising of conflict of laws rules

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 20: Do you consider that conflict of laws rules on third party effects of transactions in certificated securities should be harmonised at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Question 21: If you consider that harmonising conflict of laws rules on third party effects of transactions in certificated securities is the appropriate option:

a) What connecting factor do you recommend for **certificated registered shares**?

b) What connecting factor do you recommend for **certificated bearer securities**?

c) Which issues should be covered by the scope of the applicable law determined by such harmonised conflict of laws rules?

- the steps necessary to render rights in certificated securities effective against third parties
- priority issues
- other

Question 22: For each of the options a) and b) in Question 21 above, as you defined these in your answers, please indicate the scale of advantages – disadvantages

Option a): the connecting factor you recommend for certificated registered shares

Option a): please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase /decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase /decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase /decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Option b): the connecting factor you recommend for certificated bearer securities

Option b): please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase /decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase /decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase /decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Section 5: claims (primarily relevant for the factoring and banking industry)

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

5.1 Shortcomings of the current situation

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 23: In the past 5 years, have you encountered problems in practice in securing the effectiveness of assignments against persons other than the assignee and the debtor (e.g. a second assignee, a creditor of the assignor or of the assignee) in transactions with a cross-border element?

- Yes
- No
- Don't know / no opinion / not relevant

Question 24: In a typical transaction with a cross-border element involving an assignment of claims, do you undertake legal due diligence with respect to the underlying claim under the law governing the assigned claim?

- Yes
- No
- Don't know / no opinion / not relevant

5.2 Possible ways forward

5.2.1 Status quo

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 25: Do you see added value in Union action to address the identified issues in the area of assignment of claims involving a cross-border element?

- Yes
- No
- Don't know / no opinion / not relevant

5.2.2 Harmonising of conflict of laws rules

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 26: What conflict of laws rule on third party effects of assignment of claims would you favour?

Please indicate your order of preference among the below options ranging from 1 (best solution) to 4 (least preferred solution):

	1 (BEST solution)	2	3	4 (LEAST preferred solution)
(1) the law applicable to the contract between assignor and assignee	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(2) the law of the assignor's habitual residence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(3) the law governing the assigned claim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(4) other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 27: For each of the options 1, 2, 3 and 4 in Question 26 above, please indicate the scale of advantages – disadvantages

Option 1: the law applicable to the contract between assignor and assignee

Option 1: please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase /decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase/decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase/decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Option 2: the law of the assignor's habitual residence

Option 2: please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase /decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase /decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase /decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Option 3: the law governing the assigned claim

Option 3: please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase/decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase /decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase /decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Option 4: other solution(s)

Option 4: please indicate the scale of advantages / disadvantages in terms of:

	-2 (significant DECREASE)	-1 (some DECREASE)	0 (no change)	+1 (some INCREASE)	+2 (significant INCREASE)
a) an estimated increase /decrease of the number or value of transactions which you are able to undertake in your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) an estimated increase /decrease of your legal due diligence costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) an estimated increase /decrease of the profitability of your business	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

d) a change in your business model and the way in which you operate your business	<input type="radio"/>				
e) any other advantages	<input type="radio"/>				
f) any other disadvantages	<input type="radio"/>				

Question 28: Which issues should be covered by the scope of the applicable law determined by the conflict of laws rule?

- the steps necessary to render rights in certificated securities effective against third parties
- priority issues
- other

Section 6: certain specific situations in which claims might need different treatment (primarily relevant for securitisation, banking and derivative market industry)

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 29: In your experience, how frequently are claims constituting financial instruments other than book-entry securities and/or other claims traded on financial markets assigned, i.e. transferred?

- Very frequently
- Frequently
- Sometimes
- Rarely
- Never
- Don't know / no opinion / not relevant

Question 30: Are conflict of laws rules on third party effects of assignment of claims constituting financial instruments other than book-entry securities and other claims traded on financial markets easily identified in your Member State?

- Yes, there are statutory rules
- Yes, there is case law
- Yes, there is legal doctrine
- No
- Don't know / no opinion / not relevant

Question 31: Would it be useful to provide for a specific conflict of laws rule on third party effects of assignment of claims constituting financial instruments other than book-entry securities and/or other claims traded on financial markets which is different from your preferred solution for claims in general?

- Yes
- No
- Don't know / no opinion / not relevant

6.1 Cash in accounts

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 32: In your experience, does cash collateral play an important role?

- Yes, very important
- Yes, important
- Neutral
- No
- Don't know / no opinion / not relevant

Question 33: Are conflict of laws rules on third party effects of assignment of cash held in accounts easily identified in your Member State?

- Yes, there are statutory rules
- Yes, there is case law
- Yes, there is legal doctrine
- No
- Don't know / no opinion / not relevant

Question 34: Would it be useful to provide for a specific conflict of laws rule on third party effects of assignment of cash held in accounts which is different from your preferred solution for claims in general?

- Yes
- No
- Don't know / no opinion / not relevant

Question 35 a) : Do you consider that a specific rule, different from the above, is needed for cash collateral being provided for the purpose of securing rights and obligations potentially arising in connection with a system designated under the Settlement Finality Directive?

- Yes
- No
- Don't know / no opinion / not relevant

Question 35 b) : Do you consider that a specific rule, different from the above, is needed for cash collateral being provided to central banks of Member States or to the European Central Bank?

- Yes
- No
- Don't know / no opinion / not relevant

6.2 Credit claims used as financial collateral

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 36: In your experience, are credit claims used as financial collateral outside the Eurosystem credit operations?

- Very frequently
- Frequently
- Sometimes
- Rarely
- Never
- Don't know / no opinion / not relevant

Question 37: Are conflict of laws rules on third party effects of assignment of credit claims easily identified in your Member State?

- Yes, there are statutory rules
- Yes, there is case law
- Yes, there is legal doctrine
- No
- Don't know / no opinion / not relevant

Question 38: Would it be useful to provide for a specific conflict of laws rule on third party effects of assignment of credit claims which is different from your preferred solution for claims in general?

- Yes
- No
- Don't know / no opinion / not relevant

6.3 Claims used as underlying assets in securitisation

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 39: In your experience, how frequently are claims used as underlying assets in securitisations?

- Very frequently
- Frequently
- Sometimes
- Rarely
- Never
- Don't know / no opinion / not relevant

Question 40: Are conflict of laws rules on third party effects of assignment of claims used as underlying assets in securitisations easily identified in your Member State?

- Yes, there are statutory rules
- Yes, there is case law
- Yes, there is legal doctrine
- No
- Don't know / no opinion / not relevant

Question 41: Would it be useful to provide for a specific conflict of laws rule on third party effects of assignment of claims used as underlying assets in securitisations which is different from your preferred solution for claims in general?

- Yes
- No
- Don't know / no opinion / not relevant

Question 42: Do you have any other comments on the topic of this public consultation?

A general conflict of laws rule regarding securities holding and dispositions in the EU has for long time been one of the top priorities on the Swedish Securities Dealers Associations (SSDA) legislative agenda for EU. A harmonized securities law legislation for EU is however regarded as even more important. In the opinion of SSDA both a general conflict of Laws rule and a securities legislation is essential for the EU and a well-functioning cross border market in securities in the Union. The result of the lack of harmonization and differences between substantive laws in the EU regarding securities and securities transactions is the increased importance of a well-founded conflict of laws rule with a broad personal, material and geographical scope.

In our opinion the best way forward is to introduce a single conflict of laws rule for the holding and transferring of book-entry securities and the provision of ownership therein. Such a rule should go further than the sectorial legislation, Settlement Finality Directive (SFD and Financial Collateral Directive (FCD), and introduce a general comprehensive rule applicable to all securities held through securities accounts with intermediaries as CSDs, banks and investment firms. Such a rule should take into account that in some Member States owner and dispositions of securities could be done at the highest level, the CSD, level in so-called direct holding system.

SSDA is a supporter of The Hague Securities Convention and the Geneva Securities Convention. The best way for the Union, according to our view, is to adopt The Hague Securities Convention and the Geneva Securities Convention and thereby also stimulate other countries outside to adopt those Conventions.

3. Additional information

To ensure that responses cover all the relevant information and to help assessing the responses we strongly encourage you to answer the questions in the questionnaire. Should you wish to provide any additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Useful links

[Consultation details \(http://ec.europa.eu/info/finance-consultations-2017-securities-and-claims_en\)](http://ec.europa.eu/info/finance-consultations-2017-securities-and-claims_en)

[Specific privacy statement \(https://ec.europa.eu/info/sites/info/files/2017-securities-and-claims-specific-privacy-statement_en.pdf\)](https://ec.europa.eu/info/sites/info/files/2017-securities-and-claims-specific-privacy-statement_en.pdf)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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