

AUSTRIA

Recent ECJ decision on cross-border assignments and pledges

Whether receivables are to be acquired as collateral or otherwise, the question of applicable law relating to cross-border assignments or pledges is essential for determining enforceability. The ECJ clarified that the Rome I Regulation does not designate the law relevant for third-party effects of assignments.

If claims for money against debtors are used as collateral or otherwise transferred (e.g., by sale), this should have legal effect not only between the contracting parties, but also especially against all third parties. Otherwise the claim could subsequently be assigned or pledged effectively to a third party.

According to the laws of some countries, special regulations regarding the transfer of rights must be observed. For example, under Austrian law there must be agreed legal grounds for the assignment and the assigned right must also be transferred.

In cross-border cases (e.g., if a contractual partner or third-party debtor is domiciled abroad), the law of different countries may be applicable. This is particularly relevant because the law applicable to the transfer of the claim cannot be agreed between the parties with third-party effect. The same also applies to pledges, even if only assignments are discussed here.

The EU Rome I Regulation, which is directly applicable, stipulates which national law is applicable to particular cross-border transactions. Articles 3 et seqq. of the Rome I Regulation determine the law generally applicable to contractual obligations. Article 14 of the Regulation, however, foresees special rules for assignments of claims.

New ECJ ruling of 9 October 2019

In its decision C-548/18 (BGL BNP Paribas / TeamBank) of 9 October

2019, the ECJ clarified that Article 14 Rome I Regulation does not determine, either directly or by reference, which law is applicable to the third-party effect of an assignment of claims. The applicable law must be determined in accordance with the conflict-of-law rules of the country in which a claim is to be enforced in court.

Consequently, Article 14 (1) and (2) Rome I Regulation are relevant only for questions relating to the relationship between the contracting parties, objections of the third-party debtor and the transferability of the claim.



Austrian Law

In Austria, the conflict-of-law rules of the Private International Law Act (*Gesetz über das Internationale Privatrecht*, IPRG) must be observed when determining the law applicable to third-party effects.

However, since the IPRG does not contain any specific rules on the assignment of claims, according to s.1 IPRG the law which applies shall be that of the country with which the facts of the case have the closest connection. In relation to the topic at hand, this

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will usually be the law of the assigned claim. The law of the assigned claim will also be applicable with regard to the perfection steps required for valid assignments of claims (Austrian Supreme Court 2 Ob 265/00k). The applicable law includes its conflict-of-law rules, which means that there may be a referral to the law of another country.



Which law is relevant for assignments?

If an applicable law is specified in the assignment agreement, both the chosen law as well as the law applicable

to the assigned claim must be observed.

- First, the law chosen by the assignor and the assignee to govern the contract of assignment must be respected in order to transfer effectively the claim between the parties (Art. 14 (1) Rome I Regulation).
- In addition, the law applicable to the claim to be transferred must also be complied with in order to ensure the effect of the assignment against the third-party debtor (Art. 14(2) Rome I Regulation) and against other third parties (s. 1 IPRG). In this respect, the parties to the contract of assignment cannot choose the law applicable to these aspects of the assignment.

The applicability of the Rome I Regulation and the IPRG cannot be waived.

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