



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:

Global Legal Entity Identifier Foundation (GLEIF)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

stephan.wolf@gleif.org

*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:

Globa6215421205

*Type of organisation:

Academic institution

Consultancy, law firm

Industry association

Non-governmental organisation

Trade union

Company, SME, micro-enterprise, sole trader

Consumer organisation

Media

Think tank

Other

*Please specify the type of organisation:

Swiss non-profit Foundation

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

Germany

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

EU 28

*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

*Please specify your activity field(s) or sector(s):

Legal entity identification and relationship data



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

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

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

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.

GLEIF will not provide a response for this 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.

GLEIF will not provide a response for this question.

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.

GLEIF will not provide a response for this question.

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.

GLEIF will not provide a response for this question.

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.

GLEIF will not provide a response for this question.

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

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

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 consultation, it is stated that the place of the relevant intermediary could be specified as being determined, e.g. (i) by an account number, bank code or other specific means that identifies the relevant branch in an objective manner, with footnote 31, suggesting that the Legal Entity Identifier (LEI), a 20-character, alpha-numeric code to uniquely identify entities that engage in financial transactions, could be used. GLEIF agrees with the proposal that the LEI as an international standard with freely available, validated reference data regarding an intermediary legal entity, could be used to determine the place of the relevant intermediary.

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

GLEIF will not provide a response to this question.

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

Please refer to the response to Option 1 a).

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 prefer Super-PRIMA, please also specify which account should be solely relevant for conflict of laws purposes in your view:

GLEIF does not have an opinion regarding the selection of how PRIMA should be determined.

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

Please specify:

GLEIF does not have an opinion regarding how to select the place of the relevant intermediary. The LEI would be of use to be able to make the determination by registered office, central administration (operating office) or intermediary branch in a host country.

Option 3: the law under which the security is constituted

When you choose option 3, please also explain:

a) the reasons for your preference,

In the consultation, it also is proposed that the determination of the law to be applied could be the jurisdiction in which the security was constituted (issued) and the ISIN is proposed to be able to provide that level of information as the jurisdiction in which the security was constituted is part of the ISIN reference data. GLEIF has begun to work with the Association of National Numbering Agencies (ANNA) regarding the mapping of the securities issuer information of the ISIN to the relevant LEI, thus creating a link between the issuer and legal entity reference data.

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

GLEIF will not provide a response to this question.

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

GLEIF will not provide a response to this question.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option 1 in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 1 in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 1 in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 1 in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option 1, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option 1, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Option 3: the law under which the security is constituted

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option 3 in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 3 in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 3 in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 3 in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option 3, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option 3, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) the effectiveness of clearing and settlement systems	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) the identification of credit institutions' insolvency risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Please explain your answer as the positive or negative impact of option 1 on taxation:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on transfer of risks between central depositaries, banks and depositors:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on the effectiveness of clearing and settlement systems:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on the identification of credit institutions' insolvency risks:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on the exercise of voting rights attached to securities:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on the remuneration of the ultimate owners of securities:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on combating market abuse:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 1 on combating money laundering and terrorist financing:

GLEIF will not provide a response to the question.

Option 3: the law under which the security is constituted

Option 3: 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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) the effectiveness of clearing and settlement systems	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) the identification of credit institutions' insolvency risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Please explain your answer as the positive or negative impact of option 3 on taxation:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on transfer of risks between central depositaries, banks and depositors:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on the effectiveness of clearing and settlement systems:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on the identification of credit institutions' insolvency risks:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on the exercise of voting rights attached to securities:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on the remuneration of the ultimate owners of securities:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on combating market abuse:

GLEIF will not provide a response to the question.

Please explain your answer as the positive or negative impact of option 3 on combating money laundering and terrorist financing:

GLEIF will not provide a response to the question.

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

Please specify what other issues should be covered by the scope of the applicable law determined by such harmonised conflict of laws rules (in relation to question 15):

GLEIF will not provide a response to the question.

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?

GLEIF will not provide a response for this question.

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**?

GLEIF will not provide a response to the question.

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

GLEIF will not provide a response to the question.

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

Please specify what other issues should be covered by the scope of the applicable law determined by such harmonised conflict of laws rules (in relation to question 21 c):

GLEIF will not provide a response to the question.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option a) in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option a) in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option a) in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option a) in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option a), and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option a), and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option b) in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option b) in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option b) in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option b) in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option b), and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option b), and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what other conflict of laws rule on third party effects of assignment of claims would you favour:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option 1 in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 1 in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 1 in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 1 in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option 1, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option 1, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option 2 in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 2 in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 2 in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 2 in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option 2, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option 2, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option 3 in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 3 in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 3 in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 3 in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option 3, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option 3, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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 checked="" 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 checked="" 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 checked="" 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"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
e) any other advantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
f) any other disadvantages	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your answer as the advantages or disadvantages of option 4 in terms of increase/decrease of the number or value of transactions which you are able to undertake in your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 4 in terms of increase/decrease of your legal due diligence costs:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 4 in terms of increase/decrease of the profitability of your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please explain your answer as the advantages or disadvantages of option 4 in terms of a change in your business model and the way in which you operate your business:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other advantage(s) you can see to option 4, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

Please specify what other disadvantage(s) you can see to option 4, and provide relevant data if possible:

GLEIF's answer will not have an effect on GLEIF's business.

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

Please specify what other issues should be covered by the scope of the applicable law determined by the conflict of laws rule (in relation to question 28):

GLEIF will not provide a response to this question.

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?

GLEIF provides the following comment regarding the location of a bank account.

The paper states that the location of a bank account could be developed by reference to the International Bank Account Number (IBAN) that identifies a particular branch and suggests that the LEI might be able to be used in cases in which cash is held with a bank that does not have an IBAN.

GLEIF agrees that the LEI could be used in the cases that a cash is held in a bank that does not have an IBAN. GLEIF also notes that an initiative of LEIs mapped to IBANs is under consideration.

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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