INSTITUTE FOR LAW AND FINANCE

RICK VERHAGEN

A NEW CONFLICT RULE FOR SECURITIZATION AND OTHER CROSS-BORDER ASSIGNMENTS
A POTENTIAL THREAT FROM EUROPE

INSTITUTE FOR LAW AND FINANCE
JOHANN WOLFGANG GOETHE-UNIVERSITÄT FRANKFURT

WORKING PAPER SERIES NO. 45

Prof. Dr. Theodor Baums
Prof. Dr. Andreas Cahn

Institute for Law and Finance

Johann Wolfgang Goethe-Universität

Senckenberganlage 31

D-60054 Frankfurt am Main

Tel: +49 (0)69 / 798-28941

Fax: +49 (0)69 / 798-29018

(Internet: http://www.ilf-frankfurt.de)

Rick Verhagen

A New Conflict Rule for Securitization and other Cross-Border Assignments
A Potential Threat from Europe

Institute for Law and Finance

WORKING PAPER SERIES NO. 45

04/ 2006

A New Conflict Rule for Securitization and other Cross-Border Assignments

A potential threat from Brussels

Rick Verhagen[1]

1. Introduction

The assignment of contractual rights is of immense importance for the world of business and finance.[2] Although the sale of receivables has ancient origins (it already happened in classical Rome), its economic significance has increased enormously in the last decades, with the advent of securitisation transactions. Never before have assignments taken place on such a large scale as is the case in the contemporary securitisation market.[3] The substantive laws of many European jurisdictions have been changed in the last decades, in order to adapt to this new commercial reality. Particularly in jurisdictions where notification to the debtors was an essential requirement for the transfer of receivables this requirement has been abolished, either for certain types of

---

1 Professor Hendrik L.E. Verhagen, Faculty of Law, University of Nijmegen

2 The following abbreviations are used in these footnotes:
Eidenmüller: Horst Eidenmüller, Die Dogmatik der Zession vor dem Hintergrund der internationalen Entwicklung, Archiv für die civilistische Praxis 2004, p. 457-501
Flessner/Verhagen: Axel Flessner and Hendrik (Rick) Verhagen, Assignment in European Private International Law, Claims as property and the European Commission's 'Rome I Proposal', München 2006
Kieninger, Rome I: Eva-Maria Kieninger, Brussels I, Rome I and Questions Relating to Assignment and Subrogation, in: Johan Meeusen et al. (eds.), Enforcement of international contracts in the European Union, Convergence and divergence between Brussels I and Rome I, Antwerp (etc.) 2004, p. 363-387
Kieninger, Statut: Eva-Maria Kieninger, Das Statut der Forderungsabtretung im Verhältnis zu Dritten, RabelsZ 1998, p. 679-711
Kieninger/Schütze: Eva-Maria Kieninger and Elisabeth Schütze, Die Forderungsabtretung im internationalen Privatrecht - Bringt die "Rom I - Verordnung" ein "Ende der Geschichte"?, IPRax 2005, p. 200-208
Lagarde: Paul Lagarde, Retour sur la loi applicable à l'opposabilité des transferts conventionnels de créances, Mélanges Jacques Béguin, 2005, p. 415-432
Mäsch: Gerald Mäsch, Abtretung und Legalzession im Europäischen Kollissionsrecht, in: Stefan Leible (ed.), Das Grünbuch zum Internationalen Vertragsrecht, München 2004, p. 193-208
Max-Planck-Institut für ausländisches und internationales Privatrecht, Comments on the European Commission's Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernization, RabelsZ 2004, p. 1-118
Stoll: Hans Stoll, Die Forderungsabtretung im internationalen Privatrecht. Eine Studie zur Vereinheitlichung des Kollisionsrecht in Europa, in: Leszek Ogiegło, Wojciech Popiołek, Maciej Szpunar (eds.), Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana, Kraków 2005, p. 307-321
Struycken: Teun H.D. Struycken, The proprietary aspects of international assignment of debts and the Rome Convention, Article 12, Lloyd's Maritime and Commercial Law Quarterly 1998, p. 345-360.

3 In securitisation transactions a bank or commercial enterprise (the 'Originator') sells and assigns its claims against debtors to a 'special purpose vehicle' (SPV). The SPV funds the purchase price by issuing debt securities (bonds, notes, commercial paper), hence the name 'securitisation'. See Flessner/Verhagen, p. 5-7.

transaction (e.g. securitisation) or altogether.[4] In a recent report written on behalf of the European Commission it is noted that certain European countries, which were quick to pass securitisation laws, have seen rapid growth in securitisation volumes.[5] This report recommends that EU effort needs to be given to ensuring (inter alia) 'user friendly commercial laws' across Europe.

Many receivables-based financial transactions, such as securitisations, are cross-border transactions. It is therefore often crucial to determine which law governs the proprietary aspects of assignment. This is when private international law comes into play. Case law and legal writing in the Member States are, however, divided on the crucial question of which law governs the proprietary aspects of assignment. It is not surprising therefore, that the European Commission, in its Green Paper of January 2003,[6] asked the question on whether a revised version of article 12 of the Rome Convention[7] should clarify which law governs the enforceability of an assignment as against third parties. In response to the reactions on the Green Paper, the European Commission has, in its 'Proposal for a Regulation on the law applicable to contractual obligations',[8] formulated a new conflict rule for the law governing the enforceability of an assignment as against third parties. This issue is governed by the law of the country where the assignor has his habitual residence.

It is essential that also European private international law will be 'user friendly' and will refrain from creating new obstacles by employing rigid connecting factors. Above all, a revised conflict rule for assignment in the 'Rome I Regulation' should align well with trends in the substantive laws of the Member States, facilitating large-scale assignments of contractual claims in a commercial or financial context. In our book,

---

4 See Flessner/Verhagen, p. 6-7.

5 Study on Asset-backed Securities: Impact and Use of ABS on SME Finance (Contract ENTR 03/44), prepared by the consultancy firm GBRW on behalf of the European Commission (hereafter referred to as the 'GBRW Study'). Much useful information on securitisation transactions can be found in this report. See: http://europa.eu.int/comm/enterprise/entrepreneurship/financing/asset_backed_securities.htm.

6 Green Paper on the conversion of the Rome Convention into a Community instrument and its modernisation, COM(2002) 654 final.

7 Convention on the Law Applicable to Contractual Obligations (the 'Rome Convention'). When referring to provisions of the Rome Convention, we will use the abbreviation 'RC' (Rome Convention). Thus, the central provision for the purposes of this article will be referred to as 'Article 12 RC'.

8 COM(2005) 650 final. Hereafter it will be referred to as the 'Proposal'. We will often refer to article 13

Flessner and I have tried to demonstrate, that the solution which has been adopted by the Commission, is, with the exception perhaps of a conflict rule referring assignment to the law of the debtor's residence, the worst possible solution for receivables based cross-border transactions.[9] We have argued that a cross-border assignment should be governed by the law chosen by the assignor and the assignee and, in the absence of a choice, by the law applicable to the assigned claim. In this article, the focus will be on the advantages and disadvantages of the proposed article 13 RIP.

2. Existing Solutions in the Member States

The Rome Convention does have a provision on assignment: article 12. Article 12 has given rise to different interpretations in the Member States of the EU. The most crucial question in relation to assignment in private international law is that of which law determines what is required in order to *transfer* a claim from the patrimony of the assignor to that of the assignee. This question has found different answers in the EU Member States. In Brandsma q.q./Hansa Chemie AG[10] the Dutch Hoge Raad held that the conflict rule given in article 12(1) of the Rome Convention not only applies to the contractual relationship between assignor and assignee, but also to the proprietary aspects of the assignment. Therefore, the law which governs the obligation to transfer the receivables also governs "the question which requirements must be satisfied by the assignment of a claim in order to effectuate a proprietary transfer of the claim from the patrimony of the assignor to the patrimony of the assignee, with effect against third persons".[11] In other Member States, however, there are authoritative judicial dicta in favour of the law governing the claim that is being assigned determining the validity and effectiveness of an assignment. The German Bundesgerichtshof considered that it follows from article 33 para. 2 of the Einführungsgesetz zum Bürgerlichen Gesetzbuch (EGBGB), which is a literal translation of article 12(2) RC, that the proper law of the assigned claim not only governs its transferability, but also the as-

---

of the Proposal as 'article 13 RIP' (Rome I Proposal).

9 Flessner/Verhagen, passim.

10 HR 16 May 1997, NJ 1998, 585.

11 See further Flessner/Verhagen, p. 7-8.

signment itself, as well as the ranking of competing assignments.[12] In the leading English case, Raiffeisen Zentralbank Österreich AG v. Five Star General Trading LLC[13], Mance L.J. elaborately reviewed the Hansa case of the Dutch Hoge Raad, but came to a different conclusion, namely that assignment is within the scope of article 12(2) rather than article 12(1), mainly because article 12(2) clearly indicates that the question to whom the debtor must pay is governed by the law applicable to the assigned claim and the 'proprietary aspects' essentially concern this question. In some Member States, for instance Belgium and France, the transfer of receivables by way of assignment is considered to be outside the scope of article 12 of the Rome Convention, apparently because it is to be characterised as a matter of property law, which as such is outside the scope of the Rome Convention. Article 12, in this view, only relates to the contractual relationship between assignor and assignee (article 12(1)) and the matters listed in article 12(2)). In these jurisdictions assignments are often held to be governed by the law of the jurisdiction where the assignor is established (e.g. Belgium) or where the assigned debtor is established (e.g. France).[14]

3. The Rome I Proposal: Article 13

As the overview of the laws of only a limited number of Member States already demonstrates, there really is a need to clarify in Rome I which law governs the transfer of receivables by way of assignment. In a number of reactions to the Commission's Green Paper it is suggested that the proprietary aspects of assignment should be referred to the law of the state where the assignor has his place of business or habitual residence (hereafter: the ‘law of the assignor’s residence’). This solution has been taken over in the Proposal. Article 13 of the Proposal reads as follows:

> 1. The mutual obligations of assignor and assignee under a voluntary assignment or contractual subrogation of a right against another person shall be governed by the law which under this Regulation applies to the contract between the assignor and the assignee.
> 2. The law governing the original contract shall determine the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship be-

12 BGH 8.12.1998, Case XI ZR 302/97, IPRax 2000, p. 128-129, JZ 1999, p. 404-410. See also Flessner/Verhagen, p. 8-12.

13 [2001] 3 All ER 257. See also Flessner/Verhagen, p. 8-12.

tween the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The question whether the assignment or subrogation may be relied on against third parties shall be governed by the law of the country in which the assignor or the author of the subrogation has his habitual residence at the material time.

The major difference between article 12 of the Rome Convention and article 13 of the Proposal lies in article 13(3) RIP. For, article 13(3) makes it clear that the proprietary aspects of a transfer of receivables by way of assignment is neither within the scope of the proper law of the contract of assignment, nor within that of the proper law of the assigned receivable.[15] The proprietary aspects of assignment are instead within the scope of a separate conflict rule, which refers these aspects to the law of the assignor's residence.[16]

4. Arguments in favour of the law of the assignor's residence (and their rebuttal)

The reference to the law of the assignor's residence is said to avoid uncertainties for the assignor and the assignee, when compared with conflict rules referring assignment to the law governing the assigned claim or to the law of the debtor's residence.[17] The proponents of the law of the assignor's residence point at situations where the assignor and the assignee would not be able to identify the law governing the assignment, particularly where one is dealing with bulk assignments or assignments of future claims. By way of contrast, a solution pursuant to which the assignor and the assignee only will have to satisfy the requirements of one legal system will facilitate bulk assignments, thereby enhancing the marketability of receivables in international commerce. Although it certainly can have advantages that assignment is governed by

---

14 See Flessner/Verhagen, p. 12-14, with further references.

15 Article 13 RIP is not drafted in terms of 'proprietary aspects' or 'transfer'. To speak of "enforceability … as against third parties" probably reflects the French tradition of distinguishing between the inter partes effect of assignment (art. 1689 Cc) and the effect of the assignment against third persons (art. 1690 Cc).

16 It is unfortunate that the text of article 13 RIP is confined to assignment and does not make clear that other proprietary disposals of claims, such as charges, pledges and usufructs, are within the scope of this provision as well. It is recommendable that the final version of this provision does put beyond any doubt that these issues are covered by the conflict rule of article 13.

17 Kieninger, Rome I, p. 381 and 383; Max-Planck-Institute, para. 10.1.3; Mäsch, p. 495; Lagarde, p. 426.

one legal system,[18] which can already be identified at the time of the assignment, the practical difficulties connected with applying the proper law of the assigned receivables to bulk assignments and assignments of future receivables should not be exaggerated. In many cases where one is dealing with bulk assignments of (existing and future) receivables, these receivables will have been originated by a professional market participant, pursuant to contracts containing a choice in favour of the law of that party's place of business. In the absence of a choice, the law of the assignor's residence will usually govern the claims pursuant to article 4 RC/RIP.[19] In other words, in the great majority of cases, the law governing bulk assignments or assignments of future claims would already be clear at the time of the assignment, when it would be governed by the proper law of the assigned receivables.

According to the supporters of this conflict rule, the law of the assignor's place of business has decisive advantages for the other creditors of the assignor, since they are likely to orientate themselves on this law, in particular where it subjects assignments to registration requirements.[20] The first argument against registration dictating a conflict rule for assignment is a simple one: registration of assignments in a public register is not required in the great majority of EU Member States, so that it constitutes a weak basis for a European conflict rule for assignment. Moreover, even when one would attribute considerable weight to the fact that some Member States have a public filing system, this does not lead to the conclusion that assignments must be referred 'wholesale' to the law of the assignor's residence. Although (member) states having a public filing system might have an interest in extending it to assignments governed by foreign laws, this interest could be achieved in subtler ways than by referring the property aspects of assignments to the law of the assignor's residence. In our book, Flessner and I have recommended that the Rome I Regulation shall contain a conflict rule stating that where the assignor is subject to insolvency proceedings in his country of residence, or where individual creditors take enforcement measures against the as-

18 See further section 6 below.

19 In practice, the great majority of claims that are being assigned are claims for the payment of money, originated by parties will be the 'characteristic performer' under the original contract (e.g. sellers, lessors, lenders). See also Flessner/Verhagen, p. 53-54.

20 Struycken, p. 358-359; Kieninger, Statut, p. 702 and Rome I, p. 383; Kieninger/Schütze, p. 202; Stoll, p. 320.

signed claim in this country, the question whether the assignment must be registered in a public register in order to be enforceable against the (collective or individual) creditors shall be governed by the law of the assignor's residence.[21]

One of the main arguments forwarded in favour of the assignor's residence is that this connecting factor has also been adopted in the UN Convention on the Assignment of Receivables in International Trade.[22] Where this convention would be ratified by the Member States this could constitute an argument in favour of the law of the assignor's residence.[23] However, one would hope that such ratification does not take place. Although the Convention does contain some interesting substantive law provisions on assignment, it has a serious flaw. For, the UN Convention does not contain a substantive rule indicating what is required to transfer a claim from the patrimony of the assignor to that of the assignee, with full effect against third persons (notably: the assignor's and the assignee's creditors). Because the drafters of the Convention could not reach agreement on this, it was left to the law of the country where the assignor has his place of business. The Annex to the Convention merely provides for three different *optional* priority schemes, which the ratifying states can incorporate in their domestic laws. One of these priority shemes is based on public filing (Sections I and II), another on the time of the contract of assignment (Section III) and a third on the time of notification of the assigned debtor (Section IV). It is only for the public filing priority scheme that articles 22 and 30 of the Convention are adequate. However, where priority under the law of the assignor's residence is based on the time of notification to the assigned debtors (Section IV) it makes no sense to apply this rule to debts which are owed by debtors residing in other countries. For, while notification is already an extremely ineffective device for publicity in domestic cases, it is even more so when the assigned debtors are established outside the assignor's country of residence. Where the law of the assignor's residence has a priority scheme based on the

21 Flessner/Verhagen, p. 71-76 and Annex II.

22 Kieninger, Rome I, p. 383; Kieninger/Schütze, p. 202; Max-Planck-Institut, para. 10.1.2; Stoll, p. 321; Eidenmüller, p. 494; Lagarde, p. 426. On the UN Convention, see e.g. Spiros V. Bazinas S. and L. Meinhard (eds.), Das UN-Abtretungsübereinkommen, Vienna 2005; Elisabeth Schütze, Zession und Einheitsrecht, Tübingen 2005. On the conflicts aspects of the Convention, see in particular Hans Stoll, Kollisionsrechtliche Aspekte des Übereinkommens des Vereinten Nationen über Abtretungen im internationalen Handel, in: Michael Coester et al (eds.): Privatrecht in Europa. Vielfalt, Kollision, Kooperation. Festschrift für Hans Jürgen Sonnenberger zum 70. Geburtstag, Müchen 2004, p. 695-710.

23 Art. 22 provides that "… the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant".

time of the contract of assignment (Section III), other creditors of the assignor will have no interest at all in application of that law.[24]

5. Further criticisms on Article 13 RIP

The arguments forwarded in favour of the law of the assignor's place of residence are therefore not convincing. Moreover, there are even serious disadvantages attached to the solution of article 13 RIP. It adds yet another law to already complex transactions, thereby further complicating assignment-based cross-border transactions. One can even advance more principled objections against the assignor's residence as a connecting factor, in particular that there are also the creditors of the assignee who have an interest in the assignee having the claim (possibly under the assignee's law). The assignee may have paid a large sum for the receivables and the assignee's creditors may want to take recourse against the property received in return for this. The assignee may have assigned the receivables to a subsequent assignee, or may have charged them in favour of certain creditors, who also have an interest in the validity of the previous assignment. It is difficult to see why only the assignor's creditors should receive attention by the conflict rule.[25] This brings us to another fundamental objection: the solution is based on a 'static' approach towards assignment, in which the assignor fulfils the pivotal role and under which any conflict in respect of a claim is between creditors of the same assignor. The proponents of the law of the assignor's residence focus on the original creditor/assignor of the claim and apparently fail to appreciate that the conflict may well be between (secured and unsecured) creditors of the original assignor and (secured and unsecured) creditors of the assignee, or between (secured and unsecured) creditors of the assignee and assignees of the assignee or their (secured and unsecured) creditors and so on.[26]

A very burdensome consequence of article 13 RIP for many cross-border assignments is that under this provision the governing law will change in every cross-border assignment of the same claim, even when it is the parties' intention that the governing law shall remain the same irrespective of the residence of the assignor, as in case of

24 See Flessner/Verhagen, p. 60-62.

25 See Flessner/Verhagen, p. 60-62.

securitisations. This becomes even more urgent when one is dealing with certain categories of receivables for which a 'secondary market' can be said to exist in which these receivables are traded as liquid assets.[27] For instance, in the case of registered bonds (which are contractual claims that must be transferred by way of assignment) it is usually provided in the documentation that all transfers of the bonds are governed by the same law (usually the law governing the bonds themselves). Article 13 would frustrate this: each transfer of a bond could be governed by a different law, depending on the relevant bond holder's residence.[28]

Another serious disadvantage of article 13 RIP is that when one would refer the validity of the assignment in accordance with this provision to the law of the assignor, one could force market participants to follow 'procedures' with which they may not be familiar and for which they may not be equipped. One of the practically most important dispositions of contractual claims is the charging of bank accounts by account holders in favour of their account banks. In particular, the mandatory application of the law of the assignor's place of business would mean that it will no longer be possible for banks established in the European Union to insist that foreign account holders pledge their accounts in accordance with the law of the Member State where the office at which the account is administered is located. They would have to examine foreign pledging laws whenever a foreign account holder wants to open an account with the bank.[29] This is extremely impractical and could (e.g. in case of group finance or cash-pooling) cause all kinds of complications created by the applicability of a large number of legal systems.[30] Trying to solve this by formulating an exception for bank accounts would only be a makeshift solution. There is no proper reason why claims in respect of bank accounts should be treated differently from other claims.

---

26 See Flessner/Verhagen, p. 59-60.

27 See section 2 above.

28 See Flessner/Verhagen, p. 62-65.

29 Even article 9 UCC (from which art. 13(3) indirectly derives, see infra section 18) contains a special rule for the 'perfection' and the 'priority' of a security interest in a deposit account, referring this to the law of the deposit bank's jurisdiction: UCC, § 9-304. Article 4(2)(f) of the UN Convention excludes 'bank deposits' from its scope. No such exception applies to art. 13 RIP .

30 See Flessner/Verhagen, p. 65-67.

It could even be argued that the free movement of services, or the free movement of capital, entails that banks and factoring companies must be allowed to carry out their services in accordance with the law of the Member State from which they conduct their activities (the 'country of origin'). A mandatory objective conflict rule – such as article 13 RIP – could make it more difficult for banks and factoring companies to offer their services in the single market under the same conditions as in their country of origin and it would hardly be justifiable by a compelling public interest as viewed in the European Court's case law.[31]

6. Alternative solutions: party autonomy and the proper law of the assigned receivables

A much better solution would be to stick to a solution which is currently prevailing in a number of Member States (e.g. Germany and the United Kingdom), i.e. a conflict rule referring the transfer of receivables by way of assignment to the law applicable to the assigned receivables. The main advantage of this conflict rule is that all persons who are interested in the assignment (assignor, assignee, debtor, competing claimants) would only have to look at one legal system in order to assess their rights in respect of the relevant claim.[32] The conflict rule most suitable for receivables as marketable assets, however, would be to refer the transfer of receivables by way of assignment to the law chosen by the assignor and the assignee. This solution aligns well with trends in the substantive laws of the Member States, facilitating large-scale assignments of contractual receivables in commercial or financial transactions. It will provide the parties with certainty as to the law governing the assignment. It accomplishes that the parties' reasonable wish to have all the assignment(s) governed by the same law can be realised and it allows the parties to ensure that the assignment is recognised in non-EU jurisdictions, by selecting the law applicable to the conflict rules of those jurisdictions. This rule is likely to be consistent with fundamental principles of Community law, for it will enable credit institutions and factoring companies to continue to follow their business practices in cross-border transactions. Where the assignor and the assignee have failed to make a choice, the assignment should be governed by the law applicable to the assigned receivables. Given the considerable benefits attached to re-

31 See Flessner/Verhagen, p. 67-70, with further references.

32 See Flessner/Verhagen, p. 43-49.

ferring the proprietary effects of assignment to the law governing the assigned receivables, preference must be given to this solution as a secondary conflict rule.[33]

7. **Conclusion**

One of the dangers of harmonisation and unification processes taking place within the framework of the EU is that they may result in the codification of the lowest common denominator. This is precisely what is threatening to happen in respect of assignment. Referring the transfer of receivables by way of assignment to the law of the assignor's residence, as article 13 of the Proposal does, would be opting for the most conservative solution and would for many Member States be a step backward rather than forward. A conflict rule referring assignment to the law of the assignor's residence is too rigid to do justice to the dynamic nature of assignments in cross-border transactions and it is unjustly one-sided. It offers no real advantages when compared to other conflict rules; it even has serious disadvantages which make the conflict rule unsuitable for efficient assignment-based cross-border transactions. It is not unconceivable that this conflict rule would even be contrary to the fundamental freedoms of the EC-Treaty. The Community legislators in particular should be careful not to needlessly adopt rules which create insurmountable obstacles for cross-border business where choice-of-law by the parties would perfectly do. Community legislation has a special responsibility to create a smooth legal environment for single market transactions.

33 Flessner/Verhagen, p. 48-49 and Annex II (authors' proposal for a conflict rule).

WORKING PAPERS

1	Andreas Cahn	Verwaltungsbefugnisse der Bundesanstalt für Finanzdienstleistungsaufsicht im Übernahmerecht und Rechtsschutz Betroffener (publ. in: ZHR 167 [2003], 262 ff.)
2	Axel Nawrath	Rahmenbedingungen für den Finanzplatz Deutschland: Ziele und Aufgaben der Politik, insbesondere des Bundesministeriums der Finanzen
3	Michael Senger	Die Begrenzung von qualifizierten Beteiligungen nach § 12 Abs. 1 KWG (publ. in: WM 2003, 1697-1705)
4	Georg Dreyling	Bedeutung internationaler Gremien für die Fortentwicklung des Finanzplatzes Deutschland
5	Matthias Berger	Das Vierte Finanzmarktförderungsgesetz – Schwerpunkt Börsen- und Wertpapierrecht
6	Felicitas Linden	Die europäische Wertpapierdienstleistungsrichtlinie-Herausforderungen bei der Gestaltung der Richtlinie
7	Michael Findeisen	Nationale und internationale Maßnahmen gegen die Geldwäsche und die Finanzierung des Terrorismus – ein Instrument zur Sicherstellung der Stabilität der Finanzmärkte
8	Regina Nößner	Kurs- und Marktpreismanipulation – Gratwanderung zwischen wirtschaftlich sinnvollem und strafrechtlich relevantem Verhalten
9	Franklin R. Edwards	The Regulation of Hedge Funds: Financial Stability and Investor Protection (publ. in: Baums/Cahn [Hrsg.] Hedge Funds, Risks and Regulation, 2004, S. 30 ff.)
10	Ashley Kovas	Should Hedge Fund Products be marketed to Retail Investors? A balancing Act for Regulators (publ. in: Baums/Cahn [Hrsg.] Hedge Funds, Risks and Regulation, 2004, S. 91 ff.)
11	Marcia L. MacHarg	Waking up to Hedge Funds: Is U.S. Regulation Taking a New Direction? (publ. in: Baums/Cahn [Hrsg.] Hedge Funds, Risks and Regulation, 2004, S. 55 ff.)

12	Kai-Uwe Steck	Legal Aspects of German Hedge Fund Structures (publ. in: Baums/Cahn [Hrsg.] Hedge Funds, Risks and Regulation, 2004, S. 135 ff.)
13	Jörg Vollbrecht	Investmentmodernisierungsgesetz – Herausforderungen bei der Umsetzung der OGAW – Richtlinien
14	Jens Conert	Basel II – Die Überarbeitung der Eigenkapitalmarktregelungen der Kreditinstitute im Fokus von Wirtschaft- und Wettbewerbspolitik
15	Bob Wessels	Germany and Spain lead Changes towards International Insolvencies in Europe
16	Theodor Baums / Kenneth E. Scott	Taking Shareholder Protection Seriously? Corporate Governance in the United Stated and in Germany
17	Bob Wessels	International Jurisdiction to open Insovency Proceedings in Europe, in particular against (groups of) Companies
18	Michael Gruson	Die Doppelnotierung von Aktien deutscher Gesellschaften an der New Yorker und Frankfurter Börse: Die sogenannte Globale Aktie (publ. in: Die AG 2004, 358 ff.)
19	Michael Gruson	Consolidated and Supplemetary Supervision of Financial Groups in the European Union (publ. in: Der Konzern 2004, 65 ff. u. 249 ff.)
20	Andreas Cahn	Das richterliche Verbot der Kreditvergabe an Gesellschafter und seine Folgen (publ. in: Der Konzern 2004, 235 ff.)
21	David C. Donald	The Nomination of Directors under U.S. and German Law
22	Melvin Aron Eisenberg	The Duty of Care in American Corporate Law (deutsche Übersetzung publ. in: Der Konzern 2004, 386 ff.)
23	Jürgen Than	Rechtsfragen bei der Festlegung von Emissionsbedingungen für Schuldverschreibungen unter besonderer Berücksichtigung der Dematerialisierung und des Depotgesetzes (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 3 ff.)

24	Philipp von Randow	Inhaltskontrolle von Emissionsbedingungen (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 25 ff.)
25	Hannes Schneider	Die Änderung von Anleihebedingungen durch Beschluß der Gläubiger (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 69 ff.)
26	Hans-Gert Vogel	Die Stellung des Anleihetreuhänders nach deutschem Recht (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 94 ff.)
27	Georg Maier-Reimer	Rechtsfragen der Restrukturierung, insbesondere der Ersetzung des Schuldners (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 129 ff.)
28	Christoph Keller	Umschuldung von Staatenanleihen unter Berücksichtigung der Problematik einer Aggregation aller Anleihegläubiger (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 157 ff.)
29	René Bösch	Die Emission von Schuldverschreibungen nach schweizerischem Recht – ein Rechtsvergleich mit dem geplanten deutschen Schuldverschreibungsrecht (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 189 ff.)
30	Lachlan Burn	Bond Issues under U.K. law: How the proposed German Legislation compares (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 219 ff.)
31	Patrick S. Kenadjian	Bond Issues under New York and U.S. Law: Considerations for the German Law Maker from a U.S. Perspective (publ. in: Baums/Cahn [Hrsg.] Die Reform des Schuldverschreibungsrechts, 2004, S. 245 ff.)
32	Andreas Cahn	Bankgeheimnis und Forderungsverwertung (publ. in: WM 2004, 2041 ff.)
33	Michael Senger	Kapitalkonsolidierung im Bankkonzern (publ. in: Der Konzern 2005, S. 201 ff.)

34	Andreas Cahn	Das neue Insiderrecht (publ. in: Der Konzern 2005, 5 ff.)
35	Helmut Siekmann	Die Unabhängigkeit von EZB und Bundesbank nach dem geltenden Recht und dem Vertrag über eine Verfassung für Europa
36	Michael Senger	Gemeinschaftsunternehmen nach dem Kreditwesengesetz
37	Andreas Cahn	Gesellschafterfremdfinanzierung und Eigenkapitalersatz (publ. in: Die AG 2005, S. 217 ff.)
38	Helmut Siekmann	Die Verwendung des Gewinns der Europäischen Zentralbank und der Bundesbank
39	Guido Ferrarini	Contract Standards and the Markets in Financial Instruments Directive (MiFID): An Assessment of the Lamfalussy Regulatory Architecture (publ. in: European Contract Law Review 2005, p. 19)
40	David C. Donald	Shareholder Voice and Its Opponents (publ. in: The Journal of Corporate Law Studies, Vol. 5, Issue 2, 2005)
41	John Armour	Who should make Corporate Law? EC Legislation versus Regulatory Competition (publ. in: 58 Current Legal Problems [2005], p. 369 ff.)
42	David C. Donald	The Laws Governing Corporations formed under the Delaware and the German Corporate Statutes
43	Garry J. Schinasi/ Pedro Gustavo Teixeira	The Lender of the Last Resort in the European Single Financial Market (publ. in: Corss Border Banking: Regulatory Challenges, Gerard Caprio Jr., Douglas D. Evanoff, George G. Kaufman eds., 2006)
44	Ashley Kovas	UCITS – Past, Present and Future in a World of Increasing Product Diversity

INSTITUTE FOR LAW AND FINANCE
JOHANN WOLFGANG GOETHE-UNIVERSITÄT FRANKFURT