1. Approval of the agenda

2. Nature of the meeting

Introductory meeting. The meeting was non-public.

3. Points discussed

a. Explanation and adoption of the rules of procedure of the Expert Group

b. Presentation by the Commission of the functioning of the expert group: scope of the exercise, expected output, tentative time planning, working procedures, communication and confidentiality

c. Presentation by the Commission of the initiative on conflict of laws on securities and claims: published inception impact assessment and public consultation document

  - Discussion of the contents of the inception impact assessment
  - Discussion of the main elements of the public consultation
  - Discussion on data regarding transactions in securities and claims, relevant for the impact assessment report:

    o Book-entry securities and claims traded on financial markets are most relevant in terms of economic importance
    
    o Certificated, non-book entry, securities are also relevant in terms of cross-border transactions, but probably not in the overall volume of trade in securities
    
    o The lack of homogeneity of conflict of laws rules is an obstacle to transactions: the legal risk has an impact on the rating of the financial instrument
    
    o In case of legal uncertainty, the trade is either not concluded at all, or requirements under all possibly applicable laws are complied with which can double or even triple the costs of a given transaction

d. Presentation of the current legal landscape under Union and national law
- Stock taking and discussion of possible connecting factors for different categories of assets:
  
o For securities, the following connecting factors can be envisaged: PRIMA - the law of the place of the relevant intermediary, the law of the country where the securities account is maintained, the law governing the contract or the law under which the security is constituted

  
o For claims, the following connecting factors can be envisaged: law of the assignor's habitual residence, law of the assigned claim or law of the contract between the assignor and the assignee

  
o The problem posed by the change of the assignor's habitual residence is not very relevant for corporations and banks; possibly relevant for natural persons as they change habitual residence more often

- Presentation and discussion of possible legislative options

  
  - Securities

    
o Extension of the conflict-of-law rules regarding securities in existing EU law instruments

    
o Adoption of the approach of the Hague Securities Convention to achieve legal certainty at global level (possible sub-options: signature of the Convention; signature of the Convention supplemented by the adoption of a regulatory framework to address potential problems identified; development of an internal Union solution not conflicting with the Hague Securities Convention)

    
o Adoption of an alternative solution not based on the approach of the Hague Securities Convention, focussed on achieving legal certainty at Union level

  
  - Claims

    
o Need to deal with the issue of the third-party effects of assignments of claims, not resolved in the Rome I Regulation, possibly also in the form of a Regulation

  
  - Both securities and claims: the universal application of the conflict of laws rules in respect of both securities and claims should be envisaged; practical enforceability should be a criterion to ensure effectiveness of the solution

- Discussion on the impact of the planned initiative on existing international and Union instruments concerning conflict of laws in the area of securities and claims

  

  
  - Compatibility with international instruments: the Hague Securities Convention entered into force on 1 April 2017 and has been ratified by the U.S. and CH, whose markets
are relevant for Union markets and intermediaries. In the U.S., the core solution in the Hague Securities Convention has been used since 1994

- UNCITRAL Convention on receivables can work as a starting point for claims

g. Discussion on the scope of the legislative options

- Conflict of laws rules should cover both direct and indirect holding systems, including regular and irregular deposit

- Currently conflict of laws rules for securities and conflict of laws rules for claims have a different geographic scope (in terms of (i) the Member States where the conflict of laws rules apply and (ii) the countries' law which can be designated by the conflict of laws rules as applicable law)

h. Discussion on possible connecting factors for each asset categories identified:

- The following asset categories are relevant: securities - shares (registered, bearer, certificated, book-entry), debt instruments, claims constituting financial instruments other than book-entry securities, receivables, cash, emission allowances;

- The form of the security, not the content of the security or its legal definition, should be decisive to choose the connecting factor

4. Conclusions/recommendations/opinions

Due to the introductory character of the meeting (presentation by the Commission of the planned initiative and the tasks of the group) and the need to address procedural issues about the functioning of the group, no conclusions on substantive issues were drawn.

5. Next steps

The group will be divided into subgroups dealing separately with claims and securities. Each subgroup will prepare the work to be presented and discussed in plenary at the following meeting of the group.

6. Next meeting

Next meeting will be held on 15 and 16 May 2017.

7. List of participants

Members:

AFRELL, Lars
CREMERS, Thiebald
CUNIBERTI, Gilles
D'AVOUT, Louis
DE VAUPLANE, Hubert
GARCIMARTÍN, Francisco
HAENTJENS, Matthias
LAUHA, Janne
LEHMANN, Matthias
PERKINS, Joanna
TARNANIDOU, Christina
ULLÍVARI ROYUELA, Maria Aránzazu
VAN GALLEBAERT, Christine
VILLATA, Francesca Clara
WERNER, Peter Martin

Observers:

ECB
ESMA
BIS