

## Alert | Finance



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# Proving Assignment of Bank Credits Under Article 58 of Italy's Banking Law (TUB)

Article 58 of the Italian Consolidated Law on Banking (TUB) regulates the assignment of credits in a banking context. This law differs slightly from the ordinary civil law regime that Italian Civil Code articles 1260 and 1264 provide.

Article 58.2 of the TUB provides that, to allow the assigned debtors a chance to oppose the assignment, the assignor bank must give notice of the assignment by registering and publishing the assignment in the register of companies (*registro delle imprese*) and in the Official Gazette of the Italian Republic (*Gazzetta Ufficiale della Repubblica Italiana*), respectively.

Notwithstanding the clarity of the law with respect to the enforceability of the assignment against the assigned debtors, several previous cases have dealt with the ability of publication in the Official Gazette to accurately prove ownership of the assigned receivables.

One opinion (see, *ex multis*, Court of Pavia, s. 1 Feb. 2019, no. 184), which was once consistent with the majority of case law, maintains that publication in the Official Gazette itself allows for recognition of ownership of the assigned receivables. This argument is mainly based on the rationale of legislative intervention in Article 58 TUB, namely simplification of the assignment of credits in bulk.

Another opinion, while not denying the simplification rationale of the rule in question, considers that no constitutive effect is provided by publication in the Official Gazette. Consequently, publication would not have a probative effect on ownership of the receivables assigned in bulk.

This interpretation was reiterated by the Court of Treviso’s decision no. 26248 of 2 Dec. 2021, concerning an appeal against execution, brought by the assigned debtor against the assignee bank, based, *inter alia*, on the assignee’s lack of legitimacy in making credit claims. The Court of Treviso first referred to the Court of Cassation’s decision, no. 5617 of 28 Feb. 2020, which stated that publication in the Official Gazette may be, at most, an indicative element of the assignment, but it does not confer certainty—in its “*minimum information structure*”—as to the specific and precise contours of the credits included or excluded from the assignment in question.

The judge also stated that if the content published in the Gazette indicates what is included or excluded from the scope of the assignment without leaving any uncertainty or doubt whatsoever, said content could also, according to the “prudent appreciation” of the judge on the merits of the case, show the active legitimacy of the person who assumes, as assignee, the ownership of a claim.

In the case at hand, the Court of Treviso did not consider the object of the assignment sufficiently determined or determinable because the notice published in the Official Gazette only met general criteria, generically including the assignment of claims arising from “unsecured and mortgage loan agreements and current account overdrafts arising in the period between 1982 and 2016, the debtors of which were classified as ‘non-performing’ within the meaning of Bank of Italy Circular No. 272/2008. 272/2008.”

The judgment in question also denied that the transferor’s statement was probative of the inclusion of the receivable within the scope of the assignment. In particular, the statement was equated to declarations of knowledge coming from third parties, which, besides not having a confessional value, provide evidence only with reference to the origin of the declaration, but are freely assessable by the judge, therefore only conferring circumstantial value.

The judge’s position in the Treviso case, as anticipated, is not isolated. The judgment of the Court of Verona, no. 26251 of 29 Nov. 2021, builds on the above conclusion, offering a list of requirements for the content of the publication in the Official Gazette to be considered probative:

- (a) description of the receivables included in the assignment (e.g., receivables arising from consumer credit relationships aimed at the purchase of certain goods and/or services, underwritten by the assignor);
- (b) description of the debtors assigned (e.g., amounts owed by at least one natural person residing in Italy or in the Republic of San Marino at the time the relevant credit agreements were signed);
- (c) debt situation (e.g., the assignor has declared the debtor’s disqualification from the benefit of the term, or the debtor has been put in default for non-payment of the credit claim before a certain date);
- (d) name of the credit claims;
- (e) law governing credit agreements relating to credit claims;
- (f) the necessity of the obligor’s consent under the credit agreements to the assignment of the credit claims arising therefrom.

The judgments discussed above demonstrate how the debt landscape has become friendlier to obligors, while greater burdens have been placed on assignors. Therefore, parties involved in a block transfer should fulfill the obligation set forth in Article 58 of the TUB with as much detail as possible and use the

notice of transfer published in the Official Gazette to fully describe the criteria for identifying the claims included in the scope of the transfer.

This could make it possible to strengthen the certainty and speed of legal transactions and, specifically, to avoid procedural complications that might be detrimental to the performance of the purchased portfolio.

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