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FACTORING AND RECEIVABLES FINANCE: LEGAL CHARACTERIZATION, RISK ALLOCATION AND REGULATORY BOUNDARIES IN COMPARATIVE PERSPECTIVE

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Abstract: Factoring is a complex commercial financing transaction that combines the assignment of receivables with liquidity provision, receivables management and, in certain forms, the assumption of the debtor's non-payment risk. Despite its growing importance, its legal characterization remains contested. This article examines how factoring should be distinguished from an ordinary assignment of receivables and a loan transaction, and which contractual, proprietary and regulatory consequences follow from that distinction. The study employs doctrinal and comparative legal analysis, applying a functional approach to German, French, Italian and Georgian law and using the 2023 UNIDROIT Model Law on Factoring as a comparative reference. It demonstrates that factoring cannot be reduced to a single contractual category. Its legal character depends on the interaction between the purpose and finality of the transfer, the scope of recourse, the allocation of non-payment risk, the factor's proprietary position and the regulatory treatment of professional factoring activity. By bringing these dimensions together, the article develops a functional, multi-factor framework for the legal characterization of factoring. It also provides a prospective analysis of Georgia's enacted factoring framework, focusing on the provisions scheduled to enter into force on 1 January 2027 and their likely operation from a comparative perspective.

Keywords: Factoring; insolvency; third-party effectiveness; priority; financial regulation.

1. Introduction

Factoring is widely used to finance commercial operations and manage trade receivables. In practice, it serves as a flexible form of short-term finance, and the scale of its use is often closely linked to the growth of a company's turnover

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(Dubovec & Hara, 2024). The economic function of factoring extends beyond the assignment of receivables. It enables suppliers to convert trade receivables into liquid funds before they fall due, improve their working-capital position, and obtain short-term financing without necessarily giving rise to a separate debt obligation of the kind normally associated with a conventional loan (Klapper, 2006). Despite its close relationship with the banking sector, factoring should not automatically be equated with conventional secured bank lending (European Bank for Reconstruction and Development, 2018, p. 12). Depending on the particular model, it may combine the functions of receivables financing, administration, collection, and credit-risk management (Belu Magdo, 2022, pp. 8–9).

The need for a specific legislative framework governing factoring arises both from its increasing use and from differences among legal systems in the contractual classification of factoring, the transfer of receivables, risk allocation and financial supervision (International Finance Corporation, 2023; Goode, Kronke, & McKendrick, 2015). The legal characterization of factoring remains contested. It may be understood as a specific form of receivables assignment, a financing arrangement, a mixed contract or a functionally distinct commercial-law relationship (Shamatava, 2026, pp. 8, 12). This disagreement reflects the composite structure of factoring. Legal scholarship describes it as a hybrid commercial transaction combining elements of several legal mechanisms, although the assignment of receivables remains central to its structure (Gidro, 2021, pp. 69–70).

Although these issues are well established individually, their relationship remains insufficiently explained (Goode et al., 2015; UNIDROIT, 2023; International Finance Corporation, 2023, pp. 18–20, 26–29). This article argues that the private-law character of factoring, the effectiveness of the assignment against third parties, its insolvency consequences and the regulatory status of the factor answer different legal questions. It develops a functional framework for examining these questions in sequence and for explaining how different legal classifications may apply to the same transaction without contradiction.

Against this background, a coherent legal framework must address not only the contractual nature of factoring but also the effects of assignment, third-party effectiveness, priority and debtor protection. One of the most significant recent instruments in this field is the UNIDROIT Model Law on Factoring, adopted in 2023 (UNIDROIT, 2023). The Model Law addresses matters relating to the assignment of receivables, effectiveness against third parties, priority, registration, debtor protection, and the applicable law (Dubovec & Hara, 2024). Its development was prompted by the limited scope of existing international instruments and the need for

a legislative model that would extend beyond factoring and provide a broader legal infrastructure for receivables-based finance (Goode et al., 2015). Certain solutions adopted in the Model Law, as well as the potential consequences of their implementation in domestic law, remain subject to doctrinal assessment and criticism (Kaya, 2024).

The central issue examined in this article is the relationship between factoring, assignment of receivables and loan financing. Assignment may be the legal mechanism through which factoring is carried out, while the provision of finance is common to both factoring and lending. Distinguishing these transactions therefore requires a combined assessment of the purpose and effects of the transfer, the allocation of the debtor's non-payment risk, the grounds and scope of recourse, and the parties' contractual obligations. The article's contribution lies in connecting these criteria to the legal consequences of characterization: entitlement to the receivable, the client's repayment or recourse obligations, and the factor's position against competing claimants and in insolvency. It thus examines both how the transactions should be distinguished and why that distinction matters.

The article combines doctrinal and comparative legal analysis. It examines German, French and Italian law alongside the 2023 UNIDROIT Model Law on Factoring and uses the recently enacted Georgian framework as a comparative test case for assessing how these different approaches may be integrated within a single statutory regime.

1.1. Scope and Comparability

The jurisdictions are selected for the different legal solutions they offer to a common commercial function. Germany brings into focus the allocation of non-payment risk and the distinction between a sale of receivables and a credit relationship. France illustrates the relationship between the factoring agreement and the legal mechanism used to transfer the receivable. Italy provides a long-established statutory regime for business receivables under Law No 52/1991, allowing the analysis to test whether special rules on transfer and third-party effectiveness resolve the characterization of the wider contract. These approaches are compared through the common questions developed in Section 2, rather than treated as interchangeable national definitions of factoring.

Georgia is included because of its reception of German civil-law rules and its newly enacted factoring legislation. Although Georgia is not a Member State of the European Union, the Association Agreement signed on 27 June 2014 and in force since 1 July 2016 establishes a framework for political association, economic integration and the gradual approximation of Georgian legislation to EU law in the

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areas covered by the Agreement (EU–Georgia Association Agreement, 2014, arts. 1, 417). Accordingly, the comparative analysis also aims to examine the legal experience of Germany, France and Italy and assess its potential relevance to the interpretation and further development of Georgian factoring law. The translator's foreword to the Georgian edition of Kropholler's commentary records that the commission established in 1992 used the German Civil Code as a source for the Georgian Civil Code (Kropholler, 2014, p. XI). This connection supports comparison with Germany without implying that Georgia's specialized factoring regime follows the German model in every respect. As Articles 1–32 of the Law on Factoring enter into force on 1 January 2027, the Georgian analysis is prospective: it uses the European comparison to identify possible interpretive difficulties in the enacted framework, rather than claiming to evaluate judicial practice under provisions that are not yet operational (Law of Georgia on Factoring, 2026, art. 34) [1].

The UNIDROIT Model Law provides a further comparative reference because it covers both outright and security transfers of receivables (UNIDROIT, 2023, arts. 1, 2(i)–(j)). Comparability is established by asking the same legal questions of each jurisdiction, rather than by assuming that similarly named transactions produce equivalent legal effects. The inquiries set out in Section 2 and summarised in Table 2 provide the common framework. For each issue, the analysis identifies the applicable rule, considers the relevant judicial interpretation where available, and explains the consequence for the factor's rights or obligations. Recourse is therefore examined by reference to its legal trigger and consequences, rather than its contractual label alone. Similarly, the acquisition of a receivable is assessed separately from its effectiveness against the debtor, competing claimants and an insolvency estate. This distinction permits comparison even where national systems use different transfer mechanisms or contractual categories.

The materials compared nevertheless differ in legal status and evidential value. Judicial interpretations of operative national rules are distinguished from the prospective interpretation of Georgia's enacted provisions and from the legislative solutions proposed by the UNIDROIT Model Law. The Model Law is used as a comparative reference, not as binding law or evidence of national practice. The analysis does not establish a hierarchy of national models or infer practical effectiveness from statutory wording alone. Its conclusions concern the legal questions and sources examined; they do not establish a uniform European classification of factoring or justify transferring one jurisdiction's solution to another without examining the receiving legal framework.

2. The Legal Characterization of Factoring and the Criteria for Distinguishing It from the Assignment of Receivables and Loan Transactions

The distinction between factoring, an ordinary assignment of receivables and loan financing requires clarification of the rights transferred and the obligations arising under each arrangement. *The receivables examined here are monetary rights to payment transferred or financed under the arrangement. References to claims are broader where they concern other rights to performance or relief, including the factor's claims against the client, rather than the receivables transferred to the factor***.** Unlike conventional loan financing, where the lender's decision is based primarily on the borrower's overall creditworthiness and ability to perform its obligations, factoring focuses on the quality of the receivables being assigned and the creditworthiness of the relevant debtor. The factor provides financing against those receivables and acquires the rights attached to them, subject to the applicable legal and contractual terms (Klapper, 2006, pp. 3111–3112).

Factoring's financing function does not, on its own, determine its legal characterization – that is, its classification or qualification under the applicable private law. From an economic perspective, factoring may resemble short-term lending; its legal consequences, however, depend on the manner in which the receivables are transferred, the rights acquired by the factor, and the party that ultimately bears the economic risk of non-payment. These criteria are essential for distinguishing a genuine transfer of receivables from a transaction in which the purported transfer serves, in substance, as security for the underlying credit (Gullifer, 2023; Pantaleo et al., 1996). Conflict-of-laws scholarship examines factoring, collateralization and securitization as transactions involving the assignment of claims. It identifies uncertainty concerning third-party effects as an impediment to their cross-border use (Roji Marco, 2022, pp. 60–61). The assignment is only one element of the broader factoring relationship.

Recourse and non-recourse factoring models are distinguished primarily by the allocation of the debtor's non-payment risk (European Bank for Reconstruction and Development, 2018, p. 12). Contractual references to "recourse", however, may describe obligations with different triggers and legal functions. The analysis therefore distinguishes recourse for the debtor's failure to pay a valid receivable from claims arising from the receivable's non-existence, defects or breach of the client's warranties. Genuine or non-recourse factoring does not necessarily exclude the latter claims. In VIII ZR 307/20, the BGH examined claims against the seller concerning non-existent or defective receivables within an arrangement characterized as genuine factoring (Bundesgerichtshof, VIII ZR 307/20, 18 October 2023, paras. 17–23).

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Table 1. Illustrative Contractual Triggers of Recourse

Ground of liability	Hypothetical contractual clause
Debtor's non-payment	"If the debtor fails to pay a valid and enforceable receivable within 90 days after maturity, the client must reimburse the factor's advance."
Non-existence of the receivable	"The client must refund the purchase price if the invoiced receivable did not exist when transferred."
Defects or breach of warranties	"The client warrants that the receivable is not subject to a defence arising from its non-performance and must reimburse the factor to the extent that breach of this warranty prevents recovery."
Mandatory repurchase	"The client must repurchase any valid receivable remaining unpaid 90 days after maturity, even where non-payment results solely from the debtor's insolvency."

Interpretive distinction. *The first and fourth clauses allocate the risk of non-payment through reimbursement or repurchase. The second and third concern the existence or enforceability of the receivable, rather than the debtor's failure to pay.*
Source: Author's hypothetical contractual examples; legal effects depend on applicable national law.

The distinction also matters for the prospective Georgian analysis. Article 27(2), scheduled to enter into force on 1 January 2027, will require the assignor to pay the contractually specified amount where the transferred receivable becomes disputed, including because the underlying goods are defective, even where the parties agreed on non-recourse factoring (Law of Georgia on Factoring, 2026, arts. 27(2), 34(2)).
At EU level, Annex I, point 2 of Directive 2013/36/EU includes factoring, with or without recourse, among the lending activities subject to mutual recognition. This inclusion concerns the regulatory framework for carrying on those activities; it does not establish a uniform civil-law regime for factoring or harmonize the rules governing the assignment of receivables. The comparative analysis therefore distinguishes EU financial regulation from the national private-law rules governing contractual characterization and the effects of assignment (Directive 2013/36/EU, Annex I, point 2).
The EBRD's comparative survey recorded that respondents in 24 jurisdictions treated recourse factoring as a true sale, whereas respondents in 11 jurisdictions treated it as secured lending. It also noted that these classifications were not always

supported by clear legislation or settled case law, demonstrating why the allocation of recourse may affect the factor's position in insolvency and the predictability of receivables-based finance (European Bank for Reconstruction and Development, 2018, p. 12).

The comparative framework distinguishes five related but legally separate inquiries. First, contractual characterization requires an examination of the purpose of the transfer, the parties' substantive obligations and the allocation of the debtor's non-payment risk. Particular attention must be paid to whether the client is independently obliged to repay the financing or is liable only for the non-existence, invalidity or contractual defects of the receivable. Second, the transfer analysis identifies the legal mechanism through which the factor acquires rights in the receivable and the conditions governing their enforceability against the debtor, including the debtor's available defences. Third, third-party effectiveness must be assessed under the applicable rules governing competing rights, rather than inferred from the contractual classification of the transaction. Fourth, the factor's position in insolvency requires a distinct assessment of priority, avoidance risks and any applicable procedural requirements. Fifth, the regulatory analysis determines whether the professional activity falls within the relevant financial supervisory regime, independently of the transaction's private-law characterization. These inquiries form a common structure for comparison, not a uniform substantive test overriding national law. For each jurisdiction, the analysis connects these inquiries with the applicable national rules and relevant case law, identifies their legal consequences for the factor, and clarifies the limits of the resulting conclusions.

3. European Comparative Models: Legal Characterization, Risk Allocation and Regulatory Frameworks

3.1. Germany: Assignment of Receivables, Risk Allocation and the Functional Classification of Factoring

Germany is particularly important for comparative analysis, not because it represents a uniform or universal European model of factoring, but because German law clearly reveals several analytically distinct layers within factoring's legal structure. The German Civil Code (BGB) does not codify factoring as a distinct named contract. Its private-law architecture is shaped by the interaction between the assignment and sale of receivables, debtor protection, and the risk-based legal characterization developed in legal scholarship and case law. Professional factoring activities are also subject to financial supervision (Steidte-Megerlin, 2019; Roth & Kieninger, 2022, § 398, paras. 158–164). This makes the German model particularly useful for testing the article's central thesis.

Sections 398–399 of the German Civil Code (BGB) provide the general legal basis for the assignment of receivables and define its limitations (Bürgerliches Gesetzbuch, §§ 398–399). Within this assignment framework, German law distinguishes between genuine factoring (echtes Factoring) and non-genuine factoring (unechtes Factoring) (Strickmann, 2025). In genuine factoring, the factor assumes the risk associated with the debtor's insolvency (Delkredererisiko). The arrangement is linked to the legal structure of a sale of receivables (Roth & Kieninger, 2022, § 398, paras. 158–164). In non-genuine factoring, by contrast, the client remains liable to repay the advance if the assigned receivable cannot be collected, in accordance with the factoring agreement. The credit character follows from this continuing repayment obligation and the assignment's function as security for the factor's claim against the client (Bundesgerichtshof, VIII ZR 17/17, 21 March 2018, para. 33).

The BGH's judgment of 21 March 2018 connects these criteria to a specific legal consequence. It explains that, in non-genuine factoring, the client's obligation to reimburse an advance is secured by the assigned receivable. The court consequently treated collection as ancillary to the financing transaction, rather than an independent debt-collection business within § 2(2), sentence 1 RDG. The absence of debt-collection registration therefore did not invalidate the arrangement on that ground. For the present framework, the decision requires examination of the repayment obligation and the assignment's security function, rather than reliance on the label "factoring" alone (Bundesgerichtshof, VIII ZR 17/17, 21 March 2018, paras. 29–36).

The allocation-of-risk criterion does not mean that, in genuine factoring, the client is freed from every risk associated with the receivables. A distinction must be drawn between the Delkredererisiko, which relates to the debtor's insolvency, and risks concerning the existence, validity, or contractually defined characteristics of the receivables. The existence of recourse cannot, in itself, automatically determine whether a transaction should be classified as a sale or as a credit relationship. What matters is the substance of the recourse: does it transfer the risk of the debtor's non-payment back to the client, or does it serve only to secure the existence and legal validity of the receivables? (Pantaleo et al., 1996, pp. 162–163, 170–171; Hughes, 2018).

The judgment of 18 October 2023 illustrates the legal consequences of this distinction. The German Federal Court of Justice treated the acquisition of dental fee receivables under genuine factoring as a purchase of rights. Where a receivable sold as existing did not exist and could not be procured, however, the seller's failure was

governed by the general rules on impossibility and non-performance rather than the special sales warranty rules. The resulting claims were subject to the general limitation provisions in §§ 195 and 199 of the German Civil Code. The decision demonstrates why responsibility for the existence of a receivable must be distinguished from the debtor's insolvency risk (Bundesgerichtshof, VIII ZR 307/20, 18 October 2023, paras. 17–21, 30–34).

Assignment determines the legal mechanism by which the creditor is replaced, but it does not, by itself, establish the function served by the transfer in a particular transaction. The same receivable may be the subject of an outright sale, including in the context of a factoring arrangement, or may be used as security for a loan or another obligation (Jansen, 2018). The assignment of receivables must also be distinguished from its consequences for the debtor. Under § 404 BGB, the debtor may assert against the assignee defences that were founded against the original creditor at the time of assignment. Section 406 BGB separately governs the debtor's right of set-off against the assignee, subject to statutory limitations. Moreover, under § 407(1) BGB, the assignee must generally recognize performance rendered to the original creditor after assignment where the debtor was unaware of the transfer at the time of performance. These provisions show that the factor's acquisition of a receivable does not eliminate the debtor's statutory protections. Accordingly, the factor's entitlement under the assignment and the enforceability of that entitlement against the debtor require distinct assessment (Bürgerliches Gesetzbuch, §§ 404, 406, 407(1)).

The proprietary consequences are illustrated by two decisions concerning extended retention of title. In VIII ZR 149/80, the BGH held that authority to collect resale receivables did not authorize their transfer through non-genuine factoring where the supplier's arrangements prohibited their use as security for further credit. It also applied the principles governing conflicts between a lender's global assignment and suppliers' extended-retention-of-title rights. In VIII ZR 97/86, involving genuine factoring, the court nevertheless barred the factor from asserting priority against the supplier because the factor had consented to the diversion of the client's purchase-price claims to its bank. The decisions show that contractual characterization informs, but does not independently resolve, the factor's position against competing claimants (Bundesgerichtshof, VIII ZR 149/80, 14 October 1981, sections II.2.b–c, IV and VI.2; VIII ZR 97/86, 15 April 1987, paras. 24–33).

The judgment of 25 May 2023 concerns the knowledge required for avoidance of a payment under § 130(1), sentence 1, no. 1 InsO. In genuine factoring, the seller's contractual duties to assist collection and disclose information did not, by themselves, justify attributing its knowledge of the debtor's insolvency to the factor.

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The factor acquired and enforced the receivables for its own account, while the seller remained legally and organisationally independent. The decision therefore requires a separate inquiry into the factor's knowledge and any relationship capable of supporting attribution; genuine factoring does not itself confer immunity from avoidance (Bundesgerichtshof, IX ZR 116/21, 25 May 2023, paras. 9–20).

The judgment of 19 December 2024 illustrates the procedural consequences of reassignment in factoring. Both the supplier and the factor had registered the same receivables in the debtor's insolvency proceedings. The supplier subsequently based its action on a reassignment made after the verification hearing. The court held that the action was inadmissible because the reassignment had not been submitted to the required registration and verification procedure. The decision shows that reacquiring a receivable does not, by itself, satisfy the procedural requirements for establishing the claim in insolvency (Bundesgerichtshof, IX ZR 114/23, 19 December 2024, paras. 7–14, 17–27). For the comparative framework, this separates substantive entitlement following reassignment from the procedural conditions for establishing that entitlement in insolvency. In this context, re-registration means a renewed filing of the claim in the debtor's insolvency proceedings based on the reassignment, followed by verification. It concerns the procedural pursuit of the reacquired receivable against the debtor, rather than an independent ground of recourse against the client (Bundesgerichtshof, IX ZR 114/23, 19 December 2024, paras. 18, 22–27).

Factoring's private-law characterization is separate from its financial regulatory status. Section 1(1a), sentence 2, no. 9 of the German Banking Act (KWG) defines as a financial service the ongoing purchase of receivables under framework agreements, with or without recourse (mit oder ohne Rückgriff) (Kreditwesengesetz, § 1(1a), sentence 2, no. 9). The Deutsche Bundesbank's guidance dated 25 June 2020 explains that the financing function brings both genuine and non-genuine factoring within this financial-service category. Classification of non-genuine factoring as a loan under § 488 BGB does not change that supervisory classification. Conversely, the guidance excludes maturity factoring where the financing function is absent. The private-law inquiry therefore concerns the parties' rights and repayment obligations, whereas the supervisory inquiry concerns whether the professional activity falls within the statutory financial-service definition (Deutsche Bundesbank, 2020, p. 8).

A separate tax-law question arose in the Bundesfinanzhof's judgment of 6 June 2013. Applying § 8, no. 1 of the Gewerbesteuergesetz in the version relevant to the dispute, the court held that advances under the genuine factoring agreement did not establish a separate debt justifying the disputed trade-tax add-back. The advances constituted payments towards the purchase price of the receivables. The decision illustrates how

civil-law analysis informed that particular tax assessment; it does not establish a general exemption for factoring under current tax law (Bundesfinanzhof, IV R 28/10, 6 June 2013, paras. 20–26, 32–36).

For VAT purposes, the Court of Justice of the European Union has examined the services supplied by a factor to its client. In Finanzamt Groß-Gerau v MKG-Kraftfahrzeuge-Factoring GmbH, the CJEU emphasized the factor's role in collecting receivables and assuming the risk of the debtor's non-payment (Court of Justice of the European Union, C-305/01, 26 June 2003, paras. 49, 59, 77–80). The Court's reasoning concerns the VAT treatment and economic function of factoring and is not relied upon here as a basis for its civil-law classification in Germany, France, Italy or Georgia.

The German analysis therefore proceeds through distinct legal questions. The client's continuing repayment obligation and the assignment's security function inform private-law characterization. Conflicts with suppliers' rights, insolvency avoidance and claim-registration requirements determine separate proprietary and procedural consequences. Financial supervision addresses the professional activity's statutory status, while the tax decisions apply the particular tax provisions at issue. These assessments may inform one another, but a classification reached for one purpose cannot automatically determine the others.

3.2. France: Factoring's Contractual Autonomy and the Legal Mechanics of Receivables Assignment

In French law, factoring (affacturage) developed primarily through banking and commercial practice and is not governed by a single legislative regime. The Code civil, Code de commerce, and Code monétaire et financier do not establish a specific contractual framework for factoring. In this context, the convention d'affacturage governs the specific content of the relationship between the factor and the client, while the legal mechanism used to assign the receivables requires separate analysis. As a rule, factoring combines receivables management and financing and, depending on the model used, may also provide coverage against the risk of non-payment (Bonneau, 2025, paras. 812–813; Quiquerez, 2024, para. 853).

The doctrinal significance of this model lies in the fact that the convention d'affacturage and the legal basis for transferring receivables to the factor are closely connected, but not identical. Under French law, a factoring agreement is not automatically subject to the formal requirements applicable to a Cession Dailly. Cession Dailly is neither synonymous with factoring nor an indispensable legal basis for it. The distinction matters because the economic function of a factoring arrangement may remain unchanged even where the parties use different legal

mechanisms to transfer the receivables (Lasserre Capdeville, 2021, p. 1; Cour d'appel de Toulouse, no. 19/00727, 4 November 2020). In that case, the court identified contractual subrogation under former Article 1250(1) of the Code civil, now Article 1346-1, as the transfer mechanism and therefore rejected the application of the formal requirements governing cession (Dailly, Cour d'appel de Toulouse, no. 19/00727, 4 November 2020).

Contractual subrogation is one of the principal mechanisms used to transfer receivables in French factoring. Under Article 1346-1 of the Code civil, contractual subrogation must be express and agreed upon at the time of payment, unless an earlier instrument provides for subrogation upon payment. Article 1346-4 transfers the receivable and its accessories to the subrogated party up to the amount paid, excluding rights exclusively personal to the original creditor. Under Article 1346-5, subrogation is effective against third parties upon payment, but against the debtor only upon notification or acknowledgment; the debtor retains the defences specified in that provision (Code civil, arts. 1346-1, 1346-4, 1346-5). Recent case law of the Cour de cassation confirms that subrogation places the factor in the creditor's legal position. The scope of the rights acquired by the factor, however, is determined by the content of the assigned receivable itself and, where relevant, by the terms of the factoring agreement (Cour de cassation, no. 23-11.414, 3 July 2024; no. 24-19.201, 22 October 2025).

Article L. 313-23 of the Code monétaire et financier permits existing and certain future professional receivables to be assigned or pledged by means of a special transfer document (Code monétaire et financier, art. L. 313-23). Under Article L. 313-27, the assignment or pledge takes effect between the parties and becomes effective against third parties on the date entered on the bordereau upon its delivery, without further formalities. This differs from subrogation, whose effectiveness against third parties arises upon payment (Code monétaire et financier, art. L. 313-27; Code civil, art. 1346-5).

Article L. 313-24 further provides that an assignment transfers ownership of the receivable even when made for security purposes without an agreed price. Unless otherwise agreed, the signatory of the Dailly assignment or pledge also jointly guarantees payment of the receivables (Code monétaire et financier, art. L. 313-24). The debtor's discharge is a separate issue: following notification under Article L. 313-28 prohibiting payment to the signatory of the bordereau, the debtor can obtain discharge only by paying the beneficiary specified in that provision (Code monétaire et financier, arts. L. 313-24, L. 313-28). The distinction between contractual subrogation and cession Dailly also affects the debtor's available defences. Under

Article 1346-5 of the Code civil, the debtor may invoke against the subrogated creditor defences inherent in the debt, as well as defences arising from its relationship with the original creditor before the subrogation became enforceable against the debtor.

The Dailly mechanism requires a separate distinction between notification and formal acceptance. Where the debtor has formally accepted the assignment under Article L. 313-29, it generally cannot raise against the assignee defences based on its personal relationship with the assignor. This restriction does not apply if the assignee knowingly acted to the debtor's detriment when acquiring the receivable. Accordingly, the factor's acquisition of the receivable, the debtor's discharge and the availability of defences must be assessed under the rules governing the particular transfer mechanism (Code civil, art. 1346-5; Code monétaire et financier, arts. L. 313-28–L. 313-29).

The factor's acquisition of a receivable does not sever it from the legal framework established by the underlying contract. In its judgment of 3 July 2024, applying former Article 1250(1) of the Code civil and Article 48 of the Code de procédure civile, the Cour de cassation held that a jurisdiction clause validly incorporated into a contract between commercial parties was enforceable against the factor subrogated to the receivables arising from that contract (Cour de cassation, no. 23-11.414, 3 July 2024, paras. 7–9). The factor acquires the receivable subject to the legal limitations attached to it, confirming the derivative nature of the factor's legal position.

The factor's legal position is also affected by the proprietary rights of third parties. The Cour de cassation's 2024 case law shows that, in certain circumstances, a supplier's rights arising from a retention-of-title clause may take precedence over the factor's interests (Cour de cassation, nos. 22-22.651, 22-18.818 and 22-23.657, 6 March 2024). Thus, transferring a receivable to the factor does not, by itself, extinguish pre-existing proprietary interests.

The factor's legal position is also affected by the settlement mechanisms provided for in the factoring agreement. In decision No 13-13.630, concerning contractual subrogation, the Cour de cassation held that a reversal entered after the client's liquidation did not constitute payment where the amount was not shown to have been absorbed by a credit balance; the factor therefore retained the receivables. In decision No 22PA00217, the Cour administrative d'appel de Paris examined an agreement containing both Dailly-assignment and subrogation provisions. It likewise found no effective repayment or resulting revocation of subrogation because a sufficient credit balance had not been established. These decisions show that the legal effect of a reversal depends on the applicable transfer mechanism, the contractual terms and whether the entry actually effects payment (Cour de cassation, no. 13-13.630, 29

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April 2014; Cour administrative d'appel de Paris, no. 22PA00217, 26 January 2024, paras. 2–5).

Financial regulation raises a separate question from the contractual and proprietary analysis. Under Article L. 311-1 of the Code monétaire et financier, credit operations form part of banking operations. Article L. 313-1 defines credit operations by reference to the remunerated provision or commitment of funds, while Article L. 511-5 generally reserves the habitual performance of credit operations to credit institutions and financing companies, subject to statutory exceptions. The regulatory treatment of professional factoring must therefore be assessed by reference to the activities carried out and the applicable authorization rules. It cannot be inferred solely from whether receivables are transferred through contractual subrogation or cession Dailly (Code monétaire et financier, arts. L. 311-1, L. 313-1, L. 511-5).

The judgment of 22 October 2025 distinguishes the factor's rights against the debtor from its entitlement to recover from the client a VAT refund received by that client. The court held that payment by the factor of an invoice inclusive of VAT subrogates it to the creditor's rights against the debtor, but does not make it liable to the State for that tax. Where the receivable becomes definitively irrecoverable, the factor cannot, unless the factoring agreement provides otherwise, recover from the client the VAT refunded to that client (Cour de cassation, no. 24-19.201, 22 October 2025, paras. 7–12). For the present analysis, the decision illustrates the distinction between tax liability to the State and the contractual basis of a claim against the client; it does not establish a general civil-law characterization of factoring.

In French law, factoring's legal autonomy does not depend on a special assignment mechanism devised exclusively for factoring. The factoring agreement operates alongside contractual subrogation, cession dailly, and the general rules governing receivables. The German model focuses on the allocation of the risk of non-payment and on distinguishing a sale from a credit relationship. The French model, by contrast, centres on the relationship between the factoring agreement and the legal technique used to transfer the receivable (Bonneau, 2025, paras. 812–813; Lasserre Capdeville, 2021; Quiquerez, 2024, para. 853; Crocq, 2023).

The French approach further shows that the use of contractual subrogation or *cession Dailly* does not, by itself, determine whether the underlying transaction constitutes a sale of receivables or security-based financing. These mechanisms explain how the factor acquires rights against the debtor. The contractual terms and allocation of risk determine whether the factor acquires the receivable for its own account, assumes the risk of non-payment, or receives it primarily as security for financing (Lasserre

Capdeville, 2021, p. 1; Code civil, art. 1346-1; Code monétaire et financier, art. L. 313-24).

3.3. Italy: The Legal Characterization of Factoring and the Special Regime for Business Receivables

Italian law is of particular interest for a comparative legal study of factoring because it combines a detailed special legislative regime governing the assignment of business receivables with the contractual atypicality of the factoring agreement itself. By adopting Law No. 52 of 21 February 1991, the Italian legislature introduced special rules on cessione dei crediti d'impresa, but did not fully codify the contratto di factoring as an independent nominate contract. The distinctive feature of the Italian model therefore lies not in codifying factoring as a separate contract type, but in creating a legal infrastructure that facilitates the bulk assignment of existing and future receivables for consideration, as commonly required in factoring transactions (Vigo, 2015; Riesenfeld & Hart, 1992; Legge 21 febbraio 1991, n. 52; Corte di cassazione, no. 16850, 7 July 2017).

The immediate subject of regulation under Law No 52/1991 is the assignment of business receivables, rather than the factoring agreement as a whole. Article 1 links the special regime to the assignment for consideration of monetary receivables arising from business activities to entities specified by law. In other cases, the general rules of the Civil Code apply (Legge 21 febbraio 1991, n. 52, art. 1; Codice civile, arts. 1260–1267). Accordingly, factoring and the special regime governing the assignment of business receivables are not identical concepts. The former is a broader contractual relationship, whereas the latter is a special legal regime governing the transfer of receivables.

Recent Italian case law maintains this distinction. The Corte di cassazione characterizes factoring as a contratto atipico complesso, the essential core of which is an agreement under which a specialized factor, for a specified period, acquires all or part of an entrepreneur's existing or future receivables, on a pro soluto or pro solvendo basis. The factor's remuneration may consist of the difference between the nominal value of the receivables and the price paid for them, a commission, or, where advance financing is provided, interest charged on the amount advanced. The assignment of receivables is the structural core of factoring, but the agreement's economic and legal substance extends beyond the transfer of the receivables themselves (Vigo, 2015; Corte di cassazione, no. 16850, 7 July 2017; no. 31652, 9 December 2024).

Article 4(1) of Law No. 52/1991 establishes a statutory default rule for assignments falling within the Law's scope: the assignor guarantees the debtor's solvency up to

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the agreed consideration, unless the assignee waives that guarantee wholly or in part. Accordingly, the description of this rule as pro solvendo refers to a statutory guarantee that applies unless waived, rather than to a rule of contractual interpretation or a doctrinal simplification (Legge 21 febbraio 1991, n. 52, art. 4(1)). This statutory guarantee of solvency must be distinguished from the assignor's warranty concerning the existence of the receivable under Article 1266 of the Civil Code. The distinction is material to the proposed framework because liability for the debtor's inability to pay and liability for transferring a non-existent receivable concern different risks and do not necessarily have the same significance for contractual characterization.

Comparison with German law brings this feature into sharper focus. In the German model, the factor's assumption of the Delkredererisiko is one of the central indicators of genuine factoring and of the classification of the transaction as a sale of receivables. Italy's Law No 52/1991, by contrast, shows that a special regime for receivables tailored to factoring may also be based on a default rule under which the assignor retains the risk of non-payment. The presence or absence of recourse does not perform the same function in every jurisdiction. In Germany, it is one of the central criteria for the private-law characterization of the transaction; in Italy, Article 4(1) of Law No 52/1991 establishes the assignor's guarantee of the debtor's solvency as a default rule for assignments within the Law's scope, subject to the assignee's full or partial waiver (Legge 21 febbraio 1991, n. 52, art. 4(1)). This difference demonstrates that factoring's legal autonomy cannot be assessed solely by reference to the party that ultimately bears the risk of non-payment (Clarizia, 1989).

An important feature of Law No 52/1991 is that it permits the assignment of existing and future receivables, including receivables transferred in bulk. Article 3 also allows future receivables arising from contracts that have not yet been concluded to be identified in advance, provided that the requirements concerning their determinability and temporal scope are satisfied. As a result, a long-term factoring relationship does not require each receivable to be assigned separately. Italian case law nevertheless distinguishes between the advance agreement covering future receivables and the legal effect of the assignment once a specific receivable comes into existence (Corte di cassazione, no. 30611, 27 November 2018, section 2.8; Legge 21 febbraio 1991, n. 52, art. 3).

Article 5 of Law No 52/1991 provides a special mechanism for making assignments effective against third parties. Under Article 5(1), full or partial payment of the consideration, with a legally certain date (data certa), makes the assignment opposable to competing successors whose rights were not already effective against

third parties before that payment, creditors who attach the receivable after that date, and the assignor's bankruptcy declared subsequently, subject to Article 7(1). Article 5(2) expressly preserves the alternative means of achieving third-party effectiveness under the Civil Code (Legge 21 febbraio 1991, n. 52, art. 5(1)–(2)).

These rules must be distinguished from the assignment's effects against the debtor. Article 1264 of the Civil Code addresses notification or acceptance and the debtor's discharge by payment, including the consequences of prior knowledge of the assignment. Article 1265 determines priority between successive assignments by reference to the first notification or acceptance by an instrument bearing a legally certain date. Article 2914(2) makes an assignment notified or accepted only after attachment ineffective against the attaching creditor and creditors participating in the enforcement proceedings. Article 5(3) preserves the Civil Code rules governing the discharge of the debtor by payments to third parties. The special payment-based mechanism therefore supplements the ordinary rules without merging debtor protection with third-party priority (Legge 21 febbraio 1991, n. 52, art. 5(3); Codice civile, arts. 1264, 1265, 2914(2); Corte di cassazione, no. 4927, 16 February 2023, section 3.2).

This framework supports a broader conclusion about the legal nature of factoring. The effects of a transfer between the parties and vis-à-vis third parties are distinct legal issues. By creating a special mechanism for third-party effectiveness, the Italian legislature regulated an area in which the ordinary rules on assignment were less suited, in practical terms, to large-scale receivables-based finance. Law No 52/1991 can therefore more accurately be understood as a legal regime governing receivables and facilitating factoring transactions, rather than as a comprehensive codification of the factoring agreement (Riesenfeld & Hart, 1992; Legge 21 febbraio 1991, n. 52, art. 5; Codice civile, arts. 1265, 2914; Corte di cassazione, no. 4927, 16 February 2023; no. 32782, 16 December 2024).

Articles 6 and 7 of Law No. 52/1991 address different insolvency situations. Article 6 concerns avoidance of payments made by the assigned debtor to the assignee. Under Article 6(1), the statutory exemption protects the assignee, while an avoidance action may be brought against the assignor if the insolvency administrator proves that the assignor knew of the debtor's insolvency when the payment was made. Article 6(2) preserves the assignor's recourse against an assignee who has waived the solvency guarantee under Article 4 (Legge 21 febbraio 1991, n. 52, art. 6(1)–(2)).

Article 7, by contrast, concerns the assignor's insolvency. Under Article 7(1), the assignment's effectiveness under Article 5(1) cannot be asserted against the assignor's bankruptcy estate if the administrator proves that the assignee knew of the

assignor's insolvency when paying the consideration. This restriction applies only if payment occurred within the year preceding the declaration of bankruptcy and before the assigned receivable fell due. Article 7(2)–(3) also permits withdrawal from assignments insofar as they concern receivables not yet arising at that declaration, subject to repayment of the corresponding consideration (Legge 21 febbraio 1991, n. 52, art. 7(1)–(3)).

The case law further limits the scope of these protections. In decision No 31652/2024, applying Article 67 of the Bankruptcy Law, the Corte di cassazione held that Article 6(1) exempts ordinary payments under Article 67(2), but not abnormal means of payment under Article 67(1)(2). Decision No 32782/2024 distinguishes the special rule in Article 7(1) from ordinary insolvency avoidance: assignments made opposable through notification under the Civil Code do not fall within that special rule, although they may still be challenged by an ordinary avoidance action where its requirements are met. Third-party effectiveness therefore does not confer immunity from insolvency challenge (Corte di cassazione, no. 31652, 9 December 2024, section 7.8; no. 32782, 16 December 2024).

Factoring's financial regulatory status is separate from its private-law characterization. Under Italian financial law, professional factoring is generally linked to the authorized-intermediation regime under Article 106 of the TUB. Law No 52/1991, however, establishes a distinct regime for the assignment of business receivables, which is not confined to banks or authorized financial intermediaries (Banca d'Italia, n.d.; Legge 21 febbraio 1991, n. 52, art. 1; Decreto legislativo 1 settembre 1993, n. 385, art. 106; Decreto del Ministro dell'Economia e delle Finanze 2 aprile 2015, n. 53).

The comparison reveals that the three systems determine the factor's legal position in different ways. German law places particular weight on the allocation of non-payment risk; French law focuses on the relationship between the factoring agreement and the mechanism used to transfer the receivable; and Italian law relies mainly on rules governing bulk and future assignments, third-party effectiveness and insolvency. These differences show why recourse cannot serve as a universal test of legal characterization. Its significance depends on whether it shifts the debtor's non-payment risk back to the client, covers defects in the receivable, or secures an independent repayment obligation. Comparative analysis should therefore follow the legal effects of the transaction rather than the label attached to it.

4. The UNIDROIT Model Law on Factoring: Scope and Legal Effects

An important step towards the international harmonization of factoring law was the UNIDROIT Convention on International Factoring, adopted in Ottawa on 28 May 1988 [2]. Its legal regulation, however, cannot be reduced to the 1988 Convention, which does not address every issue arising in factoring transactions, including the formal validity of factoring agreements and the priority of competing rights in receivables (Çalışkan, 2021, p. 477).

The Convention's approach also extends beyond the mere assignment of receivables by recognizing the functional, financing, and administrative elements of factoring (UNIDROIT Convention on International Factoring, 1988, preamble, arts. 1–2). UNIDROIT's broader approach seeks to promote the transferability of receivables, access to finance, and legal predictability, although scholarship continues to debate the practical effectiveness of some of the mechanisms introduced by the UNIDROIT Model Law on Factoring (2023) (UNIDROIT, 2023; Kaya, 2024).

The development of international factoring law reflects a broader shift from regulating individual factoring agreements to building a legal infrastructure for receivables-based finance. Key stages in this development are the 1988 UNIDROIT Convention on International Factoring and the 2023 UNIDROIT Model Law on Factoring. Despite their common institutional origin, the two instruments serve different legal functions: the Convention establishes a uniform framework for specified international factoring transactions, whereas the Model Law is designed to support the development of a broader domestic legal regime for receivables-based finance (UNIDROIT, 2023; UNIDROIT Convention on International Factoring, 1988, preamble, arts. 1–2).

The UNIDROIT Model Law is a specialized instrument that complements the broader international frameworks governing assignments and secured transactions. Its definition of transfer includes both outright transfers and security transfers (UNIDROIT, 2023, art. 2(i)–(j)). Kaya identifies this breadth while questioning the clarity of the scope provision in Article 1 (Kaya, 2024, p. 587). For the present analysis, the consequence is that inclusion within the Model Law's scope cannot itself establish whether a transaction is factoring or a loan secured by receivables. The purpose of the transfer, the scope of recourse and the parties' substantive obligations remain relevant. The Model Law supplies rules for receivables finance; its application is distinct from the national classification of the underlying contract.

The Ottawa Convention is not intended to provide a uniform doctrinal classification of factoring's private-law nature. It does not determine whether, under domestic law, factoring should be treated as a sale of receivables, a credit transaction, a mixed contract, or an independent contract. Instead, the Convention establishes functional

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criteria for determining whether a particular international transaction falls within its scope. The functional definition is especially useful where the same economic operation may be structured through different contractual and proprietary arrangements in different legal systems (Goode et al., 2015).

Under Article 1 of the Convention, factoring involves the assignment of receivables to a factor and the performance of at least two functions, including financing, receivables administration, collection, or protection against the debtor's non-payment (UNIDROIT Convention on International Factoring, 1988, art. 1(2)–(3)). Gotua likewise presents these four functions when discussing the Convention's definition (Gotua, 2018, p. 21). The assignment of receivables is therefore necessary but not sufficient to establish a factoring arrangement; its legal characterization depends on the combination of the assignment with additional financial or administrative functions. This functional definition helps distinguish factoring from an ordinary assignment but does not replace the applicable national law. The Convention determines the conditions for its own application, while the legal basis of the transaction, the distinction between a sale and a credit relationship, the effect of recourse, and its proprietary consequences remain governed by national law (Gullifer, 2023; Gullifer, Bridge, & Lomnicka, 2024).

The Convention has a relatively narrow scope: it is designed for international factoring and does not establish a universal framework for domestic factoring. Although Article 5 accommodates assignments of existing and future receivables without individual specification, the Convention does not establish a comprehensive registration and priority framework for competing rights in receivables (UNIDROIT Convention on International Factoring, 1988, art. 5; Goode et al., 2015). This limitation, together with the cross-border focus of existing international instruments, created the need for an additional legal instrument capable of assisting States in developing effective domestic factoring infrastructure (Çalışkan, 2021, pp. 477–478).

The issue also requires coordination between the legal instruments developed by UNCITRAL and UNIDROIT. In establishing a regime for receivables-based finance, it is necessary to determine how general secured-transactions law should coexist with the specialized model designed for factoring, so as to avoid conflicts or normative duplication (Bazinas, 2025b, pp. 28–30).

Despite these limitations, the Convention addresses several important issues. Articles 5 and 6 permit the assignment of existing and future receivables without individually listing them, provided that they are sufficiently identifiable, and, in certain circumstances, give the assignment effect despite an anti-assignment clause

in the underlying contract. At the same time, the debtor retains the defences and rights of set-off arising from the original contract (UNIDROIT Convention on International Factoring, 1988, arts. 5–10).

Subsequent international developments placed receivables-based finance within the broader framework of secured transactions and access to credit. The 2001 UN Convention extended the regulation of assignments beyond factoring and addressed future and bulk receivables, effectiveness against third parties, and priority (Akseli, 2013; United Nations Convention on the Assignment of Receivables in International Trade, 2001). The 2023 UNIDROIT Model Law continues this development by focusing on third-party effectiveness and priority. It is, however, a specialized instrument rather than a general code of secured transactions, and its implementation therefore requires coordination with national law governing secured transactions, assignments, and insolvency (Bazinas, 2025b, pp. 28–30).

The Model Law is intended to facilitate factoring through a dedicated legislative framework, particularly in States where secured-transactions law has not yet been comprehensively modernized (UNIDROIT, 2023). The validity of an assignment between the parties is not, by itself, sufficient to protect the factor's legal position. The Model Law links effectiveness against third parties to registration and establishes rules on priority (UNIDROIT, 2023, arts. 9, 13–19, Annex A; Bazinas, 2025b, pp. 28–30). It should not, however, be treated as automatically superior to an existing national system. Where a jurisdiction already has an integrated secured-transactions regime, a parallel factoring regime may create fragmentation. Implementation must consequently be assessed by reference to its compatibility with national rules on receivables, proprietary rights, and insolvency (Bazinas, 2025a; Kaya, 2024). This is particularly important when distinguishing an outright sale of receivables from security-based financing: in both cases, the decisive considerations are the transaction's function, publicity, and priority (Gullifer, 2023; Gullifer et al., 2024).

For the present comparison, the Model Law's principal value lies in shifting the inquiry from the definition of factoring to the legal conditions under which receivables can serve as transferable financial assets.

5. The Georgian Factoring Regime: A Prospective Analysis. Enacted but not yet operative law

This section analyses the Georgian statutory framework as enacted at the research cut-off date of 20 October 2026. Articles 1–32 of the Law on Factoring are scheduled to enter into force on 1 January 2027, whereas Articles 33–34 have already entered into force. The related Civil Code amendments are also scheduled to take effect on

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1 January 2027. Accordingly, the analysis of the new substantive regime is prospective. It examines the enacted provisions and develops interpretive hypotheses about their future application; it does not report empirical findings or judicially established outcomes under Articles 1–32, which are not yet operative (Law of Georgia on Factoring, 2026, art. 34; Law of Georgia amending the Civil Code, 2026, art. 2).

5.1. Statutory and Institutional Framework

On 1 April 2026, Georgia adopted the Law on Factoring, establishing a specialized statutory framework for factoring transactions and professional factoring activity (Law of Georgia on Factoring, 2026). Under those provisions, factoring will be linked to the assignment of receivables and registration in the factoring registry, upon which ownership of the receivable will pass to the factor (Law of Georgia on Factoring, 2026, arts. 3, 12(2)). By combining registration and third-party effectiveness with the registration and supervision of factoring companies by the National Bank of Georgia, the enacted framework is designed to establish factoring as a regulated financial activity rather than a purely contractual relationship (Law of Georgia on Factoring, 2026, arts. 6–12).

Earlier Georgian case law illustrates the importance of distinguishing a factoring agreement from the transfer of a particular receivable. In its ruling of 16 February 2007, the Supreme Court described factoring as a form of banking service involving collection, credit and guarantees. It found that the agreement before it had not assigned the disputed receivable to the bank, which consequently lacked a contractual or statutory basis for recovery from the alleged debtor (Supreme Court of Georgia, no. ას-619-998-06, 16 February 2007).

Once Articles 1–32 enter into force, the statutory regime will distinguish between recourse and non-recourse factoring. In the former, the risk of the debtor's non-payment will ultimately remain with the assignor, whereas in the latter that risk will be borne by the factor (Law of Georgia on Factoring, 2026, arts. 14–15). Where it cannot be determined whether the parties agreed on recourse or non-recourse factoring, Article 16 will treat the arrangement as non-recourse factoring. Nevertheless, Article 27 will preserve the assignor's responsibility for the accuracy and validity of the receivable. Where the receivable becomes disputed, including because the underlying goods are defective, the assignor will be required to pay the factor the amount specified in the factoring agreement within the agreed period, even under non-recourse factoring. The enacted provisions thus envisage a distinction

between the debtor's non-payment risk and the assignor's responsibility for the underlying receivable (Law of Georgia on Factoring, 2026, arts. 16, 27).

Upon its entry into force, Article 18(2) will exclude the classification of factoring as a credit or loan agreement, except where Georgian legislation provides otherwise. Articles 3 and 12(2) will link ownership transfer to registration. Functional analysis must therefore examine the scope of recourse, risk allocation and the consequences of ownership within this statutory framework, rather than override its express classification (Law of Georgia on Factoring, 2026, arts. 3, 12(2), 18(2)).

A particularly important feature of the enacted Georgian framework is the constitutive role envisaged for registration: once Article 12(2) enters into force, ownership of the receivable will take effect upon registration in the factoring registry (Law of Georgia on Factoring, 2026, art. 12(2)). This differs from the UNIDROIT Model Law, under which Article 5 governs the transfer of the receivable, while Article 9 requires registration of a notice for effectiveness against third parties. The Model Law separately regulates priority among competing claimants (UNIDROIT, 2023, arts. 5, 9, 13–19, Annex A). The comparison therefore reveals a substantive difference in the function of registration: the enacted Georgian provisions envisage registration as constitutive of ownership transfer, whereas the Model Law distinguishes the transfer itself from its effectiveness against third parties. This distinction is essential when assessing the legal position acquired by the factor.

This framework may nevertheless raise practical difficulties where a transaction involves future receivables or legal and registration systems operating across several jurisdictions. In such cases, formal registration of the assignment may not by itself ensure that priority can be established clearly and predictably (Kaya, 2024, pp. 592–595). As under the broader law of secured transactions, the validity of an assignment between the parties does not automatically protect the factor against competing creditors or in insolvency. Separate mechanisms governing third-party effectiveness and priority are therefore required (Bazinas, 2025b, pp. 28–30).

From an institutional perspective, once the relevant provisions enter into force, factoring services will be restricted to the entities specified by law (Law of Georgia on Factoring, 2026, arts. 5, 6(5), 11). The separate regulation of professional factoring activity is significant because factors may combine receivables-based financing with administration, collection and credit-risk management. These functions extend beyond the transfer of a claim between private parties (International Finance Corporation, 2023, pp. 18–20, 26–29). Once the relevant provisions enter into force on 1 January 2027, the specialized framework will require factoring companies to register with the National Bank and will empower it to cancel registration, conduct inspections, regulate their activity, impose additional

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requirements and apply sanctions (Law of Georgia on Factoring, 2026, art. 6(5); Organic Law of Georgia on the National Bank of Georgia, art. 52^{8}(1)(a), effective 1 January 2027). The enacted Georgian framework thus distinguishes the private-law character of the factoring agreement from the regulatory status envisaged for professional factoring activity.

The transitional provisions qualify this prospective assessment. Article 33(1) gives existing operators, other than commercial banks, microbanks and microfinance organizations, 90 calendar days from the entry into force of the National Bank's registration rules to submit the required registration documents and permits them to continue operating pending its decision. Article 33(2) excludes transfers of receivables made before the Law entered into force from its scope. Article 33(3) requires the National Bank to issue the implementing legal acts specified in that provision within nine months of the Law's entry into force (Law of Georgia on Factoring, 2026, art. 33(1)–(3)).

5.2. Distinguishing Factoring from Loan Financing and the General Assignment Regime

The legal character of factoring depends on the function of both the financing and the assignment of receivables within the transaction. The relevant distinction is whether the recipient of funds assumes an independent repayment obligation, whether the receivable is transferred as an asset or for security purposes, and which party ultimately bears the debtor's non-payment risk.

A loan involves the transfer of money or other fungible property into the borrower's ownership, together with an obligation to return an equivalent quantity of property of the same kind and quality (Shamatava, 2024, pp. 37–38, 98–99). Although Georgian legal doctrine traditionally characterizes the loan as a real and unilaterally binding contract, its decisive feature for the present comparison is the borrower's independent repayment obligation (Shamatava, 2024, pp. 81–82). Factoring does not necessarily create such an obligation. The factor's payment may instead constitute the price of the receivable or an advance against that price. The provision of liquidity before the receivable falls due is therefore insufficient, by itself, to classify the transaction as a loan.

Assignment addresses a different aspect of the transaction. Under the UNIDROIT Principles, an assignment is the transfer by agreement from the assignor to the assignee of a right to monetary or other performance by an obligor; the definition expressly includes a transfer made by way of security (UNIDROIT, 2016, art. 9.1.1, comment 1). Assignment consequently identifies the mechanism through which a

claim is transferred, but it does not determine the economic purpose or finality of the transfer. The same mechanism may be used for an outright transfer of receivables or to create a proprietary interest supporting an independent financing obligation (Gullifer, 2023).

Georgian case law also recognizes assignment as a mechanism for securing a loan. In its judgment of 19 October 2010, the Supreme Court characterized an agreement providing for the transfer of a mineral extraction right upon the borrower's default as a conditional assignment by way of security, rather than a debtor's guarantee. Although the case concerned an extraction right rather than a trade receivable, it illustrates a distinction relevant to the present analysis: the transfer of a right may secure a loan repayment obligation without constituting an outright purchase of receivables (Supreme Court of Georgia, no. ას-379-352-2010, 19 October 2010).

The consequences of assignment are not confined to the relationship between assignor and assignee. Comparative legal systems differ on whether assignment is treated as exclusively contractual or whether the agreement to transfer must be distinguished from the proprietary transfer itself (Kronke, 2019, pp. 8–10). Its effects may extend to the debtor, the assignor's creditors, competing assignees and an insolvency administrator. Questions concerning the relationship between assignor and assignee must therefore be distinguished from the effectiveness of the assignment against the debtor and third parties and from the priority of competing claims (Kronke, 2019, pp. 10–13). Assignment alone cannot establish whether the wider transaction constitutes a sale, secured financing or factoring.

As explained in Section 5.1, the prospective assessment of the Georgian regime must operate within the enacted statutory framework. The scope of recourse and the allocation of non-payment risk remain relevant to determining the parties' rights and obligations, but do not, by themselves, override the statutory rules on ownership transfer or the exclusion of loan classification (Law of Georgia on Factoring, 2026, arts. 3, 12(2), 18(2)).

From 1 January 2027, Article 198(4) of the Civil Code of Georgia will exclude factoring relationships from Article 198 and Articles 199–205 and 207 of the general assignment regime (Civil Code of Georgia, art. 198(4); Law of Georgia amending the Civil Code, 1 April 2026, No 1454, arts. 1(1), 2). Assignment will remain the legal mechanism through which the factor acquires the receivable, but the broader relationship will be governed by the specialized factoring framework. The enacted amendment thus envisages a separation between the mechanism of transfer and the legal regime applicable to the transaction as a whole.

Under the general assignment regime, the Supreme Court has confirmed that assignment does not enlarge the claim or require the debtor to perform the same

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obligation twice. The debtor retains the defences available against the original creditor when notified of the assignment (Supreme Court of Georgia, no. ას-1303-1241-2014, 17 February 2015). This provides a point of comparison with the specialized factoring regime. Although the Civil Code amendment effective from 1 January 2027 will exclude factoring from the general assignment provisions, Article 29(2) of the Law on Factoring will preserve the debtor's defences available against the assignor at the time of notification. The specialized regime will therefore maintain this protection through its own statutory rule (Law of Georgia on Factoring, 2026, art. 29(2)).

This statutory separation will also have proprietary consequences once the relevant amendments enter into force. Under Article 274(5) of the Civil Code, where a pledged receivable is transferred to a factor in accordance with the Law on Factoring, the factor will acquire it free of the pledge, while the pledge will continue over the proceeds received in exchange for the receivable. Article 286(6[1]), in turn, will restrict the use of residential immovable property as security for claims arising from factoring and reverse factoring (Civil Code of Georgia, arts. 274(5), 286(6[1]); Law of Georgia amending the Civil Code, 1 April 2026, No 1454, art. 1(2)–(3), art. 2). These provisions show that the Georgian framework coordinates factoring with the law of secured transactions and regulates the factor's position beyond the bilateral relationship with the client.

In comparative terms, the Georgian framework combines elements that appear separately in the European models examined above. Its treatment of recourse and the allocation of non-payment risk resembles the German focus on the substantive consequences of risk allocation; its emphasis on registration and third-party effectiveness corresponds to the infrastructure-oriented approach reflected in Italian law and the UNIDROIT Model Law. At the same time, the Georgian framework does not eliminate the need to distinguish the factoring agreement from the legal mechanism by which receivables are transferred. Its significance therefore lies not in adopting one existing model, but in combining contractual, proprietary, institutional, and regulatory elements within a single statutory framework (UNIDROIT, 2023, arts. 13–19, Annex A; Law of Georgia on Factoring, 2026, arts. 3, 6–15; Legge 21 febbraio 1991, n. 52, arts. 4–5).

Table 2 brings together the findings of the national analyses by applying common criteria to the four jurisdictions. It distinguishes contractual characterization and risk allocation from the legal effects of transferring receivables, third-party effectiveness, insolvency consequences and financial regulation. The comparison concerns the

relevant legal rules and their consequences for the factor, rather than the formal classification of factoring under a single legal model.

The comparison demonstrates that similar features of factoring arrangements may have different legal significance across jurisdictions. In Germany, the allocation of non-payment risk and the client's repayment obligation are central to the distinction between genuine and non-genuine factoring. Italian law, by contrast, establishes a statutory default guarantee of the debtor's solvency without thereby determining the character of the wider factoring agreement. French law illustrates that the mechanism used to transfer receivables must be distinguished from the contractual relationship between the factor and the client. The Georgian legislation provides a prospective example of a specialized statutory regime addressing these questions through express rules on classification and transfer. These differences support the central finding that contractual characterization cannot, by itself, determine the factor's rights against third parties, its position in insolvency or its regulatory status.

Table 2. Legal Characterization and Effects of Factoring: A Comparative Matrix

Criterion	Germany	France	Italy	Georgia (prospective)
Nature of transfer	Sale of receivables or security assignment, as agreed	Transfer may serve an outright or security purpose; cession Dailly transfers ownership even when used as security (CMF, Art. L. 313-24).	Assignment for consideration under Law No 52/1991, if applicable	Statutory factoring; transfer upon registration
Independent Repayment obligation	Continuing repayment duty relevant to non-genuine factoring	Defined by the factoring agreement	Not inherent in assignment	Statutory recourse must be distinguished from independent loan repayment; Art. 18(2) will exclude loan or credit classification, subject to exceptions under Georgian legislation.

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Criterion	Germany	France	Italy	Georgia (prospective)
Non-payment risk	Factor: genuine factoring; client: non-genuine factoring, subject to terms	Allocation depends on the agreement and transfer mechanism; under cession Dailly, the signatory jointly guarantees payment unless otherwise agreed (CMF, Art. L. 313-24).	Solvency guaranteed unless waived (Law No 52/1991, Art. 4(1))	Recourse and non-recourse arrangements
Existence and validity	Distinct from the debtor's insolvency risk	Contract and applicable transfer rules	Existence warranty (Civil Code, Art. 1266) distinct from solvency guarantee (Law No 52/1991, Art. 4(1))	Statutory assignor liability, including disputed receivables
Debtor and defences	Defences founded at assignment remain available; set-off and payment to the former creditor are governed separately (BGB, §§ 404, 406–407).	Notification, acknowledgment and defences depend on the transfer mechanism	Notification or acceptance governs effectiveness against the debtor; knowledge of the assignment may prevent discharge by payment to the assignor (Civil Code, Art. 1264).	The debtor will retain defences available against the assignor upon receipt of notification (Art. 29(2)).
Third-party effectiveness	Assignment rules and competing rights	Payment: subrogation; dated bordereau: cession Dailly	Law No 52/1991, Art. 5; alternative Civil Code rules	Registration-based transfer

Criterion	Germany	France	Italy	Georgia (prospective)
Insolvency and priority	Genuine factoring does not confer immunity from avoidance; reassigned claims may require renewed filing and verification (BGH, IX ZR 116/21; IX ZR 114/23).	Suppliers' retention-of-title rights may limit the factor's recovery; an account reversal does not itself extinguish the factor's rights without effective repayment.	Law No 52/1991, Arts. 6–7; other insolvency rules	Registration will constitute ownership transfer; its implications for insolvency priority require separate analysis under applicable insolvency law.
Financial regulation	Financial service: KWG § 1(1a), sentence 2, no. 9	Banking/credit-operations regime; authorization as applicable (Code monétaire et financier)	Authorized intermediaries, including TUB Art. 106 where applicable	National Bank of Georgia supervision

Source: Author's comparative analysis of the legislation and case law examined in the article.
Note: *The Georgian regime is analyzed prospectively, with reference to provisions scheduled to enter into force on 1 January 2027. References to Articles 18(2) and 29(2) are to the Georgian Law on Factoring. Registration-based ownership transfer does not, by itself, establish the factor's priority in insolvency. The matrix summarises the legal questions examined rather than every rule of each jurisdiction. BGB = Bürgerliches Gesetzbuch; BGH = Bundesgerichtshof; CMF = Code monétaire et financier; KWG = Kreditwesengesetz; TUB = Testo Unico Bancario.*

6. Conclusions

The assignment of receivables is a necessary structural element of factoring, but it does not, by itself, determine the legal characterization of the transaction. Nor does advance financing, in itself, give rise to a loan relationship, and the existence of recourse does not automatically justify classifying the transaction as a credit arrangement. The decisive considerations are the function of these elements within the particular transaction, especially the purpose of the assignment, the allocation of the debtor's non-payment risk, and the scope of the legal position acquired by the factor.

The first question is whether the receivable has been transferred to the factor as an asset or merely assigned as security. The second concerns the scope of recourse and

the ultimate allocation of the debtor's non-payment risk. Advance financing is relevant, but it is not conclusive, particularly where it is linked to identified receivables and accompanied by administration or collection services. Finally, the factor's position must be assessed against third parties and in insolvency, separately from the regulatory status of the professional activity.

The comparison supports three normative findings. First, the legal basis of the factor's claim against the client should be determined by distinguishing payment of the purchase price for a receivable from financing subject to an independent repayment obligation. Second, recourse provisions should distinguish liability for the non-existence, invalidity or defects of a receivable from liability for the debtor's non-payment. Third, the factor's rights against the debtor and competing claimants should be assessed separately under the applicable rules on transfer, debtor protection, third-party effectiveness and insolvency. These questions must be answered under the relevant national rules: a contractual label or a supervisory classification cannot substitute for that analysis.

Although jurisdictions employ different contractual and statutory structures for factoring, its private-law characterization must be distinguished from the regulatory status of professional factoring activity. Factoring's legal autonomy therefore depends neither on the existence of an independent contract type nor on the use of a particular assignment mechanism.

Georgia's enacted regime demonstrates that statutory ownership transfer and the exclusion of loan classification do not eliminate the need to analyze the consequences of recourse and registration. Once operative, its rules will distinguish the debtor's non-payment risk from the assignor's responsibility for the underlying receivable. Comparison with the UNIDROIT Model Law also reveals different functions envisaged for registration: constitutive of ownership transfer under the enacted Georgian provisions, and a condition for effectiveness against third parties under the Model Law. The article's contribution is to connect these distinctions to the factor's rights against the client, the debtor and competing claimants. The analysis is limited to the selected jurisdictions and the legal questions examined. Its findings should therefore not be treated as a uniform test applicable across European legal systems. Furthermore, because the substantive provisions of Georgia's new factoring legislation are not yet operative, conclusions concerning their practical effects remain prospective rather than supported by judicial or supervisory practice. Future research should assess the operation of these provisions after Articles 1–32 of the Georgian Law enter into force on 1 January 2027.

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Notes:
[1] The research cut-off date is 20 October 2026.
[2] The Convention entered into force on 1 May 1995.