PRELIMINARY

DRAFT REGULATION ON THE LAW APPLICABLE TO PROPERTY RIGHTS IN TANGIBLE ASSETS[1]

CHAPTER 1 SCOPE AND DEFINITIONS

Article 1

Scope

(1) This Regulation shall apply, in situations involving a conflict of laws, to property rights in tangible assets in civil and commercial matters.
It shall not apply to public law matters, including in particular revenue, customs or administrative matters.

(2) The following shall be excluded from the scope of this Regulation:

(a) the succession to the estate of a deceased person in the meaning of Regulation (EU) No 650/2012 or its successor;

(b) the property relationships between spouses and in their relations with third parties, as a result of marriage or its dissolution in the meaning of Regulation (EU) 2016/1103 or its successor;

(c) the property consequences of a registered partnership, between the partners themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution in the meaning of Regulation (EU) 2016/1104 or its successor;

(d) questions involving the status or legal capacity of natural persons, without prejudice to point (d) of Article 14 (scope of applicable law);

(e) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated;

(f) the property consequences of the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated;

(g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(h) contractual and non-contractual obligations;

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(i) intellectual property rights

(j) the effects of insolvency proceedings on property rights, including in particular the determination of the assets which form part of the insolvency estate, the treatment of assets acquired by, or devolving on, the debtor after the opening of the insolvency proceedings, the effects of insolvency proceedings on contracts to acquire or make use of assets, the distribution of proceeds from the realisation of assets, the ranking of claims for the purpose of insolvency proceedings and the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors.

(3) This Regulation does not apply to:

(a) bills of exchange, cheques and promissory notes and other negotiable instruments;
(b) claims;
(c) financial instruments as specified in Section C of Annex I of Directive 2014/65/EU;
(d) digital assets;
(e) electricity, except where stored in receptacles;
(f) gas, except where stored in receptacles.

Comments:

Art. 1(1) limits the material scope of this Regulation to civil and commercial matters. It is inspired by and replicates the definition found in Art. 1(1) of the Rome I and Rome II regulations.

Art. 1(2)(a), (b) and (c) delineate the scope of this instrument from that of the Succession Regulation and the Matrimonial Property Regulations, respectively. The exclusions in Art. 1(2)(a), (b) and (c) replicate the scope of the Succession Regulation and the Matrimonial Regulations, respectively. Unlike these two regulations, Art. 1(2) does not include exclusions relating to *in rem* rights or the recording of such rights in registers, since it is the very purpose of this regulation to determine the law applicable to property rights, including the requirement and effect of registration for the purposes of property law (see Art. 14(i)). The absence of an exclusion relating to registration does not purport to change the applicability of the law of the place where the register is maintained to its operation.

Art. 1(2)(d) is inspired by and essentially replicates Art. 1(2)(a) of the Rome I Regulation. It confirms the principle that personal status and legal capacity are autonomous categories for private international law purposes, as they are governed by the personal law of the relevant person. In the context of property law, the exclusion is relevant to determine the law applicable to the capacity of certain categories of persons (priests, doctors) to own property.

Art. 1(2)(e): Requirements to register security rights in company assets, whose fulfilment is necessary for creation or third-party effectiveness of a security right, are classified as proprietary matters. Accordingly, Article 1(2)(e) does not exclude rules on registration of security rights in a company's assets from the scope of this Regulation even if, under the law applicable to companies, such registration must be made in a companies register.

Art. 1(2)(h) delineates the scope of this instrument from that of the Rome I and Rome II Regulations, respectively. It does not intend to regulate indirectly proper *rem* obligations, ie obligations that are incumbent upon the holder of a property right by virtue of its connection to the asset, such as an obligation to contribute to the costs of the common parts of a building in a condominium.

Although this draft regulation is limited to property rights in tangible assets, for the sake of clarity, Art. 1(2)(i) and Art. 1(3)(b) explicitly exempt from its scope intellectual property rights and claims. The term "claim" is to be understood as meaning "the right to claim a debt of whatever nature, whether monetary or non-monetary, and whether arising from a contractual or a non-contractual obligation"; see Art. 2(d) of the Proposal for a Regulation on the law applicable to the third-party effects of assignments of claims, COM/2018/096.
Art. 1(2)(j) delineates the scope of this instrument from that of Regulation 2015/848 (the 'Insolvency Regulation'). While the *lex concursus* does not determine the content of property rights, it determines the effect of insolvency proceedings on property rights. The non-comprehensive list of issues governed by the *lex concursus* is inspired by Article 7(1)(b),(e) (combined with Art. 11), (i)) and (m) of the Insolvency Regulation, which define the scope of the *lex concursus*. As Article 14 of this Regulation includes 'ranking' within the scope of the applicable law, Art. 1(2)(j) clarifies that the exclusion from the scope of this Regulation of "the ranking of claims" is only "for the purpose of insolvency proceedings".

Article 2

Definitions

For the purposes of this Regulation:
(a) 'property right' means the right of a person over an asset which is enforceable *inter partes* (between contracting parties), or in relation to one party, and *erga omnes* (having third party effect);
(b) 'third party effect' means the right to assert legal title to an asset as against all other parties;
(c) 'asset' means an item or unit of property, movable or immovable, which is tangible (having physical substance) and has defined boundaries;
(d) 'Asset in transit' means an asset which is being transported from one state (the place of dispatch) to a specified, ultimate destination in another state (the place of destination);
(e) 'motor vehicle' means any motor-driven vehicle intended or adapted for use on roads, and having at least two wheels and a maximum design speed exceeding 25 km/h, and its trailers, with the exceptions of vehicles which run on rails, agricultural and forestry tractors, and all mobile machinery;
(f) 'watercraft' means any vehicle that can move in or on water whether by sail, oar, paddle, or engine, as well as underwater, such as a boat, ship, yacht, hovercraft, and submarine;
(g) 'aircraft' means any vehicle, with or without an engine, that can fly in the atmosphere, such as a plane or helicopter;
(h) 'rail vehicle' means any vehicle suitable for circulation via a fixed railway track, with or without traction;
(i) 'security interest' means a property right conferring a right to obtain satisfaction preferentially over an asset, including by grant or retention of ownership;
(j) 'security interest register' means a register in which a debtor may register any security interest that s/he purports to grant over an asset, irrespective of the location of the asset, and irrespective of whether such registration is necessary for the security interest to have third party effect under the law governing it;
(k) 'Centre of main interests' (COMI) means Centre of main interests as defined in Regulation

(EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast);
(l) 'cultural object' means a tangible object which is classified or defined by a State, before or after its unlawful removal from the territory of that State, as being among its national treasures possessing artistic, historic or archaeological value under national law, or forming an integral part of public collections or inventories of ecclesiastical institutions.
(m) 'public collections' means collections, defined as public in accordance with the legislation of a State, which are the property of that State, of a local or regional authority within that State or of an institution situated in the territory of that State, such institution being the property of, or significantly financed by, that State or local or regional authority.

Comments:

On (a), (b) and (c) Together with Article 1(1), Art. 2 (a), (b) and (c) define the scope of the regulation.
Article 2 (c) clarifies that the regulation covers movable and immovable property but excludes intangible property, see also Art. 1 (3). Tangible property is defined as property that has "physical substance". Gases or liquids are therefore "assets" but only as far as they have "defined boundaries", e.g. are stored in containers (see also Article 1(3)(f) , meaning that a purported property right in the atmosphere or the sea (which both have physical substance but no boundaries) would not come under the draft regulation.

The GEDIP proposal is to the same broad effect but uses slightly different wording, see Article 2 (b): "Tangible Corporeal assets" means assets able to be physically possessed and includes both movable and immovable". By contrast, the definition in this draft uses more general language and tries to avoid legal terminology such as "corporeal" and "possession" because the meaning of such terms tends to be pre-defined by a specific applicable law.

The definitions in (a) and (b) are companion provisions since (b) defines a term used in (a). The notion of "property right" is difficult to define from an overarching perspective because, once more, what constitutes a property right and how it is to be distinguished from a mere contractual right ultimately depends on the applicable law.

The EU Commission's proposal for a regulation on the third party-effects of assignment[2] cannot be used as a model since Article (2) (e) thereof defines 'third-party effects' as meaning "proprietary effects, that is, the right of the assignee to assert his legal title over a claim assigned to him towards other assignees or beneficiaries of the same or functionally equivalent claim, creditors of the assignor and other third parties." It seems unhelpful to define "third-party effects" through "proprietary effects". The accompanying report does not attempt to explain this definition.

The GEDIP proposal, in Article 2 (a), uses this language: "Proprietary rights" means rights over tangible corporeal assets that are effective against third parties (erga omnes), such as ownership, security interests, mortgages, usufructs or servitudes."

In this draft, we have chosen the simpler though equivalent notion of "property right". As in the GEDIP draft, property right is defined as the right of a person over an asset which has third

[2] Proposal for a Regulation [..] on the law applicable to the third-party effects of assignments of claims COM(2018) 96 final of 12 March 2018. The proposal has subsequently been retracted.

party effect, but the present draft also includes as a property right one that is enforceable as between the parties to a contract and even a right of one person over an asset, which may be created by original rather than derivative acquisition, such as processing or a trove. The aim, on one hand, is to exclude mere contractual rights that have no third party effect, but to include, on the other hand, the *inter partes* relationship insofar as the applicable law distinguishes as among the parties to a transaction, between its contractual side and its property side (the principle of separation, *Trennungsprinzip*). For example, if a movable asset is sold by A to B, the regulation should be applicable to the transfer of ownership as between A and B, if this, under the applicable law, is regarded as a separate aspect of the transaction, and, of course, to the third party relationship between A and/or B on one hand, and C, who may be a subsequent buyer to whom A purports to sell the asset, or a third creditor of A who tries to execute against the asset that is still in the hands of A. This clarification is useful to avoid the difficulties that have haunted the interpretation of Art. 14 (1) Rome I Regulation.[3]

On (d)

'Asset in transit' is defined in Article 2(d) as an asset which is being transported from the territory of one state (place of dispatch) to a specified, ultimate destination in another state (place of destination). The adjective 'ultimate' underlines that temporary, transitional destination is not relevant. The adjective 'specified' underlines that the place of destination must follow from the contract or circumstances of the transaction. The Group purposefully decided not to include within this rule assets which are not transported, but are destined to be transported in future. Inclusion of such assets within the rule was thought likely to distort the goal of predictability.

(e)

The definition of "motor vehicle" derives from Art. 2 Directive 1979/156/EEC on the approximation of the laws of Member States relating to the type-approval of motor vehicles and their trailers (as amended) and Art. 1 Directive 1992/61/EEC relating to the type-approval of two or three-wheel motor vehicles. as amended. The definition is meant to exclude electric bycicles with a design speed not exceeding 25 km/h, but to include motor cycles.

On (l) and (m)

A uniform applicable law rule for cultural objects is incorporated in the draft regulation to help strengthen the existing international protection of such property, including, in particular, the protection that is conferred by way of two major, multilateral treaties, namely, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,[4] and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.[5] The 1970 Convention imposes duties only upon States party to it, and the recovery of cultural property is dependent upon State intervention; the former possessor of stolen cultural property (i.e. the victim of a theft) has no direct, personal right of action. The 1995 UNIDROIT Convention was a specific attempt to deal with the private law aspects of the illicit trade in cultural objects. However, from an applicable law perspective,

[3] See Kieninger, European rules on the law applicable to third-party effects of assignments: a never-ending story? *Uniform Law Review* 24 (2019) 633-648.
[4] As of 29 August 2025, the 1970 Convention has been ratified by 148 states (<https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural?hub=416#item-2>).
[5] As of 29 August 2025, the 1995 Convention has been ratified by 56 states (<https://www.unidroit.org/instruments/cultural-property/1995-convention/status/>).

there are defects within the 1995 Convention. Article 3(1), for example,[6] is private international law-blind, and it is unclear how the Convention rules should fit with a Contracting State's private international law rules. The draft regulation, in providing a uniform applicable law rule, seeks to complement and strengthen the existing international protection of cultural objects. A special choice of law rule for cultural objects will complement Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast),[7] which does not itself apply to the question of ownership,[8] and which is without prejudice to any civil (or criminal) proceedings that may be brought, under the national laws of the Member States, by the requesting Member State and/or the owner of a cultural object that has been stolen.[9] Moreover, a special choice of law rule will complement the rule of special jurisdiction in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), article 7(4), pertaining to civil claims for the recovery, based on ownership, of a cultural object.

There is no universally accepted definition of the type or class of property with which this area of law (cultural objects/cultural property) is concerned. Special rules have been devised within numerous treaties and legislation to deal with property having so-called 'cultural' characteristics, i.e. broadly speaking, attributes of an archaeological, historical, literary, artistic, scientific, spiritual, or other cultural significance, but uniform terminology is lacking. Each instrument sets its own parameters.

The definition adopted in the draft regulation is a modified version of the definition of 'cultural object' contained in article 2(1)[10] of Directive 2014/60/EU. Art 2(l) of the draft regulation, however, expressly limits the definition of 'cultural object' to 'tangible' objects, so as clearly to reflect the subject matter scope of the draft regulation. Moreover, art 2(l) refers to the classification/definition of an object by "a State", rather than by "a Member State", to reflect the principle of universality that is embodied in the regulation. Further, to qualify as a 'cultural object' for the purpose of Directive 2014/60/EU, the object in question must be "classified or defined by a Member State, before or after is unlawful removal from the territory of that Member State" as being among the relevant national treasures. The draft regulation echoes this approach by incorporating a requirement for state designation of the property as a 'cultural object'.

The last clause of art 2(l) ("or forming an integral part of public collections or inventories of ecclesiastical institutions") reflects the wording of recital (4) of Directive 2014/60/EU.[11]

[6] "(1) The possessor of a cultural object which has been stolen shall return it."
[7] OJ L 159, 28.5.2014, pp. 1–10.
[8] Art 13 merely specifies that, "Ownership of the cultural object after return shall be governed by the law of the requesting Member State." By art 2(3), "'requesting Member State' means the Member State from whose territory the cultural object has been unlawfully removed; …". It is not clear whether 'law' is to be construed narrowly, or 'in the round', i.e. exclusive or inclusive of the requesting Member State's rules of private international law.
[9] Directive 2014/60/EU, art 16.
[10] "(1) 'cultural object' means an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 TFEU; …".
[11] "(4) Directive 93/7/EEC introduced arrangements enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of Article 36 TFEU, which fall within the common categories of cultural objects referred to in the Annex to that Directive, and which have been removed from their territory in breach of the national measures or of Council Regulation (EC) No 116/2009. That

The definition of 'public collections' is a modified version of the definition of 'public collections' contained in article 2(8) of Directive 2014/60/EU, reflecting the principle of universality that is embodied in the draft regulation.

Notes:

On (f), (g) and (h)

- The definitions of these three categories of means of transport are intentionally broad to minimise qualification issues (i.e., 'borderline' cases). The terms 'watercraft' and 'aircraft' are wider than concepts like 'ship'[12], 'vessel'[13], and 'aeroplane'[14], which are commonly used in international conventions and/or national choice-of-law rules of Member States. Because of these broadly defined concepts, several categories of means of transport fall under the scope of the special rule on means of transport (Article 10) that might otherwise be excluded if the rule's scope were defined using narrower concepts. For instance, submarines and hovercraft are traditionally not considered 'ships', but due to the broad definition of 'watercraft', they are included under the special rule. This inclusion is particularly beneficial given their ability to navigate frequently in different territorial waters and international waters (see in this regard the *rationale* for the special rule on means of transport in the commentary to that rule (Article 10)).
- Because the definitions are broadly defined, they encompass various small/hobby means of transport (e.g., rowing boats) that — in essence — often do not require a special rule (see the *rationale* for the special rule on means of transport in the commentary to that rule (Article 10)), as they typically remain within the same State. In practice, the applicable law for property rights in these means of transport will be the same as it would be if they were not covered by the special rule on means of transport, thereby falling under the general *lex situs* rule (Article 4). For example, a rowing boat registered in Belgium and primarily used on Belgian rivers for hobby purposes would also be governed by Belgian law if it were excluded from the special rule, resulting in the application of the general *lex situs*. Nonetheless, if these small/hobby means of transport occasionally cross national borders, they benefit from the stable applicable law regime provided by the special rule, provided they are subject to registration (see on this requirement Article 10 and its commentary).
- The definition for watercraft does not require any propulsive capability, which means it also includes vehicles such as barges that can be towed by tugboats.
- The definition for aircraft encompasses, in addition to the traditional 'aeroplane', many vehicles such as helicopters and hot-air balloons. The phrase 'fly in the atmosphere' in the

Directive also covered cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions which did not fall within those common categories."

[12] For an international convention that uses the term 'ship', see, e.g., the UN Convention on Conditions for Registration of Ships of 7 February 1986 (UN Convention on Conditions for Registration of Ships). Examples of Member States that have integrated the term into their national choice-of-law rules: Bulgaria (Art. 68 Private International Law Code) and Poland (Art. 42 Act on Private International Law), for which a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*

[13] Two international conventions that use the term 'vessel' are the UN International Convention on Maritime Liens and Mortgages of 6 May 1993 (UN International Convention on Maritime Liens and Mortgages) and the UN Convention on the registration of inland navigation vessels of 25 January 1965. Examples of Member States that have integrated the term into their national choice-of-law rules: Czechia (§ 69(2) Act on Private International Law), Hungary (Section 42(1) Act on private international law), the Netherlands (Art. 127(2) Book 10 Civil Code), Spain (Art. 10(2) Civil Code), for which a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*

[14] See, e.g., the English translation of the Czech choice-of-law rule for means of transport (§ 69(2) Act on Private International Law) available on obcanskyzakonik.justice.cz.

definition ensures that space rockets and similar assets intended to move beyond the atmosphere are excluded.
- The definition of rail vehicles avoids references to ‘wheels’, vehicles ‘on’ tracks, and similar terms, in order to include vehicles that use more modern, alternative, technologies, such as magnetic levitation. It also encompasses vehicles *with* and *without* traction, ensuring that all components of, e.g., a train (including locomotives, carriages and wagons), are covered by the definition.

<u>On (l) and (m)</u>
The term ‘cultural property’ is used in, e.g., the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (adopted under the auspices of UNESCO), and its accompanying protocols; and in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

By contrast, the term ‘cultural objects’ is used in, e.g., the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. When UNESCO and UNIDROIT collaborated on the publication, in 2011, of Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects, the term ‘cultural objects’ was preferred. The term ‘cultural objects’ is used in European legislation: e.g. in Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State; Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997 amending the Annex to Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State; Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 amending Council Directive 93/7/EEC; Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast); and in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (article 7(4)).

The draft regulation uses the term ‘cultural objects’, being the preferred, more commonly used term in European legislation.

Article 3

Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Comments
The draft regulation adopts the principle of universal application which is embodied in all EU regulations in matters of choice of law. However, as an exception, the limited right to choose the applicable law under Art. 7 (2) is restricted to immovables situated within the EU.

Notes

The rule is identical to Art. 2 Rome I Regulation and Art. 3 Rome II Regulation.

CHAPTER 2 UNIFORM RULES

Article 4

General Rule

(1) Unless otherwise provided for in this Regulation, the law applicable to a property right in an asset shall be the law of the State where the asset is situated at the time when the property right is created or acquired.

(2) When determining the effectiveness of the creation or acquisition of a property right in an asset that, prior to the time of creation or acquisition, was situated in another State, account shall be taken of acts and formalities performed or satisfied while the asset was situated in that other State.

Comments:

Section (1)

Art. 4 (1) takes the traditional *lex situs* rule as the general principle.[15] It applies where no other specific rule, set out elsewhere in the proposal, is applicable. Such specific rules are contained in Art. 6 (security interests registered at the COMI of the grantor); Art. 7 (immoveable property); Art. 8 (assets in transit), Art. 10 (means of transport); Art. 12 (motor vehicles) and Art. 13 (cultural objects). Further specific rules deal with the situation where the situs of an asset happens to be in a State's exclusive economic zone or on the continental shelf (Art. 11). Moreover, Art 5 elaborates special rules for assets which have been moved to another State.

In addition to the 'special' choice of law rules set out in the draft regulation, including in particular the rules in article 13 concerning cultural objects (applicable to cultural objects which have been stolen or unlawfully removed from the territory of a State), the Working Group considered the possibility of drafting a special choice of law rule to deal with 'stolen objects', ie covering stolen 'non-cultural' objects. The decision was taken, however, not to incorporate such a rule, but rather to apply to stolen 'non-cultural' objects the rules otherwise applicable under the draft regulation, most notably those set out in articles 4 (General rule) and 5 (*Conflit mobile*). The common view was that there is no clear justification for applying a special rule to stolen 'non-cultural' objects. Unlike the public interest in the protection of cultural property, and the associated EU and international legislative schemes that exist to protect cultural objects/cultural property, there is no distinct public interest in the special protection of 'non-cultural' objects. 'Non-cultural' objects typically lack the distinctive or unique features that imbue cultural objects and may not be associated with the high monetary value that typically attaches to cultural objects. Accordingly, as regards stolen 'non-cultural' objects, the Working Group did not consider there to be a strong reason to disapply the general rules in the draft regulation, though noted that the special rules contained in article 12 (Property rights in motor vehicles) would apply to stolen motor vehicles. Application of the general rules reflects the position that pertains in most national systems of private international law.

[15] See also GEDIP draft Paris 2024 (https://gedip-egpil.eu/en/documents/), Article 4. General rule: The proprietary rights in an asset are governed by the law of the State within the territory of which the asset is located.

In accordance with domestic legislation in the Member States (see below, notes), case law[16] and the predominant opinion in academic writing, this proposal rejects freedom of choice of law as a general principle for property law matters.[17] However, in two very restricted areas choice of law is possible: see Art. 8 (choice of law of place of dispatch instead of place of destination for assets in transit) and Art. 7 (2) (choice of law for the content of a mortgage).

According to Art. 4 (1), the situs must be determined at the time at which the property right in question has been created or acquired. This may seem to be a circular rule; however, similar rules exist, for example, with respect to the law applicable to choice of law clauses under Art. 10 (1) Rome I Regulation.

<u>Section (2)</u>
Section (2) contemplates the situation where, according to the governing law, the creation or acquisition of a property right in an asset requires more than one step. This is of no concern as long as, under the governing law, completion of the first step does not give rise to a property right. Yet, depending on the respective substantive law, completion of one step may already give rise to a property right under the old *lex situs*, but a more comprehensive right might be acquired under the law at the final situs. This situation cannot be solved by Art. 4 (1) alone. Such a situation came before the German Supreme Court in the famous *Strickmaschinenfall*, where assets were sold under an orally concluded retention of title while the assets were still in Italy, and were later brought to Germany.[18] Under Italian law, the retention of title was required to be in writing and contain a certain date ("*data certa*") in order to be opposable against third parties. Consequently, under the orally concluded clause, the seller retained title only in relation to the buyer. By contrast, under German law, no such restriction exists and the retained ownership would have also been effective against third creditors of the buyer. Upon change of the situs from Italy to Germany, the old right (a mere relative retention of title under Italian law) could have been transposed into German law, but this was not regarded as a possible solution because, under the doctrine of transposition, such transposition could not accord to the secured party greater or stronger rights than were acquired formerly. The BGH solved the case by saying that what the parties intended was a security right (retention of title which was opposable against third parties) under the law of the new situs (German law). This foundation was generally considered unsatisfactory and led to the introduction of Art. 43 (3) EGBGB, which is mirrored in this proposal. According to this rule, the acquisition of the real right (ROT as an opposable security right of the seller) is governed by German law as the *lex situs* when the acquisition was completed. The oral agreement which took place while the assets were in Italy is taken into account under the governing law, i.e. German law, and results in a retained title that is opposable against third parties.

Notes:
<u>Section (1)</u>
The *lex situs* rule is recognized in all EU Member States and in many third States, see the following references:
- Austria: § 31(1) PILA.

[16] BGH 10.6.2009, VIII ZR 107/07, NJW 2009, p. 2824; Court of Appeal Antwerp 1 April 2025, *Tijdschrift voor Notarissen* 2025, afl. 9, 646-653;
[17] For a discussion of (limited or unlimited) freedom of choice of law in property law see Westrik/van der Weide (eds), Party Autonomy in International Property Law, 2011; *Kieninger*, Rechtswahlfreiheit im Sachenrecht?, Festschrift Martiny, 2014, pp. 391 et seq.
[18] *BGH* 2.2.1966, BGHZ 45, 95; see also *Ulrich Drobnig*, Eigentumsvorbehalte bei Importlieferungen nach Deutschland, RabelsZ 32 (1968) 450.

- Belgium: Article 87(1) PILA.
- Bulgaria: Article 64(1) PILA.
- China: Article 36 (immovables) and Article 37 (movables) Law of the People's Republic of China on the Application of Law to Civil Relations with Foreign Elements of 28 October 2010.
- Czech Republic: § 69(1) PILA.
- France: Article 3(2) Code Civil (immovables) and Cass Civ 3. 2. 2010 Nr 121 [08-19.293] JDI 2010, 1272 (movables)
- Germany: Article 43(1) EGBGB.
- Greece: Article 27 Cicil Code.
- Hungary: § 21(1) PILA.
- Italy: Article 51(1) PILA.
- Japan: Article 13(1) PILA.
- Latvia: Article 18(1) Civil Code.
- Lithuania: Article 1.48(1) Civil Code.
- Luxemburg: See France.
- Netherlands: Article 127(1) Burgerlijk Wetboek.
- Poland: Article 41(1) PILA.
- Portugal: Article 46(1) Código Civil.
- Romania: Article 2.613(1) Civil Code.
- Russia: Article 1205 Civil Code.
- Slovakia: § 5 PILA.
- Slovenia: Article 18(1) PILA.
- Spain: Article 10(1) Código Civil.
- Switzerland: Article 99 (immovables) and Article 100 (movables) PILA.
- Turkey: Article 21(1) PILA.
- United Kingdom: Winkworth v Christie, Manson & Woods Ltd [1980] Ch. 496.

<u>Section (2)</u>
Apart from the German PIL Act, Art. 43 (3) the same rule can be found in Art. 8 (5) of the 2024 GEDIP Draft.

Article 5

Conflit mobile

(1) If an asset is moved to another State (‘the new *situs*’), the law designated by Article 4 (‘the former *lex situs*’) shall continue to apply to the requirements for the existence of a property right therein, its content, and the exercise thereof.

(2) If, however, by the law of the new situs (‘the new *lex situs*’), another property right has been created or acquired, or a priority conflict has arisen with respect to the asset, the content and exercise thereof, the publicity requirements for the continuous existence or third-party effect of the property right created or acquired under the former *lex situs*, and its ranking, shall be governed by the new *lex situs*. Such application of the new *lex situs* shall

preserve a property right that has been created or acquired in accordance with article 4 or 6 unless to do so would violate fundamental principles of property law of the new *lex situs* other than the principle of *numerus clausus* of property rights.

A priority conflict is a competition between the holder of a property right in an asset and another party asserting rights in that asset, including
(i) any secured creditor of the grantor;
(ii) any creditor of the grantor levying attachment against the asset; and
(iii) the community of creditors or the insolvency representative in insolvency proceedings opened in the new *situs* in respect of the grantor.

Comments:
The rule deals with the well-known problem of "mobile conflict" which arises when an asset, which is the subject of a property right created while the asset was in state A (old *lex situs*), is brought to State B. Yet, compared to many Member States' current law, Art. 5 has a more limited scope of application since Art. 6 makes it possible for Member States to enable commercial actors to choose the law of the COMI of the debtor as the governing law for security rights. Additionally, motor vehicles are subjected to a special rule, i.e. the *lex registrationis* (see Art. 12).

The following questions arise when the *lex situs* changes:

(i) Does the mere change of the location of the asset give rise to a change of the applicable law? Or does the applicable law only change upon the occurrence of a "supervening event"? And if so, how is such an event to be defined?

(ii) If the applicable law changes, what happens to property rights that have been created under the former *lex situs*?
This question has a theoretical side: does the new *lex situs* have to translate or transpose the existing right into one known to the new *lex situs*? Or can it apply the new *lex situs* and substitute any rights or requirements under the new *lex situs* for rights created under the old *lex situs*?

(iii) More importantly, the new *lex situs* may differ from the old one to such an extent that a transposition or substitution or other continued application of the old *lex situs* runs contrary to rules or principles of property law under the new *lex situs*. This may give rise to a discontinuance of property rights after a change of the *situs*. In practice, the most important challenges are the principle of *numerus clausus* of property rights and the principle of publicity either by dispossession or registration.

Ad (i): What triggers a change of the applicable law?
As to the first question, under Art. 5, the applicable law does not change while the asset is situated at the new situs, so long as there is no "supervening event". It follows from paragraph (2), that such "supervening event" is either the creation of another property right (e.g. transfer of ownership, or the creation of a limited real right such as a usufruct, a charge or mortgage, commingling, accession etc.), or the creation of a priority conflict, the latter being defined in paragraph (2). The creation of a priority conflict is distinguished from the creation or acquisition of a property right because the former does not necessarily entail such creation or acquisition. For example, general creditors of an insolvent debtor do not have a property right in the estate of the debtor, but the opening of insolvency proceedings creates a priority conflict between them and any holders of property rights in assets that belong to the estate. The definition of

priority conflict uses the words "community of creditors or the insolvency representative in insolvency" because in some jurisdictions the question whether a real right is effective in the debtor's or grantor's insolvency is coined as a priority conflict between the individual (secured creditor) and the general unsecured creditors of the insolvent debtor ("community of creditors"; *masse des créanciers*).

Ad (ii): Theoretical approach to mobile conflict
The rule abstains from embracing any "theoretical" approach for the solution of mobile conflicts such as transposition, recognition, adaptation or substitution and instead uses the neutral term of "application".

Ad (iii): Practical approach to mobile conflict
Under paragraph (2), the removal of the asset to a new situs, together with the occurrence of a "supervening event", changes the applicable law in most, but not all respects: the question whether the right has been created under the old *lex situs* continues to be governed by that law. However, its content and exercise as well as any publicity requirements which the new *lex situs* would demand for the continuous existence or third-party effect of a similar property right (such as registration or dispossession in case of security rights), are governed by the new *lex situs*, albeit with important restrictions: First, according to the second sentence of paragraph 2, the new *lex situs* cannot invoke the principle of *numerus clausus* to disregard the formerly created property right altogether. In other words, a refusal to preserve such a property right cannot be based on the mere fact that the type of the right is unknown to property law of the new *lex situs*, or not part of its 'closed system' of property rights. Secondly, the new *lex situs* can only invoke "fundamental principles of property law" in order to defeat the right created under the old *lex situs*.

Since this is a proposal for a European Regulation, ultimately, it will be for the CJEU to control what such a fundamental principle may be and whether a concrete national rule complies with such standards for a fundamental principle. Such standards will have to be defined by balancing the interests of States to maintain their principles of property law against the principles of the Common Market, especially the free movement of goods and services. Important factors will be suitability and proportionality of domestic rules.

If, for example, the new *lex situs* demands that a security right must be entered in a tax register which is not publicly searchable, it will be difficult to maintain that such a provision reflects the principle of publicity as a Member State's fundamental principle of property law. Such a registration requirement could not, therefore, be invoked in connection with the principle of publicity to disregard an unregistered security right that was created under a former *lex situs*. Likewise, if the *lex situs* allows for a simple retention of title to be third-party effective without registration, it might be difficult to maintain that security rights without dispossession generally violate that State's fundamental principles of property law.[19] Therefore, the fact that

[19] In this sense *obiter* OGH 3 Ob 249/18s, v. 23.01.2019 – IPRax 2019, 548; cf. *Faber*, Foreign Properietary Security Rights Failing to Comply with National Publicity Standards to Be Accepted?, Yearbook of Private International Law, vol. 21 (2019/2020), 514 ff. For a general treatment of the relationship between the market freedoms and the *lex situs* rule in mobile conflict situations see *Kieninger*, Mobiliarsicherheiten im Europäischen Binnenmarkt, 1996, p. 152 et seq.; Jürgen Basedow, RabelsZ 49 (1995) 1, 41 ff.; *von Wilmowsky*, Europäisches Kreditsicherungsrecht (1996); *Wulf-Henning Roth*, Secured Credit and the Internal Market: The Fundamental Freedoms and the EU's Mandate for Legislation, in: Horst Eidenmüller/Eva-Maria Kieninger (Hg.), The Future of Secured Credit in Europe (2008) S. 36; *Jacobien W. Rutgers*, International Reservation of Title Clauses (1999) S. 167 ff.; *Thilo Rott*, Vereinheitlichung des Rechts der Mobiliarsicherheiten (2000) 40 ff.; *Anne Röthel*, Internationales Sachenrecht im Binnenmarkt, JZ 2003, 1027.

international property law would be regulated on a European, rather than on a national, level might significantly contribute to solving the problem of mobile conflict.

Notes:
Some, but not all national PIL codifications of EU Member states have explicit rules for mobile conflict.

Mostly, they start from the assumption that a property right that has been acquired under a former *lex situs* should continue to exist, but that its exercise is governed or at least limited by the present new *lex situs*, see for example, Article 10:130 B.W.: "Real property rights in a thing that have been acquired or established in conformity with the present Title (Title 10.10), remain vested in that thing, also when that thing is moved to another State. These real property rights cannot be exercised in a way which is incompatible with the law of the State on the territory of which that thing finds itself at the moment that these rights are exercised."

For German PIL Art. 43 (2) EGBGB/Introductory Act to the Civil Code follows the same principle: "If an asset, to which property rights attach, is moved to another country, these rights cannot be exercised in contradiction to the legal order of that country." Likewise, Art. 66 Bulgarian PILA states: "Upon change of the place in which the corporeal object is situated, the rights acquired pursuant to the law of the State in which the corporeal object was situated may not be exercised to the prejudice of the law of the State in which the said object is newly situated." Section 41 Hungarian PILA states the same principle in a positive way: "If, following a change in the law relating to the in-rem right, a movable property is transferred permanently to the territory of another state, the previously acquired rights can be recognised in accordance with the law of the new location of the thing." The second limb of the rule is also explicitely stated in § 18(2) Estonian PILA: "A right in rem shall not be exercised in conflict with the essential principles of the law of the state of location of the thing."

Art. 100 Swiss PILA does not explicitly deal with mobile conflict but again, draws a distinction between existence on one hand and exercise and content of the property right on the other hand, and submits the latter to the (present) *lex situs*: (1) The acquisition and loss of personal property rights are governed by the law of the place where the personal property is located at the time of the facts on which the acquisition or loss is based. (2) The substance and exercise of personal property rights are governed by the law of the place where the personal property is located."

Portuguese case law likewise distinguishes between the validity of the constitution or transferral, and the content of the right *in rem*. On the former, the previous *lex rei sitae* applies, on the latter, including the opposability against third parties, the new *lex rei sitae* applies.[20]

This distinction between existence (= former *lex situs*) and exercise/content (= new *lex situs*) is mirrored in the GEDIP draft:

Article 8. Protection of acquired rights
1. When there is a change of the applicable law in accordance with this Regulation and a proprietary right has been acquired under the former law, this law continues to govern the existence of such a right.
2. The new law governs the extent and the exercise of that proprietary right, and the priority between that proprietary right and a competing proprietary right created under

[20] Supreme Court of Justice of 7 March 2007, proc. n.º 487/2007.

the new law.

3. […]
4. Where a person invokes a proprietary right to which he or she is entitled under the law referred to in paragraph 1 and the law referred to in paragraph 2 does not know the proprietary right in question, that right shall, if necessary and to the extent possible, be transposed to the closest equivalent proprietary right under the law referred to in paragraph 2, taking into account the aims and the interests pursued by the specific right and the effects attached to it.
5. […]

The present draft tries to go beyond the GEDIP draft in facilitating cross-border transactions and the "recognition" of foreign property rights by stating that, as a matter of principle, not only the existence, but also – as far as possible – the content and exercise of the property right remain to be determined by the former *lex situs*, see Art. 5 (1). Art. 5 (2) allows application of the new *lex situs* to the content and exercise, but only by way of exception: first, the new *lex situs* is only applied after a supervening event took place at the new situs, and second, the new *lex situs* "shall preserve a property right that has been created or acquired in accordance with articles 4 and 6 unless to do so would violate fundamental principles of property law of the new *lex situs* other than the principle of *numerus clausus* of property rights."

Article 6

Security interest registered in the State of the centre of main interests of the debtor

(1) This Article applies to a security interest in any asset owned by a company or other legal person, or association of natural or legal persons, except immovable property, watercraft, aircraft, rail vehicles and motor vehicles registered in the meaning of Article 12(2).

(2) Notwithstanding Articles 5, 16 [Public policy] and 17 [Overriding mandatory provisions], the law governing the acquisition, creation, content and third party effects of a security interest registered in a security interest register of the State where the grantor has its centre of main interests ('COMI') shall be the law of that State.

Where, however, the COMI of a grantor has been moved to another State, or where a court has found that the COMI of a grantor was situated in a State other than the State in which it was presumed to be situated, the law of the State where the security interest was registered in a security interest register before the move of the COMI or the finding that the COMI was situated in another State shall continue to apply for a period of three months. If, within that period, the security interest is not registered in the State to which the COMI has been moved or is found to be, the law governing the security interest shall be determined pursuant to Article 4.

(3) Where another security interest is created or acquired in respect of an asset that is already subject to a security interest registered pursuant to paragraph (2), the law designated under paragraph (2) shall determine the order of ranking of the security interests.

Any effect on the security interest of events such as an outright sale, commingling, processing, incorporation, association, accession, or the creation of a right of use in, or enjoyment of, the asset, shall be governed by the law of the situs at the time of such event.

(4) Where a security interest is registered in a security interest register after the time of its creation, the law of the COMI of the grantor shall govern the content and third party effects of that right from the date of registration.

(5) In relation to the manner of enforcement and the steps to be taken by a creditor in the event of the debtor`s default, regard shall be had to the law of the country in which enforcement takes place.

Comments:
In order to resolve at least partly the problem of the recognition of foreign security interests, Article 6 establishes a specific, highly ambitious regime, for legal persons, and retains a more conservative regime for other parties (Article 5). The innovation is to provide for the exclusive application of the law of the COMI to security interests granted by legal persons provided that the relevant interest was published in a register maintained in the State of the COMI. After the entry into force of the Regulation, all EU economic actors should know that legal persons are able to register any interest that they grant, and that this would result in full extra-territorial application (as the case may be) of the law of the State of the COMI.

From the perspective of the Regulation, the only effect of the designated registers would be to trigger the application of Article 6. The registers would not change the local law on third party effect of property rights. But as the benefit of Article 6 would depend on registration in the relevant registers, this would mean that even security interests which have third party effect without registration would need to be registered in order to benefit from Article 6. Failing registration, they would fall within the scope of Article 5.

The EU could and should decide to extend the benefit of Article 6 to debtors established in third States where equivalent registers exist.

Article 6(1) limits the scope of the rule to security interests, as defined in Article 2, and excludes assets for which the application of the rule of the place of registration of the assets is widely accepted and often mandated by widely ratified international conventions (including cars, for which a special rule providing for the application of the law of the place of registration is proposed). Article 6(1) further limits the scope to corporate grantors, defined broadly by reference to the definition in Article 19 of the Rome I Regulation to include business entities which do not have legal personality.

The principle of the rule is to provide for the application of the law of the COMI of the grantor of the security interest.
The fundamental requirement, which follows from Article 6(2), is that the relevant right was registered in a security register in the meaning of the Regulation at the place of COMI to ensure information and protection of third parties.

In case of change of COMI, the law of the former COMI will continue to apply for a period of three months, which corresponds to the presumption provided in Article 3 of the Insolvency Regulation. During that time, the security interest should be re-registered in the register at the place of the new COMI. Such registration would trigger the application of the law of the new COMI pursuant to paragraph 2. In the absence of such re-registration, Article 6 ceases to apply, and the default rule in Art 4 steps in. The same principle applies if a court finds that the presumption of location of the COMI has been rebutted.

Article 6(3) addresses the issue of the creation or acquisition of competing property rights over the asset subject to a security interest constituted under paragraph 2. In this respect, it is proposed to distinguish between two types of property rights.

If the competing property right is a security interest created on the territory of another State and thus, in principle, pursuant to the law of that other State, it is submitted that that the law of the COMI should resolve that conflict and establish which security interest ranks over the other and prevails. Any person dealing with the debtor should be aware that his assets might be subject to security interests, and thus ready to accept that such security interest might take precedence over the new security interest if so provided by the law of COMI. The application of this rule will align with the application of the *lex concursus*, which governs priority conflicts in case of insolvency.

Example: company A grants and registers a security interest in an excavator pursuant to the law of COMI. The excavator is used in another Member State where it is brought to a garage for repair. The law of the situs grants a statutory interest over the asset to the garage for payment of the repair services. The priority conflict between the security interest granted by company A under the law of COMI and the subsequent statutory interest arising under the *lex situs* is governed by the law of COMI. For the purpose of resolving the priority conflict, the statutory interest must be adapted and characterized under the law of COMI.

In contrast, if the competing property right is a right of ownership over the asset, or a right to enjoy or use the asset, it is submitted that it cannot be expected that the owner or beneficiary of the right to enjoy or use the asset would verify whether a security interest was registered in the State of COMI. As a result, it is proposed that the operation of general rules of property law which might affect the asset such as commingling, accession or incorporation in an immoveable remain governed by the *lex situs* as determined by Article 4 and are thus outside the scope of Article 6. Likewise, the effect of an outright sale of the asset on the security interest and the protection of good faith acquirers remain governed by the *lex situs* as determined by Article 4. However, the issue of whether the security interest provides by operation of law a security interest in the claim arising from the sale to a third party [and the proceeds of payment of such claim] fall within the scope of Article 6.

Example: company A grants and registers a security interest in an excavator to a financial institution pursuant to the law of COMI. The excavator is used in another Member State where it is sold to a local company B at the end of the construction. The effect of the sale on the security interest constituted under the law of COMI and the conditions under which company B might be protected as a good faith acquirer are governed by the law of the situs. The extent to which the financial institution has a security interest in the claim for the price of the asset is governed by the law of COMI.

Article 6(4) addresses the issue of the timing of registration. If registration takes place after the creation of the security interest, the security interest was necessarily governed, until registration, by the law determined pursuant to Article 4. Registration and benefit from the rule in Art 6 remain possible, but the legal consequence will only be application of the law of COMI to the content and third party effect of the right from the time of registration. The creation of the right remains governed by the law determined pursuant to Article 4.

Article 6(5) reserves the necessary room to the *lex rei sitae* with respect to the manner of enforcement. It is modelled on Article 11 of the Rome I Regulation.

Article 7
Immoveable Property

(1) Property rights in an asset that is classified as immovable under the law of the State where the asset is situated are governed by that law.
(2) Regarding security rights listed in Annex I on immovables situated within a Member State of the EU, the party or parties establishing the security right in question may choose the law of another Member State to govern its content, within the meaning of Article 14 (d), including the relationship with the underlying debt. The law of the country where the asset is situated shall govern all other matters.
(3) Where all other elements relevant to the situation at the time of the choice of law are located in a country other than the country whose law has been chosen, the choice of law referred to in paragraph (2) is not effective.
(4) Where a security right is created by a natural person, the consumer, for a purpose which can be regarded as being outside his trade or profession, choice of law is limited to the law of the Member State in which he is habitually resident or the law of the Member State where the holder of the security right is habitually resident.
(5) The habitual residence of the holder of the security is the place in which the centre of interests of his family and social life is located.
(6) The law chosen in accordance with paragraph (2) or (4) above shall not apply, however, to property rights in movable assets which are associated with, or accessory to, immovables, or are deemed to be immovable.
(7) If a law is chosen in accordance with paragraph (2) or (4) above, the law that has been chosen and the security right selected in accordance with that law as set out in Annex I shall be registered in the land registry of the place where the asset is situated. In the absence of such registration, the choice of law shall not be effective.

Comments:
<u>Paragraph (1)</u>
This is a rule on immovable property (as classified by the *lex situs*. It provides for the application of the *lex rei sitae*, since its universal application demands no modification. It is justifiable on grounds of sovereignty, public international law principles, effectiveness, governmental policies, third party protection and international consistency.

The classification of an asset as *immovable* is entrusted to the *lex situs* since an autonomous definition would risk disharmony with the categorisation under the *lex situs*, which would render ineffective the specific rules of the Regulation on immovables (article 7(2) – (7)). Although this rule already follows from article 14(a) and article 4(1), it is expressly stated in paragraph (1), clarifying that the law chosen under paragraphs (2) and (4) does not apply to the classification of an asset as immovable.

Paragraph (2)
Regarding non-possessory security rights that exist only if inscribed in a Land Registry (hypothec; mortgage; Grundschuld, etc.), the Regulation creates the possibility of choosing the law of another Member State to regulate the prerogatives of the holder of such rights and the relationship with the secured credit.
Detachment of the content of the security right from the *lex rei sitae* has been extensively researched in legal literature and in several investigative projects, and is specifically analysed in the European Commission Green Paper on Mortgage Credit (COM [2005] 327 final) as a

tool to overcome the non-existence of a European Mortgage Market.
There is consensus that one of the major reasons for the absence of a European mortgage credit market is the mandatory application of the *lex situs*, linked to the significant disparity that exists between national mortgage laws and the rigidity of their regulation, which leads to very different levels of creditor protection (European Commission White Book on the integration of mortgage markets 2007 (COM [2007] 807 final). Furthermore, most national laws treat a mortgage as accessory to a specific debt, which hinders the transferability of the security right (since it can only be transferred together with the debt), and do not allow re-use of the rank (which is why the suggestions of creating a *Euromortgage* are all inspired by *non-accessory* security rights).
Instead of proposing the introduction of a supranational security right (*Euromortgage*) or unification of the substantive laws of Member States, the Regulation addresses the issue less invasively, namely, by allowing choice of the law of another Member State to govern the content of the security right.

With regard to third party protection, the *situs* rule is not compulsory, because such security rights do not grant any physical control over the asset and are publicised exclusively by a Land Registry, which is an "intelligent" means of publicity, since it may publicise the law applicable to the security rights and inform all interested parties of its main features by means of a uniform European certificate publicised in the Land Registry.

According to article 7(7), the choice of law shall be publicised in a Uniform European Certificate (drawn in Annex I) that will publish the relevant aspects: autonomous or accessory nature; ability to re-use with the original priority; the possibility of contractual adjustments of the prerogatives granted to the holder; existence of *lex commissoria*; and divisibility.
All other matters shall be governed by the *lex situs* (article 7(2), final part).

Choice of law is an option (the *lex situs* applies in the absence of choice) and is restricted to the law of another Member State. This will ensure that the Land Registry is a condition for the existence of the security right (i); will allow European harmonisation, if necessary (ii); and will ease the application of foreign law (iii) — publicised in the Uniform European Certificate of Annex I.

The possibility of *dépeçage* of the law applicable to the mortgage leads to a loss of unity of regulation of the property right.
The hypothec has specific features that prevent many regulatory conflicts: the fact that the rights conferred on the holder, according to all Member States' laws, materialise at the moment of enforcement makes the mortgage immune to the rules of the *lex situs* regarding the use and enjoyment of the property: the mortgagee will always be able to enforce it, exercising the powers conferred by the chosen law, regardless of who the owners or holders of other rights may be. Herein lies the very essence of the mortgage.
Moreover, the problem of demarcation of scope between the *lex rei sitae* and the *chosen law* is not entirely new in international mortgage law: the current conflict of laws regime may already raise the question of the demarcation between the scope of the *lex contractus* (applicable to the contract creating the mortgage) and that of the *lex situs*. The rule of party autonomy puts the boundary between the two legal systems further *within* the security right, leaving to the chosen law not only the obligations, but also the powers conferred on a creditor.
Finally, the loss of unity of the property statute is counterbalanced by *a unity of status of the credit legal relationship,* since it becomes possible that *the secured obligation and the security would be subject to the same law.*

At the point of enforcement, similar to what happens with personal security rights or with security rights governed by a law other than the *lex situs* (vehicles, means of transport, etc.), the law applicable to enforcement proceedings may not be the same as the law governing the security right. At that stage, only the accessory or autonomous nature of the right, its ranking, and the prerogatives of the holder are to be governed by the chosen law.
If difficulties of characterisation should arise (there are several examples in legal literature), priority should be given to the law governing enforcement, since procedural rules come into play before the conflict of characterisation arises and take precedence over any substantive provisions that contradict them. This is the solution usually applied to personal security rights (which are subject to *professio iuris*) and to security rights over vehicles in systems that do not apply the *lex situs* to property rights.

Paragraph (3)

The elements that may establish a relevant foreign connection may differ from those typically relied upon in contract law.
As a rule, a mortgage should not be regarded as having an international character merely because the secured obligation is denominated in a foreign currency, since this factor does not reflect any multi-jurisdictional dimension in the objective elements of the legal relationship — all of which remain subject to the same law — and is therefore irrelevant to its international character. The same reasoning supports recognising an international character where the nationality of the creditor, the habitual residence or registered office of the holder, and the location of the property do not all point to the same law.

Paragraphs (4) and (5)

Where a security right is created by a consumer, the choice of law is restricted to the law of the Member State of the consumer's habitual residence or the law of the Member State where the holder of the security right is habitually resident. This limits the choice — other than the *lex situs* — to either one of the laws most closely connected with the transaction, thereby preventing banks from imposing, particularly in home credit transactions, the application of a law which has no substantial connection to the case.
The definition of 'consumer' is drawn from the Rome I Regulation, thus avoiding any inconsistency between the two instruments."

The definition of 'habitual residence' is inspired by recent ECJ jurisprudence on the concept of the habitual residence of adults (Judgments EE, IB, and MPA — Case C-80/19 EE EU:C:2020:569; Case C-289/20 IB v FA EU:C:2021:955; Case C-501/20 MP A v LCDNMT EU:C:2022:619). Although one can argue that the concept of habitual residence used in the European Succession Regulation and the Matrimonial Property Regulations is more demanding than that which is used elsewhere (in the sense that what might not suffice for succession or matrimonial property purposes would be enough to satisfy Article 6 of Rome I and Article 4 of Rome II), the only Regulation which incorporates specific recitals on the connecting factor is the European Succession Regulation (Recitals 23 and 24) and in Judgment IB (Case C-289/20 IB v FA EU:C:2021:955) the ECJ rejected the notion of concurrent habitual residences beyond the scope of the Succession Regulation, albeit emphasising that the residence of an adult is «composed of a significantly wider range of activities and diverse interests, concerning, inter alia, professional, sociocultural and financial matters in addition to private and familial matters» (Judgment EE — Case C-80/19 EE EU:C:2020:569, n.º 56).
Therefore, the definition stands on the criteria of the European Succession Regulation (family and social life), notwithstanding the possibility that courts may use other criteria to establish

the habitual residence of the holder.

Paragraph (7)
The validity of the choice of law must be assessed in accordance with Article 10, possibly taking advantage of existing cross-border conveyancing systems, which connect notaries from different countries online and provide the parties with information regarding the applicable law (e.g. EUFides, of the Council of the Notariats of the European Union; CROBECO, of the European Land Registry Association).
The duties of registrars verifying the validity of the choice of law are governed by the law of the country in which the Land Registry is situated (*auctor regit actum*).

Notes:
The possibility of choosing the law applicable to security rights on registered property rights has its source in legal scholarship[21] and exists in the International Ship Register of Madeira (Portugal), allowing choice of law for ship mortgages (article 14 of Decree-Law 96/89, altered by Law 56/2020).
The definition of habitual residence is taken from recent ECJ jurisprudence on habitual residence of adults (Judgments EE, IB, and MPA — Case C-80/19 EE EU:C:2020:569; Case C-289/20 IB v FA EU:C:2021:955; Case C-501/20 MP A v LCDNMT EU:C:2022:619).

Article 8

Assets in transit

(1) The creation or transfer of a property right in an asset in transit is governed by the law of the place of destination.
(2) By way of exception to paragraph (1) above, parties transacting in respect of a property right in an asset in transit may agree, either expressly or impliedly, at the time of the transaction, that the law of the place of dispatch shall apply.

Comments:
A separate conflict of law rule for assets in transit was considered necessary, as the situs (place where the property is located) with respect to assets which are in transit is too random and might not represent any meaningful connection with the asset. Additionally, using the connecting factor of the flag of a vessel or place of registration of an airplane was avoided in case goods are in transit in international waters or on the high seas.

For the purpose of the rule, an ‘asset in transit’ is defined in Article 2(1)(d) as an asset being transported from the territory of one state (place of dispatch) to a specified, ultimate destination on the territory of another state (place of destination). The adjective ‘ultimate’ underlines that a temporary, transitional destination is not relevant. The adjective ‘specified’ underlines that the place of destination must follow from the contract or circumstances of the transaction. The Group purposefully decided not to include within this rule assets which are not currently being

[21] D'AVOUT, LOUIS, *Sur les solutions du conflit de lois en droit des biens*, Economica, Paris, 2006; BELL, ABRAHAM / PARCHOMOVSKY, GIDEON, "Of Property and Federalism", *The Yale Law Journal*, vol. 115, 2005, pp. 72-115; RIGAUX, FRANÇOIS / FALLON, MARC, *Droit International Privé*, 3. edition, De Boeck & Larcier, Bruxelles, 2005; PATRÃO, AFONSO, *Autonomia conflitual da hipoteca e cooperação internacional: removendo os obstáculos ao mercado europeu de garantias imobiliárias,* Livros Horizonte, Lisboa, 2017; PATRÃO, AFONSO, *Hipoteca e autonomia conflitual,* Gestlegal, Coimbra, 2018.

transported, but which are destined to be transported in future. Inclusion of such assets within the rule would have distorted the goal of predictability.
The possible alternative connecting factors would have been the 'place of dispatch'. The place of destination was considered to be better as being more likely to avoiding potential problems of conflit mobile. It seems also more practical as (currently) more commonly used in the EU and beyond (for example, in Switzerland, China). It will be clarified in the recitals that the law of the place of destination will apply, if assets are transported by an independent carrier starting from the time they were handed over to the carrier. In remaining cases, this moment would have to be decided based on circumstances of a given case.
A limited party autonomy is admissible allowing parties to opt for the application of the law of the place of dispatch. The possibility of choosing the law applicable to the underlying transaction (as provided for in Swiss PILA) was purposefully excluded since, as combined with Article 3 of the Rome I Regulation, would allow for practically unlimited choice of law. The choice should follow the framework already created within Rome I Regulation, meaning that the choice might be 'made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case'.

Notes:
The table below presents a comparative overview of the existing solutions.

	No separate rule	Separate rule	*Lex loci expeditionis*	*Lex loci destinationis*	Other	Party autonomy
EU Member States						
Austria	X					
Belgium		X		X		
Bulgaria		X		X	Separate rule for luggage of passengers	
Croatia		X		X		
Cyprus	X					
Czechia		X	X			
Denmark	X					
Estonia		X		X		X (limited)
Finland	X					
France	X					
Germany	X					
Greece	X					
Hungary		X		X		
Ireland	X					
Italy		X		X		
Latvia	X					
Lithuania		X		X		X
Luxembourg	X					
Malta	X					
Netherlands		X		X		X (limited)
Poland		X	X		Escape	

					clause	
Portugal		X		X		
Romania		X	X		Separate rule for luggage of passengers	X
Slovakia		X	X			
Slovenia		X		X		
Spain		X	X			X
Sweden	X					
Others						
GEDIP		X		X		
China		X		X		X (unlimited)
Switzerland				X		X
OHADAC Model Law		X		X		
France draft PILA		X		X		
Albania		X		X		
Argentina		X			Domicile	
Bosnia and Hercegovina		X		X		
Quebec		X		X		
Japan	X					
Turkey		X		X		

In certain EU MSs, currently there is no separate rule for assets in transit. Examples include Germany and Austria.
The reasons for a separate choice of law rule for assets in transit are as follows: (1) it is not possible to assess the *situs* of an asset in transit when a legal event impacting rights *in rem* in respect thereof occurs (though this argument seems less persuasive with modern technologies like GPS); (2) There is no significant connection between the asset and *lex rei sitae*, when an asset is in transit.

Possible options for a choice of law rule pertaining to assets in transit include: (1) The law of the country of destination (This is the most common solution, and is found, for example, in Belgium, Bulgaria, Croatia, Italy, Lithuania, Portugal, Romania, Slovenia, but also in Switzerland and China, as well as in the proposal of GEDIP); (2)the law of the place of dispatch (This, much less frequent solution, is found in Poland, Slovakia, Czech Republic, and in Spain); (3) Rarely a choice of applicable law is admissible (but generally only a limited choice, as in Switzerland and Lithuania. Only the law of the country of dispatch, the law of the country of destination and the law of the country of the underlying legal act may be chosen in Switzerland and Lithuania; in Spain only the law of the country of destination may be chosen. Chinese PIL allows for an unlimited choice of law, which has been criticised. (4) A special escape clause for assets in transit is provided for in Poland, and a general escape clause is provided in Switzerland.

The definition of an 'asset in transit' can vary, as follows: (1) Assets in transit may be understood as assets relocated from one state to another (for example, Switzerland) or as assets relocated from one State to another through the territory of another state or open sea (for example, Poland); (2) GEDIP additionally defines an ‘asset to be exported’ as an asset destinated to be relocated to another State and treats it as an asset in transit. An asset to be exported isone, which has not yet been transported, but which is to be exported at some future time. The only other instrument where the notion of an asset to be exported is known is Switzerland PILA, albeit in a different context (namely Article 103 - *The reservation of ownership of movable property intended for export is governed by the law of the state of destination*).

The scope of application of a separate rule for assets in transitcan be general or limited. For example, in Switzerland the rule is limited to the *acquisition and loss, through legal transactions*. Romanian PIL provides that the rule on goods in transit does not apply to property that comprises part of the personal property of a passenger, which rather is subject to the passenger’s national law).

Recitals:

(…) Where the assets are transported by an independent carrier, they should be considered as being in transit from the time they were handed over to the carrier.

(…) The law designated by this regulation for assets in transit will determine, in cases where a document of title representing the assets has been issued, whether nevertheless, these assets can themselves be subject to independent property rights during the transit.

Article 9

Designation of the applicable law

(1) The existence and material validity of a choice of law under Article 6, 7 or 8 shall be determined by the chosen law.
(2) The choice of law shall respect the formalities that are necessary for the creation of a property right.

Comments:
The rule on substantial validity is inspired by all other European regulations establishing choice of law, and provides that the putative applicable law shall govern such matters.

The rule on formal validity aims to pair the formal requirements for choice of law with those applicable to the creation of the property right. Depending on the system governing the creation and transfer of property rights (as determined by the *lex situs*), formal requirements may be imposed either directly by the *lex situs* or by the law applicable to the form of the contract creating the property right. The rule laid down in article 9 does not resolve this issue, but has the effect that, whatever law governs the formal requirements for the creation of the property right, those same requirements shall apply also to the agreement designating the applicable law.

Article 6 is mentioned because by registering the security right, there is a true choice of law, replacing the general rule of article 4 (*lex rei sitae*) by the application of the law of the State where the grantor has its centre of main interests (COMI). Therefore, the validity of such choice follows the rules of this article.

Notes:

It is inspired in article 3 of Rome I Regulation; articles 23 and 24 of the Matrimonial Property Regulation; articles 6 and 7 of Rome III Regulation.

Article 10

Means of transport

(1) The law applicable to a property right in the following means of transport shall be:
  (a) for watercraft, the law of the State where the right of ownership in respect of the watercraft is registered;
  (b) for aircraft, the law of the State of registration; and
  (c) for rail vehicles, the law of the State in which the rail vehicle in question is registered.

(2) Registration means the administrative act of recording the means of transport in a registry under the control and management of a national, European or international authority, due to which the means of transport is allowed to operate within a certain territory.

(3) If, at the time at which the property right in the means of transport has been created or acquired, the latter is not registered within the meaning of this provision, Articles 4, 5 or 6, as appropriate, will apply.

(4) If the applicable law changes because the means of transport is registered for the first time, de-registered or re-registered in a new State, Article 5 shall apply as if the means of transport were moved to a new situs.

(5) The law designated by paragraph (1) above, shall also apply to property rights in movable assets which are, or become associated with, or accessory to, means of transport.

(6) Where, in the case set out in paragraph (1)(a), the State of registration grants greater freedom of choice of the law applicable to property rights in watercraft, advantage may be taken of that freedom.

Comments:

The general rule in Article 4, which determines the location ("situs") of an asset as the connecting factor, would yield unsatisfactory outcomes for watercraft, aircraft, and rail vehicles: (1) they are inherently designed to cross borders regularly, so applying the *lex situs* rule would inevitably result in numerous mobile conflict situations; (2) some have the capability to operate beyond the territorial jurisdiction of any State and thus cannot be located within a State's territory; (3) their significant economic value requires consistency and certainty about the law governing property rights in these assets; and (4) their precise location may sometimes be unknown for technical reasons, making the *lex situs* rule impractical if not impossible to apply. Therefore, a specific rule for these means of transport, prevailing over the general rule, was adopted.

The special rule only applies to means of transport that (1) can be categorised as one of the three types (watercraft, aircraft, rail vehicles) and (2) are 'registered'. Registration' concerns the 'administrative act' of recording the means of transport in a registry. These registers *can* but *do not need* to evidence property rights. This approach differs from the GEDIP proposal, which targets only registers that 'evidence property rights'.[22]

Paragraph (1)(a) determines that the law of the State where the right of ownership in respect of

[22] Art. 6 GEDIP proposal (see specifically footnote 11 of the proposal).

the watercraft is registered, should be used as connecting factor. In this way, it is clear which register must be taken into account in case the watercraft has been registered in multiple countries (see notes section below). Unlike watercraft, aircraft are only allowed to be registered in one State's register at a time. Therefore, paragraph (1)(b) simply refers to the law of the State of registration as the connecting factor. According to EU law, every railway vehicle used on EU territory must be registered in the European Vehicle Register[23], a register kept at EU level under the auspices of the EU Agency for Railways. Given that the registration process is handled by (the administrations of) one of the Member States where the railway vehicle will operate[24], the expression 'the State in which the rail vehicle in question is registered' in (1)(c) refers to the State that processed the registration.

Paragraphs (3), (4) and (5) correspond to those of the provision on motor vehicles (Article 12) and are to be interpreted and applied in a similar manner.

In the exceptional situation where the State of registration of a watercraft grants, in its shipping register, a freedom of choice as to the law applicable to property rights in watercraft — such as, for example, under the International Shipping Register of Madeira, which permits a choice of law governing ship mortgages (see the notes accompanying the rule on immoveable property (Article 7)) — paragraph (6) allows that freedom to be exercised.

Notes:

The table below presents a comparative overview of the existing solutions in several EU Member States.

Member State	Special rule for watercraft	Special rule for aircraft	Special rule for rail vehicles	Special rule for other means of transport
Austria	v	v	v	
Belgium	v	v	v	v
Bulgaria	v	v	v	v
Croatia	v	v	v	
Czech Republic	v	v		
Estonia	v	v	v	
France	v	v		
Germany	v	v	v	
Hungary	v	v	v	
The Netherlands	v	v		
Poland	v	v	v	
Portugal	v	v	v	v
Romania	v	v	v	v

[23] The European Vehicle Register is currently not fully operational in all Member States. As a transitional measure, Member States are allowed to keep a national vehicle register: Art. 47(1) Directive 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (hereinafter 'Directive on the interoperability of the rail system').
[24] Art. 22(2) and Art. 22(3) Directive on the interoperability of the rail system.

Slovenia	v	v	v	v
Spain	v	v	v	

- Currently, most Member States refer simply to the State (or place) of registration[25] as the connecting factor for watercraft. This approach can result in legal uncertainty, as it is not clear which country of registration is referenced when a watercraft is registered in multiple States. Multiple registrations of the same watercraft are a common international practice, especially in the context of bareboat charter agreements. In these cases, a watercraft is first registered in a State by the owner and subsequently chartered to another party, which then registers it in a different State's special register (i.e., bareboat charter register), allowing it to temporarily fly the flag and adopt the nationality of the second State.[26] The first State (where the owner registered the watercraft) generally retains authority over the registration of property rights, including mortgages or hypothecs[27], and property rights in ships are typically vested according to the law of the first registering State[28]. This clarifies why the connecting factor for watercraft was designated as 'the State where the right of ownership in respect of the watercraft is registered'. Additionally, it explains the choice of the State of 'registration' as the connecting factor, rather than the 'flag State', as is customary in some Member States.[29]
- While, in principle, all drones are included by the definition of 'aircraft', only 'certified' drones are required to be registered.[30] All other types of drones are exempt from this requirement. As a result, only 'certified' drones are covered by the special rule on means of transport.
- Among the Member States that have a special rule for rail vehicles, there is no unanimity regarding the connecting factor. Some Member States refer to the actual head office of the railroad enterprise employing the vehicles[31] or the place of business of the person operating the vehicles[32]. These connecting factors are often challenging to establish due to their complexity. Other Member States use the State of authorisation of the railway vehicle as

[25] See, e.g., the choice-of-law rules of Austria (§ 33(1) Federal Statute on Private International Law), Czechia (§ 69(2) Act on Private International Law), Estonia (§ 22(1)(2) Private International Law Act), Germany (Art. 45(1)(2) Introductory Act to the Civil Code), the Netherlands (Art. 127(2) Book 10 Civil Code), Poland (Art. 42 Act on Private International Law), Portugal (Art. 46(3) Book 1 Civil Code), for which a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*
[26] Art. 91(1) UNCLOS.
[27] Art. 16 UN International Convention on Maritime Liens and Mortgages. For an illustration within the national law of a Member State, consult Art. 84K(1) and Art. 84M of the Malta Merchant Shipping Act (accessible via parlament.mt). See also Art. 2.2.1.9(§4) and Art. 2.2.1.10(§3) Belgian Maritime Code of 8 May 2019 ('Belgisch Scheepvaartwetboek') (accessible via ejustice.just.fgov.be).
[28] Art. 1(a) UN International Convention on Maritime Liens and Mortgages.
[29] See, e.g., Bulgaria (Art. 68(1) Private International Law Code), Hungary (Section 42(1) Act on private international law), and Spain (Art. 10(2) Civil Code), for which a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*
[30] Art. 14(7) Commission implementing Regulation 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft systems.
[31] E.g., Austria: § 33(1) Federal Statute on Private International Law (a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*).
[32] E.g., Bulgaria: Art. 68 Private International Law Code (a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*).

the connecting factor.[33] The EAPIL Working Group decided to opt for the State of registration, a solution currently employed in several Member States.[34] Given that every rail vehicle operating in the EU must be registered[35] and marked with its assigned registration number[36], this connecting factor is not only stable and transparent, but also straightforward to determine.

Article 11

Assets in a State's exclusive economic zone or on its continental shelf

For assets situated in a State's exclusive economic zone or on its continental shelf, any reference in this Regulation to a State's territory shall be construed as referring to that State's exclusive economic zone or continental shelf, unless that State has adopted a norm that provides otherwise.

Comments:
Given the current uncertainty regarding the applicable law governing property rights in assets located in a State's exclusive economic zone or on its continental shelf, and in light of the increasing importance of such assets (e.g., offshore wind farms and underwater pipelines and cables), it was decided that the Regulation should provide a solution.

The assets in question typically lie *outside a State's territory* and are therefore not covered by the general rule in Article 4 (*lex rei sitae*), which applies only to assets located *within such territory*. In order to remedy this, the present specific choice of law rule provides that any reference in the Regulation to a State's territory is to be construed as referring to its exclusive economic zone or continental shelf.

As it is not uncommon for States in this context to conclude (bilateral) agreements regarding the applicable law governing property rights, for example where State A and State B agree that property rights in a pipeline traversing the continental shelf of both States shall be governed by only the law of State A, the possibility is left open for States to depart from the present choice-of-law rule by adopting a norm that provides otherwise. 'Norm' is to be understood broadly and may, for instance, comprise a provision in a treaty or in national legislation.

Notes:
- The exclusive economic zone (hereinafter 'EEZ') and the continental shelf extend beyond the territorial sea of a coastal State.[37] Therefore, they do not form part of that

[33] E.g., Estonia: § 22(1) Private International Law Act. Germany: Art. 45(1) Introductory Act to the Civil Code. A translated version in English of both choice-of-law rules is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.* However, according to Art. 21(5) Directive on the interoperability of the rail system, the authorisation of a railway vehicle can be granted not only by a Member State but also by the EU Agency for Railways. Consequently, relying on the *State* of authorisation as the connecting factor is not the most suitable approach.
[34] See, e.g., Belgium (Art. 89 Code of Private International Law, Poland (Art. 42 Act on Private International Law), Portugal (Art. 46(3) Book 1 Civil Code), and Spain (Art. 10(2) Civil Code), for which a translated version in English is available in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law,* IV*, op. cit.*
[35] Art. 22(1) *juncto* Art. 2(3) Directive on the interoperability of the rail system.
[36] Art. 46(1) Directive on the interoperability of the rail system.
[37] Articles 55 and 76 UNCLOS.

State's territory. Although both often overlap, the continental shelf sometimes extends beyond the EEZ.[38]

- Despite the fact that the EEZ and the continental shelf do not form part of any sovereign 'territory', the coastal State enjoys specific limited 'sovereign rights' relating to the EEZ[39] and continental shelf[40], including rights related to the production of energy from the water and winds[41], such as the construction, operation and use of artificial islands, installations and structures[42] like windmills.
- All States enjoy the freedom to lay cables and pipelines in the EEZ[43]and the Continental Shelf[44] of other States.
- Although coastal States enjoy limited 'sovereign rights', there is uncertainty regarding the extent to which the coastal State's (property) law applies to assets in its EEZ or on its continental shelf. Some countries have declared (parts of) their national law applicable in their EEZ or continental shelf. For instance, the USA[45] has declared its *entire* national law —including its property law — applicable. Other countries, like Belgium[46] and France,[47] have declared their entire national law applicable, *but only for specific matters* (e.g. the establishment and use of artificial islands, installations and structures). Still, other countries have declared *only parts of their national law* (e.g. only tax law or criminal law) applicable *for specific matters* (e.g. the establishment and use of artificial islands, installations and structures). The Netherlands, for example, has declared its criminal law (but not its property law) applicable for offences committed on or in relation to offshore constructions on its continental shelf.[48]

[38] Articles 57 and 76 UNCLOS.
[39] Article 56.1(a) UNCLOS.
[40] Article 77 UNCLOS.
[41] Article 56.1(a) UNCLOS.
[42] Article 60.1 UNCLOS.
[43] Article 58.1 UNCLOS.
[44] Article 79 UNCLOS.
[45] §1333(a)(1)(A) Outer Shelf Lands Act, US Code 43 (accessible via govinfo.gov): "The Constitution and laws and civil and political jurisdiction of the United States are extended, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State, to— (i) the subsoil and seabed of the outer Continental Shelf; (ii) all artificial islands on the outer Continental Shelf; (iii) installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources, including non-mineral energy resources; or (iv) any such installation or other device (other than a ship or vessel) for the purpose of transporting or transmitting such resources".
[46] Article 7 'Continental Shelf Act' ('Wet inzake de exploratie en de exploitatie van niet-levende rijkdommen van de territoriale zee en het continentaal plat', 13 June 1969, accessible via ejustice.just.fgov.be): "De (kunstmatige eilanden,) installaties of andere inrichtingen, als bedoeld in deze wet, die blijvend (in de territoriale zee of) op het continentaal plat zijn aangebracht, alsmede de personen en de goederen die zich (op de kunstmatige eilanden,) installaties of inrichtingen bevinden, zijn onderworpen aan het Belgisch recht".
[47] Article 19(I) Ordonnance n°2016-1687 ('Ordonnance relative aux espaces maritimes relevant de la souveraineté ou de la juridiction de la République française', 8 December 2016, accessible via legifrance.gouv.fr) : "Les lois et règlements s'appliquent, pendant le temps où sont exercées en zone économique exclusive ou sur le plateau continental les activités autorisées au titre de l'article 20 et les activités autorisées au titre du code minier, sur les îles artificielles, installations, ouvrages et leurs installations connexes, comme s'ils se trouvaient en territoire français métropolitain (…)".
[48] Article 1 *juncto* 2 'Offshore Installations Act' ('Wet installaties Noordzee', 3 December 1964, accessible via wetten.overheid.nl). The Netherlands has also declared its tax law applicable to its continental shelf: Article 2 'Law Extending Tax Jurisdiction to the Dutch Continental Shelf' ('Wet Uitbreiding van de fiscale jurisdictie tot het Nederlandse deel van het continentaal plat', 13 December 1989, published in State Gazette ('Staatsblad') 1989, no. 554, 1).

- From a Private International Law perspective, it is highly debated whether the current *lex rei sitae* rule of coastal States ensures the applicability of their (property) law within their EEZ or on their continental shelf. While some advocate for a wide understanding of the *lex rei sitae* principle[49], arguing that assets in an EEZ or on a continental shelf should be considered part of the coastal State's 'territory' for the purpose of the *lex rei sitae* rule, others favour a strict application of the principle, asserting that it does not apply to assets located outside a State's territory, resulting in a 'legal vacuum' for assets in the EEZ or on the continental shelf[50]. This results in considerable disadvantages for the proper functioning of property rights in assets located in the EEZ of on the continental shelf.[51] This is especially true for security rights, which typically play a vital role in this regard (e.g. external[52] private[53] financing of wind farm projects).[54]
- The proposed rule aims to tackle these problems, by stipulating that assets situated in a State's exclusive economic zone or on its continental shelf, shall be treated as equivalent to assets situated within that State's territory.
- If the coastal State wishes to allow for a derogation (in full or in part) from this basic principle, it can do so by adopting a 'norm' in that respect. This is not uncommon in international practice. For example, the 1997 Convention between Belgium[55] and the United Kingdom stipulates *inter alia* that, for a pipeline connecting the mainland of Belgium and the UK, the Belgian principle of accession shall not apply to any part located on the Belgian land territory, territorial waters or continental shelf. Additionally, certain Belgian formal requirements, such as registration formalities, do not apply to the pipeline.[56] Another example is the 1996 Convention between Belgium and Norway[57], stipulating that the pipeline forming subject of the Agreement is governed by Norwegian law, despite being partly located on the Belgian continental shelf.[58]

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[49] E.g., W. WURMNEST, "Windige Geschäfte? Zur Bestellung von Sicherungsrechten an Offshore-Windkraftanlagen", *RabelsZ* 2008, (236) 247-248.
[50] See more elaborately on this argument B.K. POUWER, "De goederenrechtelijke positie van offshore windmolens - Het Nederlandse goederenrecht in binnen- noch buitenland", Weert, Celsus, 2022, 26-29.
[51] E.g. some scholars in the Netherlands take the view that assets (such as parts of a windmill) brought from a State's territory to its EEZ retain the 'property regime' they had prior to their removal from the State's territory. On this argument: B.K. POUWER, "De goederenrechtelijke positie van offshore windmolens - Het Nederlandse goederenrecht in binnen- noch buitenland", Weert, Celsus, 2022, 26-27. This, however, does not address the lack of applicable property law concerning the ranking of various property rights (established under the laws of different States) in the same asset, as well as the transfer of these rights (e.g. the transfer of a pledge in a windmill's component).
[52] B.K. POUWER, "De goederenrechtelijke positie van offshore windmolens - Het Nederlandse goederenrecht in binnen- noch buitenland", Weert, Celsus, 2022, 1.
[53] See, e.g., B.A. SCHUIJLING, "Zekerheid op buitengaatse installaties: *horror vacui?*", *Rechtsgeleerd Magazijn Themis* 2021, no. 1, (15) 16.
[54] See on this, e.g., W. WURMNEST, "Windige Geschäfte? Zur Bestellung von Sicherungsrechten an Offshore-Windkraftanlagen", *RabelsZ* 2008, (236) 237-238.
[55] Agreement of 10 December 1997 between the Government of the Kingdom of Belgium and the Government of the United Kingdom of Great Britain and Northern Ireland relating to the transmission of natural gas through a pipeline between the Kingdom of Belgium and the United Kingdom of Great Britain and Northern Ireland, accessible via ejustice.just.fgov.be (hereinafter '1997 Convention').
[56] Article 15 1997 Convention.
[57] Accord du 20 décembre 1996 entre le Gouvernement du Royaume de Belgique et le Gouvernement du Royaume de Norvège concernant la pose du gazoduc "Norfra" sur le plateau continental belge, accessible via ejustice.just.fgov.be (hereinafter '1996 Convention').
[58] Article 3 1996 Convention: "La section du pipeline "Norfra" située sur le plateau continental belge relève de la

Article 12

Property rights in motor vehicles

(1) Property rights in a motor vehicle are governed by the law of the State in which the vehicle is registered at the time when the property right is created or acquired (*lex registrationis*).
(2) Registration means the administrative authorisation for the permanent entry into service in road traffic of a vehicle, involving the identification of the latter and the issuance of a registration number.
(3) If, at the time when the property right in the motor vehicle has been created or acquired, the latter is not registered within the meaning of section (2), Articles 4, 5 or 6 shall apply.
(4) If the applicable law changes because the motor vehicle is registered for the first time, de-registered or re-registered in a new state, Article 5 shall apply as if the motor vehicle were moved to a new situs.
(5) The law designated by paragraph (1) above, shall also apply to property rights in movable assets which are or become associated with, or accessory to motor vehicles.

Comments:

(1) *Lex registrationis* instead of *lex situs*

In most Member States (see notes below), cars do not form a separate category of movables in international property law. Real rights in cars, therefore, are subject to the general rule, i.e. the *lex situs*. Since cars are, by nature, movable and often very valuable, this leads to a high number of cases involving mobile conflicts, especially with respect to secured transactions. This is evidenced by numerous court decisions involving rights in cars.[59] By contrast, choosing the state of registration as the connecting factor, as proposed in Art. 12 (1), leads to far greater legal stability and (except in case of a change of the place of registration, see paragraph (4)), avoids the complexity surrounding the solution of mobile conflicts.

The state of registration is usually evidenced by the country identification on the number plate, which is harmonised within the EU,[60] and can easily be verified by looking at the certificate. It is therefore ascertainable for all parties to a transaction concerning property rights in the motor vehicle. In practice, the registration certificate will usually have to be produced if a property right in the car is to be created or transferred, or upon the conclusion of a contract relating to the vehicle, including repair.

The lex registrationis cannot be manipulated by simply driving the car across a national border, meaning that circumvention of rules on the creation and perfection of security rights is not as easy as it would be under the *lex situs* rule.[61]

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juridiction norvégienne et de la compétence des tribunaux norvégiens. Elle est soumise aux lois et règlements norvégiens en vigueur (…)".

[59] See e.g. BGH v. 11.03.1991, NJW 1991, 1415; BGH v. 13.5.1996, NJW 1996, 2226; BGH v. 1.3.2013, NJW 2013, 1946; Öst. OGH v. 23.01.2019 – IPRax 2019, 548; BGH v. 18.9.2020, NJW 2020, 3711; BGH v. 23.9.2022, NJW 2023, 781; Hoge Raad 16 September 2016, 15/03346, 'Daytona'; Audiencia Provincial de Barcelona 13.9.1989, Revista Española de Derecho Internacional 1990, 644 (note *Sánchez Lorenzo).*

[60] See European Directive 1999/37 (as amended), Annex I, which uses country abbreviations for the issuing member state which appear on the certificate and on the number plate: "I.1. The first page of Part I of the Registration Certificate shall contain: (i) the name of the Member State issuing Part I of the Registration Certificate, (ii) the distinguishing mark of the Member State issuing Part I of the registration certificate, namely: "B": Belgium [..]".

[61] Under the 2019 jurisprudence of the Austrian OGH (IPRax 2019, 548), which applies the *lex situs* but recognises a German *Sicherungsübereignung* although is was until then considered to be contrary to the publicity principle of Austrian substantive law, cars can now simply be driven across the border to Germany and

(2) Definition of registration
The definition of registration is taken from Art. 2 (b) of EU Directive 99/37/EC on the registration documents for vehicles (as amended).[62] Unlike the proposal prepared by GEDIP (Art. 6), registration in this draft therefore does not mean entry into "registers that evidence proprietary rights", and the practical application of the present rule is therefore not limited to Member States which have registration systems for property rights in movables.

The requirement of "permanent entry" signifies that, if a car carries a number plate for only a few hours or days in order to be tested by a customer (*Händlerkennzeichen*), or be driven to a customer or another car trader (*Überführungskennzeichen*), the situation does not come under the lex registrationis rule. Such a car remains an unregistered vehicle and is governed by Art. 12 (3).

(3) Unregistered vehicle; relation to Art. 6
If the car is not yet registered (for example, if a newly manufactured car is still stored at the premises of the manufacturer or is transported to a trader or customer either on a train or lorry, or driven with a temporary number plate, or if the car is temporarily or finally put out of use and deregistered), the rules in Articles 4, 5 and 6 shall apply.
It follows that Art. 12 generally takes precedence over the special rule in Art. 6. Therefore, if a car is registered within the meaning of Art. 12 (2), the applicable law is defined by the state of registration, not the place of the debtor`s COMI.

(4) Change of place of registration
Although a change of the state of registration will happen only rarely compared to possible changes of the physical location of the car, it is nevertheless possible, e.g. if the owner of the car moves to another country and re-registers the car there, or if a new, unregistered car, hitherto located in State A, is taken to State B and is registered there by its new owner for the first time. According to paragraph (4), the general rule on mobile conflict in Art. 5 shall apply, the only difference being that the change of the applicable law is not triggered by the change of the situs, but by the car's first registration or by its re-registration in a new state.
(5) Accession and association
It is not unusual for cars to be fitted with a new engine, new tyres, or with a new battery or other component. The legal consequences of these physical acts may depend on the severability of the items, on the relative values of the car and the component, or on other considerations, and may thus vary, depending on the applicable substantive law. It is therefore necessary to decide which PIL rule applies or, in other words, which asset's regime takes precedence: the *lex situs* of the component or the law applicable to the vehicle under Art. 12.
Art. 12 (5) clearly states that Art. 12, i.e. the *lex registrationis* governing property rights in the car takes precedence. Therefore, if a car is registered in State A and, while located in State B, needs a new battery, the property law consequences of fitting the car with the battery will be governed by the law of State A. Under most substantive laws, such a process will not lead to loss of ownership or other real right in the battery since generally a test of physical severability will be applied and will lead to the preservation of previous rights in the battery. In any event, however, Art. 12 (5) clarifies the applicable law, which, as has been said under the comments to section (1), is ascertainable by all parties concerned, including any repairer. Repairers usually

be subjected to a German security interest.
[62] "Registration: shall mean the administrative authorisation for the entry into service in road traffic of a vehicle, involving the identification of the latter and the issuing to it of a serial number, to be known as the registration number".

demand presentation of the registration certificate prior to entering into the contract, especially if the customer is unknown to them. If a repairer is servicing a car that is registered in a foreign country, it might secure itself by simply demanding instant payment.

Notes:
Most legal systems do not contain a specific choice of law rule for motor vehicles but simply apply the *lex situs* rule. Nevertheless, at least five EU member states have adopted specific rules either for cars or for transport vehicles which might also extend to cars.
Under Portuguese law, Article 46(3) of the Civil Code stipulates that the creation and transfer of rights over means of transport subject to a registration system are governed by the law of the state under whose authority the register is maintained. This provision covers, in particular, motor vehicles bearing a registered number plate.
A comparable rule exists under Belgian law. According to Article 89 of the 2004 PIL Code the rights in an aircraft or *other means of transportation* which is registered in a public register are governed by the law of the State on the territory of which the registration took place. At least according to some writers, cars qualify as "other means of transportation", since they are not explicitly excluded from the rule.[63]
Slovenian law contains a similar rule: Ownership and other rights in rem over means of transportation are governed by the law of the state to which the latter "belong" (see Article 18 (1) and (2) of the 1999 Private International Law and Procedure Act).
Contrastingly, under Article 68 of the Private International Law Code of Bulgaria, the acquisition, transfer and termination of rights in rem in means of transport are governed by law of the State where the person operating a land motor vehicle has its place of business. This provision also covers cars in general, although the wording suggests that it applies only to vehicles used for business purposes.
Romanian law likewise contains a provision that is limited to a business context (Article 2.620 of the New Civil Code). According to this provision, the creation, transfer or extinction of real rights over a means of transport are subject to the law applicable to the company statute of the transport company for road vehicles in its assets.
Attempts to introduce the place of registration as a connecting factor for motor vehicles were also made during the 1999 reform of the German PIL Act (Einführungsgesetz zum Bürgerlichen Gesetzbuche, EGBGB). At the time, however, the adoption of a specific conflict-of-law rule for motor vehicles was rejected.[64] The principal argument was that Germany would deviate from an international consensus, the situs still being the predominant connecting factor for motor vehicles. Evidently, this argument carries no weight in the context of a European instrument on private international law.

Dutch PIL does not have a special provision on cars, but on the transfer of ownership in lost items to an insurance company, which in practice, is primarily directed to stolen cars:

Art. 10:132 B.W. provides that
1. If possession of an item has been involuntarily lost and, following this loss, the condition of the item is unknown, the legal consequences of legal acts relating to property rights, performed by the owner or his legal successor, shall be governed by the law of the state in

[63] In favour of the inclusion of automobiles see e.g. RIGAUX, F./FALLON, M., *Droit International Privé*, De Boeck & Larcier, Brussels, 2005, p. 681; contra CLIJMAN, C., *Het wetboek internationaal privaatrecht becommentarieerd,* Intersentia/Bruylant, Antwerp – Oxford/Brussels, 2006, p. 458.
[64] See *Kreuzer*, Gutachtliche Stellungnahme zum Referentenentwurf eines Gesetzes zur Ergänzung des Internationalen Privatrechts, in: Henrich (ed.), Vorschläge und Gutachten zur Reform, des deutschen internationalen Sachen- und Immaterialgüterrechts, 1991, p. 37 at 125 et seq.

whose territory the item was located prior to the loss of possession.
2. If, in the case referred to in the previous paragraph, the loss is covered by insurance, the law governing the insurance contract shall determine whether and how ownership is transferred to the insurer.

This draft regulation refrains from a special rule on stolen assets (except for cultural goods) because the general *lex situs* rule and the special rules for motor vehicles, means of transportation and assets in transit seem suitable to also govern the requirements, consequences and exclusions of bona fide acquisition. A special rule on items with unknown situs was discussed, but was finally rejected as being unhelpful for the following reasons: first, one would have to determine for whom the situs must be unknown, because in most cases, the situs is unknown to the former possessor but not to everyone. If the rule was to be restricted to cases where the present situs is known to no-one, the practical application would be marginal, because according to Art. 5, not every change of location leads to a change of the applicable law. The latter only changes with a "supervening event" as defined n Art. 5 (2). For such a supervening event to occur, the asset must usually have reappeared, and hence be known to someone.
If a rule on assets without a known situs was to cover all situations, where the situs at the time of a transaction was not known to the former owner, the realm of application would be very large and would overlap to a great extent with the general rules: Such special rule on the law governing acts performed by the former owner or his legal successor (as Art. 10:132 (1) B.W.) would need to be coordinated with the protection of a bona fide purchaser as determined by the actual *lex situs* (or otherwise applicable law). It therefore creates more questions than it solves.

This draft regulation also refrains from offering a special rule for insurance companies as in Art. 10:132 (2) B.W. The rule builds upon section (1) and is therefore subject to the same criticism. The goal of section (2) seems to protect the insurance company from the argument that ownership was not validly transferred to the insurer because the actual (at the time unknown) *lex situs* had different requirements for the validity of the transfer. Yet, such invalidity must either be raised by a third party relying on the (bona fide) acquisition of its rights, in which case it seems correct to apply the rules in this regulation to any priority conflict, because the third party will usually not know that the goods have been stolen and that ownership has purportedly passed to an insurer under a chosen law. If, on the other hand, such invalidity is raised by the insured person (or its legal successor) who wants the asset back after its rediscovery, it seems better to leave the protection of the insurer to the terms of the insurance contract. The contract could provide, for example, that the insured person (or its legal successor) must repay the insurance sum, if ownership in the asset is claimed back.

Article 13

Cultural objects

(1) Notwithstanding Articles 4 and 5, where a cultural object has been stolen or unlawfully removed from the territory of a State, as regards a civil claim for the recovery of a cultural object initiated by a party claiming the right to recover such object, the law applicable to a property right therein shall be, at the option of the claimant, either:

(a) the law of the State from whose territory the cultural object was stolen or unlawfully removed; or

(b) the law of the State in whose territory the cultural object was located at the time when the court of a State is seised of the claim.

(2) "unlawfully removed from the territory of a State" means: (a) removed from the territory of a State in breach of its rules on the protection of national treasures; or (b) not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.[65]

Comments:
Article 13 is intended to address problems concerning the theft or unlawful removal of cultural objects from one State to another. It gives an option, in terms of which the claimant may seek, in effect, to reinstate the *status quo ante* following the right-holder's involuntary dispossession of the object.

The rule in article 13(1)(a) aligns with the rule found in article 13 of Directive 2014/60/EU to the effect that "Ownership of the cultural object after return shall be governed by the law of the requesting Member State" (i.e. the law of the Member State from whose territory the cultural object has been unlawfully removed[66]).

Notably, however, the rule of special jurisdiction in article 7(4) of the Brussels I Recast Regulation[67] does not neatly align with the rule now found in art 13 of Directive 2014/60/EU.[68] Article 7(4) of Brussels I Recast confers special jurisdiction on what is described in Directive 2014/60/EU (article 2(4)) as the 'requested Member State', i.e., the Member State in whose territory a cultural object, *which was unlawfully removed from the territory of another Member State*, is located. Thus, the requested Member State has jurisdiction, but, in terms of article 13 of Directive 2014/60/EU, the forum must apply the law of the 'requesting Member State'.

To reconcile this point, and to complement article 7(4) of Brussels I Recast, article 13 of the draft regulation allows the claimant to choose, by way of alternative applicable law, the law of the State in whose territory the cultural object was situated at the time when the court of that State was seised of the claim. This connecting factor is considered to be sufficiently proximate as to render it a justifiable alternative applicable law.

Notes:
Some, but not all, national legal systems contain a special choice of law rule for cultural property. For example, the 2004 Belgian Code of Private International Law, Chapter VIII on Goods, contains special provision in article 90 on the 'Law applicable to cultural property'.[69]

[65] This is a modified version of Directive 2014/60/EU, recital (17).
[66] Directive 2014/60/EU, art 2(3).
[67] To the effect that a person domiciled in a Member State may be sued in another Member State, "as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised."
[68] Art 13: "Ownership of the cultural object after return shall be governed by the law of the *requesting* Member State." (Emphasis added).
[69] If an item, which a State considers as being included in its cultural heritage, has left the territory of that State in a way, which is considered to be illegitimate at the time of the exportation by the law of that State, the revindication by the State is governed by the law of that State, as it is applicable at that time, or at the choice of the latter, by the law of the State on the territory of which the item is located at the time of revindication.

Nevertheless, if the law of the State that considers the item part of its cultural heritage does not grant any protection

Similarly, the Hungarian Act XXVIII of 2017 on Private International Law, Ch V on rights *in rem*, contains in section 46, a special rule for property falling within a State's cultural heritage.[70] Both the Belgian and Hungarian rules operate only where the property in question has unlawfully left the State of origin. In such circumstances, each of the choice of law rules permits application of the *lex loci originis* to any question of ownership: the law of the State from which the object was wrongfully removed.

It was not thought necessary to extend to the claimant a third possible applicable law (such as article 10.1(b) of the GEDIP proposal, viz. the law of the State in which the object was located at the time of the acquisition of possession by the defendant subsequent to the theft or illegal removal).

The EAPIL working group considered that the *lex situs* at the time of the acquisition of possession by the defendant subsequent to the theft or illegal removal was not sufficiently proximate to the claim as to be a necessary alternative applicable law.

Similarly, article 13 does not incorporate a rule for the protection of the *bona fide* purchaser, such as is contained in art. 10 (2) of the GEDIP proposal.[71] The working group considers that such a rule pertains to harmonisation of substantive law, and is beyond the appropriate remit of a private international law instrument. Moreover, such a rule would raise many questions, e.g. what law should determine reasonable expenditure; by what law ought an award of reimbursement be calculated; and, more fundamentally, why should provision for reasonable reimbursement be imposed if that is not part of the otherwise applicable law?

Separately, the EAPIL working group decided against formulating a specific choice of law rule to govern property rights in stolen, 'non-cultural' property. The group considered it more appropriate to apply to such property the general rules contained in the draft regulation. The reasons for this approach broadly are as follows: unlike cultural objects, there is no clear justification for applying a special rule to 'non-cultural objects' (unlike cultural objects, 'non-cultural objects' are unlikely to have distinctive or unique attributes leading to a special public interest in their protection); 'non-cultural objects' are not necessarily high value assets justifying special protection; unlike cultural objects, 'non-cultural objects' are not subject to any pre-existing scheme of special protection in the EU; and unlike the case of cultural objects, there is no strong reason to disapply the general rule as regards 'non-cultural objects'.

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to the possessor in good faith, the latter may invoke the protection, that is attributed to him by the law of the State on the territory of which the item is located at the time of revindication.

[i.e. applies, in cases of 'illegitimate removal', the law of the State from which the object was removed or, at that State's choice, – and subject to protection of the good faith possessor – the law of the 'new/current *situs*']

[70] (1) Where a thing that a State considers a part of its cultural heritage exits the territory of that State in a way that is considered illegal at the time of the exit under its own law, if that State lays claim of ownership of that thing the law applicable shall be - at that State's discretion - either its own law or that of the other State where the thing in question is situated at the time the ownership claim is evaluated.
(2) If the law of the State that considers the illegally removed thing a part of its cultural heritage offers no protection for the bona fide possessor, that person may claim protection under the law of the State where the thing in question is situated at the time the ownership claim is evaluated.
[i.e. applies, in cases of 'illegal removal', the law of the State from which the object was removed or, at that State's discretion, – and subject to protection of the good faith possessor – the law of the 'new/current *situs*'].
[71] 2. If the claimant is entitled to recover the object under the law applicable under paragraph 1, but that law does not provide for any reimbursement of funds spent in the acquisition of possession in good faith or for the necessary preservation of the object, the court seized may award the reimbursement of such funds reasonably spent.

CHAPTER 3 GENERAL PROVISIONS

Article 14

Scope of applicable law

The law applicable to property rights pursuant to this Regulation shall govern, inter alia:

(a) the classification of an asset as movable or immovable;

(b) the existence, nature and number of property rights;

(c) the creation, acquisition, transfer, modification and extinction of property rights;

(d) the content of property rights, including in particular the determination of the prerogatives of the holder of such rights;[72]

(e) the right to dispose of property rights, or have them disposed of, and to obtain satisfaction from the proceeds or income of such disposal;

(f) the right to demand property from, and/or to require restitution by, anyone having possession or use of an asset contrary to the wishes of the party so entitled;

(g) the consequences of the purported existence of several property rights over the same asset, including acquisition in good faith, ranking and priority,;[73]

(h) the question whether animals or human body parts or bodily fluids can be subjected to property rights; and

(i) the requirements to ensure the effectiveness of property rights against third parties, such as registration or publication formalities.

Comments:

Article 14 defines the scope of the law applicable to property rights as determined under the Regulation. As the language of the first sentence (“inter alia”) makes clear, the purpose of Article 14 is not to establish an exhaustive list of issues governed by the applicable law, but rather to improve legal certainty by identifying a number of issues which fall within its scope.

Article 14(a) makes clear that the law applicable to property rights determines the classification of an asset as movable or immoveable. Although most rules distinguishing between movable and immovable property are rules of substantive law, the Regulation includes a choice of law rule specifically applicable to immovables, for the purpose of which the classification is necessary.

Article 14(b) confirms that the law applicable to property rights defines which property rights can be created over a particular asset, and their number. The words ‘existence, nature and number’ are inspired by the judgment of the CJEU in *Kubicka* (Case C-218/16, § 46 ff.).

Article 14(h) further clarifies that the applicable law governs whether or not property rights can

[72] ECJ, *Kubicka*

[73] See COM(2018) 96 final, Article 5 (b)-(e).

be created over animals or human body parts or bodily fluids. While many legal systems provide that animals and/or body parts may not be subjected to property rights, it was considered that this was an issue of substance, and that it was more to clarify the law applicable to this issue rather than excluding it from the material scope of the Regulation.

Article 14(c) provides that the law applicable to property rights governs how property rights arise, how they can be modified, and how they can be terminated. Article 14(c) does not purport to extend the scope of the applicable law to sources of property rights which are governed by other laws, and which are thus excluded from the scope of the Regulation pursuant to Article 1(2). Formal requirements applicable to the creation of property rights may be governed by the law applicable to property rights or, as the case may be, by another law applicable to the source of the relevant property right.

Article 14(d) confirms that the law applicable to property rights governs the content of such rights, including the prerogatives of its holder.

Article 14(e) and (f) are inspired by Article 8 of the European Insolvency Regulation.

Article 14(i) makes clear that the law applicable to property rights governs the resolution of conflicts between/among alleged or multiple holders of property rights over a given asset through doctrines such as rankings, priorities and good faith acquisition. Article 14(i) confirms that the law applicable to property rights determines the requirements for ensuring that property rights fully produce their effects. Depending on the applicable substantive law, these requirements either control the existence of the relevant right, or its effect towards third parties (e.g. *opposabilité* in francophone legal systems). The word 'effectiveness' seeks to capture all such requirements.

Article 15

Exclusion of *renvoi*

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

Comments:
This is a no-*renvoi* rule, in line with most of the European acts on private international law. It is a full exclusion of *renvoi*, even if *lex rei sitae* has a special rule on security rights leading to the application of the law of the habitual residence of the grantor (owner) or of the debtor. The no-*renvoi* rule is based on the following grounds:

Because of the almost universal application of *lex rei sitae*, conflicts resulting in international inconsistency are rare. Since the problems that *renvoi* aims to solve are infrequent, their existence would not justify the increased complexity resulting from *renvoi*.

The exclusion of *renvoi* is in line with what, for example, the UNCITRAL Legislative Guide on Secured Transactions recommends (exclusion 'for the sake of predictability and also because *renvoi* may lead to results that run contrary to the expectations of the parties', Chapter X paragraph 14 and recommendation 221).

This Regulation introduces new special connecting factors for specific situations, where the *lex rei sitae* is inadequate. In those cases, accepting *renvoi* would undermine the reasons for the special rules, since third States could still point to *lex rei sitae*. For example, the special rule on cars could be void every time the car in question is situated outside the EU, while the special rule on *conflit mobile* could be neutralised every time the asset in question is situated outside the EU.

Even in cases where *lex rei sitae* establishes application of the law of the grantor (owner) or of the debtor, accepting a single *renvoi* would not suffice to achieve international consistency, since that law could (and often would) refer to *lex rei sitae*. Therefore, the only truly alternative provision on *renvoi* would be a complex provision – inspired by the one of the European Succession Regulation – establishing it only for the cases where *lex rei sitae* redirects to the law of the grantor or of the debtor and where the State in question would apply its own law.

More generally, identifying situations where *renvoi* might make sense would require a very detailed and situation-specific analysis, taking into account a large number of variables (conflict rules, substantive rules, factual circumstances, and expected 'winners' and 'losers'). Any gains in 'uniformity of decision' would come at the cost of reduced predictability and would undermine the policy choices behind uniform conflict rules.

Notes:
The same rule is to be found in Art. 32 Matrimonial Property Reg.,[74] Art. 20 Rome I-Reg. and Art. 24 Rome II-Reg.

Article 16

Public policy

Without prejudice to Art. 5, the application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Comments:
The Regulation includes the usual reservation of ordre public, modelled after the wording of the newer European PIL regulations (succession and matrimonial property).
Art. 16 is of general application. However, for cases where *ordre public* is invoked after a change of the situs, Art. 5 (2) will take precedence as *lex specialis*. Art. 5 (2) already limits the application of the new *lex situs* and explicitly forbids states to disregard foreign rights because of the *numerus clausus* principle. A recital to Art. 16 shall signal that Art. 5 (2) is the *lex specialis* in cases of mobile conflict.

A recital to Art. 5 (2) shall clarify that the *numerus clausus* principle covers both an explicit statutory rule and a doctrinal principle.

[74] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.

Notes:
Art. 21 Rome I and Art. 26 Rome II:
The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Art. 26 Rome II:
The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Art. 12 Rome III:
Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Art. 35 Succession Reg.
The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Art. 31 Martimonial Property Reg.
The application of a provision of the law of any State specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (ordre public) of the forum.

Possible Recitals:

Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. However, the application of a provision of the law of any country specified by this Regulation may not be refused solely on the grounds that a property right created or transferred in accordance with a foreign law is unknown in the forum State.

Article 17

Overriding Mandatory Rules

(1) Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a State for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable under this Regulation.
(2) With the exception of Art. 6 (2), nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum where the situation in question has sufficiently close links to that law.

Comments:

The Article replicates Art. 9 (1) and 9 (2) Rome I Reg. Recently, the CJEU stated that, as a general requirement, the case at hand must have sufficiently close links to the forum state (which goes beyond the mere jurisdiction of the forum).[75] To reflect this jurisprudence, this requirement (which is not yet to be found verbatim in Art. 9 Rome I) has been added to the text.

Notes:
Art. 9 Rome I Reg.
1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.
2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

Article 18

States with two or more legal systems

(1) Where a State comprises several territorial units, and all or part of these have their own rules of law in respect of property rights over tangible assets, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

(2) A Member State where different territorial units have their own rules of law in respect of property rights over tangible assets, shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 19

Relationship with other provisions of Union law

With the exception of Article 13, this Regulation shall not prejudice the application of provisions of Union law which, in relation to particular matters, lay down conflict-of-law rules relating to property rights.

Comments:
This provision takes as its starting point that it shall not affect the application of provisions in other instruments of EU law which, in respect of specific matters, lay down conflict-of-law rules relating to property rights.

However, a policy decision was taken to create an exception for the provision on cultural objects (Article 13). Consequently, Article 13 prevails over, for example, Article 13 of the *Directive on the return of cultural objects unlawfully removed from the territory of a Member State (2014/60/EU)*, which provides that, following their return, the ownership of cultural objects shall be governed by the law of the requesting Member State.

Notes:

[75] CJEU 5.9.2024, Case C-86/23 *E.N.I./HUK Coburg*.

The wording of this provision is primarily based on Article 23 Rome I and Article 27 Rome II. The GEDIP draft includes a similar provision.[76] Article 9(1)[77] of the Late Payments Directive[78] should not be regarded as a specific provision of EU law that establishes a conflict-of-law rule concerning property rights.[79]

Article 20

Relationship with other international conventions

(1) This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to property rights.
(2) However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 21

List of Conventions

(1) By ……, Member States shall notify the Commission of the conventions referred to in Article 20. After that date, Member States shall notify the Commission of all denunciations of such conventions.
(2) Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the Official Journal of the European Union:
    a. a list of the conventions referred to in paragraph 1;
    b. the denunciations referred to in paragraph 1.

Comments/Notes:
Art. 20 and 21 pertain to the relationship of this Regulation with preexisting international conventions. The wording of these two Articles mirrors that of Art. 25, 26 of the Rome I-Convention,[80] Art. 28, 29 of the Rome II-Convention[81], and Art. 19 of the Rome III-

[76] Article 16 GEDIP draft 'The law applicable to rights in rem in corporeal assets' of 4 July 2025 (accessible via gedip-egpil.eu).
[77] "Member States shall provide in conformity with the applicable national provisions designated by private international law that the seller retains title to goods until they are fully paid for if a retention of title clause has been expressly agreed between the buyer and the seller before the delivery of the goods".
[78] Directive 2011/7/EU.
[79] ECJ 26 October 2006, C-302/05, European Commission v. Italy, § 29-30.
[80] Art. 25: (1) This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to contractual obligations. (2) However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.
Art. 26: (1) By 17 June 2009, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions. (2) Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the Official Journal of the European Union: a. a list of the conventions referred to in paragraph 1; b. the denunciations referred to in paragraph 1.
[81] Art. 28: (1) This Regulation shall not prejudice the application of international conventions to which one or more

Convention[82] with minor adaptations.

Art. 20 (1):
This paragraph states the basic rule on the interaction of this Regulation with international conventions. Prior existing conventions on conflict of law rules regarding property rights will remain applicable as a matter of principle. A list of such existing conventions is to be found below.
International Conventions which only contain rules of substantive property law and do not touch upon conflict of laws, are neither covered by Art. 20 (1) nor dealt with elsewhere since there is no overlap between this Regulation and substantive rules on property law.
The Convention on International Interests in Mobile Equipment (Cape Town 2001; hereafter "the Convention") and its four Protocols[83] of which two are in force, is a slightly more complicated matter. To fill in gaps, the Convention in a number of Articles refers simply to "the applicable law".[84] However, Art. I (k) MAC-P at least implicitly seems to embrace the *lex situs* rule. Nevertheless, even they are not in conflict with this Regulation, because the latter will automatically be applied by the Convention: The European Union has itself ratified the Convention as a Regional Economic Integration Organisation so that, as far as the Convention touches upon a matter for which the EU has exclusive competence, the latter has the rights and obligations of a Contracting State.[85] Insofar as the Convention refers to "the law of the State, in which an asset is situated" such reference will therefore point to the EU whose conflict rules will then decide which Member States' law will be applicable. The text of the Convention does not explicitly refer to "the applicable law" as being only substantive law and does not exclude renvoi.
Therefore, if an asset is situated in a Member State, Art. I (k) MAC-P, which applies the law of the State in which the asset is situated, would refer to this Regulation as the pertinent PIL rule, which would then determine the (national) applicable law. In sum, the Convention does not contain any PIL-rules which are in conflict with this Regulation. As far as a Member State's court will be competent, any necessary gap-filling will be done by this Regulation.

Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations. (2) However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.
Art. 29: (1) By 11 July 2008, Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions. (2) The Commission shall publish in the Official Journal of the European Union within six months of receipt: a. a list of the conventions referred to in paragraph 1; b. the denunciations referred to in paragraph 1.

[82] Art. 19: (1) Without prejudice to the obligations of the participating Member States pursuant to Article 351 of the Treaty on the Functioning of the European Union, this Regulation shall not affect the application of international conventions to which one or more participating Member States are party at the time when this Regulation is adopted or when the decision pursuant to the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union is adopted and which lay down conflict-of-laws rules relating to divorce or separation. (2) However, this Regulation shall, as between participating Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

[83] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town 2001), number of Contracting States: 87; Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (Luxembourg 2007), number of Contracting States: 6; Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (Berlin 2012); Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural and Construction Equipment (Pretoria 2019).

[84] E.g. Art. 29 (7) (a) and (b).: 7. This Convention: (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

[85] Art. XXVII (1) Air-P; Art. XXII (1) Rail-P; Art. XXXVII Space-P; Art. XXIV (1) MAC-P.

Art. 20 (2):
As an exception to the basic rule in Art. 20 (1), conventions which are exclusively concluded between Member States would not take precedence over this Regulation. Presently, only the Convention on the law governing transfer of title in international sales of goods (1958) would fall in this category. It is, however, not in force and has only been ratified by Italy and signed by Greece.

Art. 21 (1):
For the sake of clarity, Member States are obliged to notify the European Commission of any conventions which might overlap with this Regulation, and to which they are parties. In addition, Member States are asked to notify any denunciations of conventions which may be covered by Art. 20 of this Regulation. The following, non-exhaustive list contains conventions and treaties which have been signed or ratified by at least one EU Member State. The list includes signatory states, because signature may be an indicator for an imminent ratification or accession.
List of International Conventions and Treaties pertaining (at least partly) to international property law:

Convention	EU Member States (Minimum: signed)
International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (1926 Brussels Convention)	Not exclusively Member States. Belgium, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Luxembourg, Netherlands, Poland, Portugal, Romania, Serb-Croat-Slovene-State (only signature, nothing happened since 1926), Spain, Sweden
Convention on the International Recognition of Rights in Aircraft (1948 Geneva Convention)	Not exclusively Member States. Belgium, Denmark, Germany, France, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Sweden
Convention on the law governing transfer of title in international sales of goods (1958)	Not in force. Exclusively Member States. Greece, Italy
Second International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (Brussels 1967)	Not in force. Not exclusively Member States. Austria, Belgium, Denmark, Germany, Greece, Italy, Poland, Portugal, Spain, Sweden
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris 1970)	Not exclusively Member States. Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden (only missing Member State = Republic of Ireland)
Convention on international financial leasing	Not exclusively Member States.

(Ottawa 1988)	Belgium, Czech Republic, Finland, France, Hungary, Italy, Latvia, Slovak Republic
Third International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (1993 Geneva)	Not exclusively Member States Denmark, Estonia, Finland, Germany, Lithuania, Spain, Sweden

Convention on international interests in mobile equipment (Cape Town 2001) - Aircraft Protocol (Cape Town 2001) - Rail Protocol (Luxembourg 2007)	Not exclusively member states Cyprus, Denmark, EU, France, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Romania, Spain, Sweden
Hague Securities Convention (2017)	No member states.
Convention on the International Effects of Judicial Sales of Ships (New York 2022)	Not yet in force. Not exclusively Member States Belgium, Croatia, Cyprus, EU, Italy, Luxembourg, Malta, Spain

Art. 21 (2):
The list shall create transparency but there is no guarantee of completeness or accuracy, since the list has no legal effect.

CHAPTER 4 OPTIONAL SECURITY INTEREST REGISTERS

Article 22

Optional establishment of security interest registers

(1) Member States may establish and maintain in their territory one or more security interest registers for the purpose of Article 6.

(2) Any register established and maintained in a Third State which fulfils the minimum requirements under paragraph (3) shall qualify as a security interest register for the purpose of Article 6. A declaration of the Commission pursuant to Article 25 establishes a presumption that the security interest register qualifies for the purpose of Article 6.

(3) Security interest registers shall make publicly available the following information:
   (a) if the grantor is a company or a legal person, the grantor's name, registered office and, if different, postal address;
   (b) if the grantor is an individual exercising an independent business or professional activity, the grantor's name, and postal address or, where the address is protected, the grantor's place and date of birth;
   (c) if the beneficiary is a company or a legal person, the beneficiary's name, registered office and, if different, postal address;
   (d) if the beneficiary is a company or a legal person, the beneficiary's name, registered office and, if different, postal address;

(e) the type of security interest granted over the asset;
(f) a description of the encumbered assets which reasonably allows their identification. A description that indicates that the encumbered assets consist of all of the grantor's movable assets, or of all of the grantor's movable assets within a generic category, satisfies the standard in sentence 1.

(4) Paragraph 3 shall not preclude Member States from including documents or additional information in the registers that they establish or decide to use for the purpose of Article 6.
(4) [The publication of information in the registers under this Regulation shall not have any legal effects other than those set out in national law and in Article 6.]

Comments:
Article 22 establishes some basic rules for the functioning of the security interest register. It is inspired from Article 24 of the Insolvency Regulation.
Article 22(1) does not make it compulsory for Member States to establish a security interest register in the meaning of the regulation. For Member States which would not establish such a security interest register, the consequence would be that grantors established on their territory could not benefit from Article 6 (but would be bound to recognise security interests registered in other Member States pursuant to Article 6). Alternatively, we could mandate all Member States to establish a security interest register, including designating an already existing national register fulfilling its requirements.
Article 22(2) clarifies that registers maintained in third States can qualify as security interest registers for the purpose of Article 6 if they meet certain requirements
Article 22(3) provides the information that each entry in a security interest register should include. The starting point is that it should identify the grantor with a COMI in the relevant State. It should also identify the beneficiary. Although there are other models, it is suggested that it should identify 1) the security interest granted, and 2) the asset.
Article 22(4) clarifies that existing national registers which may require the publication of additional information can be used for the purpose of Article 6 without changing these additional requirements.
Finally, Article 22(5) clarifies that registration in a security interest register has no other effect than those provided by Article 6, and in particular has no effect under substantive law.

Article 23

Security interest registers established or maintained by Third States

(1) The Commission may declare that it considers that a register established or maintained by a Third State qualifies as a security interest register for the purpose of Article 23.

(2) The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Comments:
Article 23 aims at facilitating the operation of Article 6 with respect to third States. Pursuant to Article 22(2), registers maintained in third States that the Commission declares as qualifying as security interest registers for the purpose of Article 22 are presumed to qualify for the purpose of Article 6.

Article 24

Interconnection of security interest registers

(1) The Commission shall establish a decentralised system for the interconnection of security interest registers by means of implementing acts. That system shall be composed of the security interest registers and the European e-Justice Portal, which shall serve as a central public electronic access point to information in the system. The system shall provide a search service in all the official languages of the institutions of the Union in order to make available the mandatory information and any other documents or information included in the security interest registers which the Member States choose to make available through the European e-Justice Portal.

(2) By means of implementing acts in accordance with the procedure referred to in Article xx, the Commission shall adopt the following by 26 June 20XX:
   (a) the technical specification defining the methods of communication and information exchange by electronic means on the basis of the established interface specification for the system of interconnection of insolvency registers;
   (b) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of insolvency registers;
   (c) minimum criteria for the search service provided by the European e-Justice Portal based on the information set out in Article 22;
   (d) minimum criteria for the presentation of the results of such searches based on the information set out in Article 22;
   (e) the means and the technical conditions of availability of services provided by the system of interconnection; and
   (f) a glossary containing a basic explanation of the national insolvency proceedings listed in Annex A.

Comments:
Article 24 is inspired from Article 25 of the Insolvency Regulation.

Article 25

Costs of establishing and interconnecting security right registers

(1) The establishment, maintenance and future development of the system of interconnection of security right registers shall be financed from the general budget of the Union.

(2) Each Member State shall bear the costs of establishing and adjusting its national insolvency registers to make them interoperable with the European e-Justice Portal, as well as the costs of administering, operating and maintaining those registers. This shall be without prejudice to the possibility to apply for grants to support such activities under the Union's financial programs.

Comments:
Article 25 is inspired from Article 26 of the Insolvency Regulation.

Article 26

Conditions of access to information via the system of interconnection

(1) Member States shall ensure that the mandatory information referred to in points (a) to (xx) of Article 22(3) is available free of charge via the system of interconnection of security interest registers.

(2) This Regulation shall not preclude Member States from charging a reasonable fee for access to the documents or additional information referred to in Article 22(4) via the system of interconnection of security interest registers.

Comments:
Article 26 is inspired from Article 27 of the Insolvency Regulation.

CHAPTER 5 FINAL PROVISIONS

Article 27

Information to be provided by Member States

(1) By XXXX 20XX, the Member States shall communicate to the Commission the following information:
 (a) the security interest registers established or maintained under Article 22(1)
 The Member States shall apprise the Commission of any subsequent changes to that information.

(2) The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters.

Comments:
In order to facilitate the verification by creditors of the registration of a security interest in a register pursuant to Article 6, Article 27 requires that Member States communicate to the Commission the security interest registers that they establish or deem to qualify as registers under Article 22.