

DRAFT REGULATION ON THE LAW APPLICABLE TO PROPERTY RIGHTS IN TANGIBLE ASSETS¹

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;
 - (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

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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.

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.

Article 3

Universal application

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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;
- (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;
- (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.

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.

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.

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.

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.

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.

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.]

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.

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.

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.

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.

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.