

RIGHTS IN REM

Note on the *status quaestionis* of the discussion

I. Introduction

1. In the last meeting of the Group, we mainly discussed Articles 1 to 6 (i.e. scope of the instrument, definitions, universal scope, general rule, assets in transit and means of transport). We also partially analysed Article 7 (scope of the applicable law) and Article 8 (conflict mobile). However, we did not have any discussions on Articles 9 to 15 (General Provisions) and the need of special rules for cultural goods or stolen assets.

II. Matters already discussed

2. With regard to the matters already discussed, the new draft tries to address most of the issues raised last year. In particular:

(i) the relationships between this instruments and other EU instruments. It may be worth noting the clarification in footnote 2 on the law applicable to the “proprietary agreement” and footnote 8 on trust.

(ii) the definition of assets in transit and assets to be exported. Two functional definitions are proposed in footnote 10. If accepted, these definitions may be included in Article 2 or in the recitals. That footnote also clarifies the conflict between two proprietary rights, one created under the law of the putative location and another under the law of the physical location. If the proposal is accepted, it could be included in the recitals or in the text itself.

(iii) The special rule for means of transport (Art. 6) is narrowed down to those subject to registration. If accepted, a decision of the Group about the nature of the register is still pending (see footnote 12).

3. The most controversial issue is likely the conflict mobile problem (Article 8), which is closely related to the delimitation of the scope of the applicable law (Article 7). So far, we have explored different alternatives to address this issue. In the new proposal, we have included two options, both trying to combine two potentially conflicting objectives: keeping the rule as clear and simple as possible, on the one hand, but providing a functional solution to the different scenarios that may arise in this context. Option A is based on Article 7 HCCH Securities Convention but has been simplified and adapted to our instrument. Option B is proposed by Marc. Footnotes 15 to 19 explains some of the issues related to the different formulations.

4. With regard to Article 7, special attention should be paid to letter (b) (title certificates or warrants). This issue has not been discussed so far.

III. Pending issues

4. In addition to the General Provisions, we still have to discuss the inclusion of special rules for stolen goods and cultural goods. Footnotes 20 and 21 include, as possible references, the special rules established by Belgium law.