

## Special rules for cultural objects

### Chapter I. Scope

#### Article 2(e). Definitions

*‘Cultural object’ means a corporeal object that is classified or defined by a State, at the time of its removal from the territory of that State, as being among the national treasures possessing cultural, including religious, artistic, historic or archaeological value, under national legislation or administrative procedures.*

*The term ‘cultural object’ also includes a sacred or communally important corporeal object that is part of a generally recognised indigenous, tribal or other cultural community’s religious, traditional or ritual heritage at the time of its removal, irrespective of any classification or definition by a State.<sup>10</sup>*

### Chapter III. Special rules for cultural objects

#### Article 9. General provision

*Except as otherwise provided in this Chapter, the provisions of this Regulation apply to cultural objects which have been stolen or illegally removed.<sup>16</sup>*

#### Article 10. The law applicable to claims for the recovery of stolen or illegally removed cultural objects

1. *A claim for the recovery of a stolen or illegally removed cultural object is governed, at the choice of the claimant, by the law of:*

*(a) the State in which the object was located at the time of its theft or illegal removal from that State;*

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<sup>10</sup> *For the purpose of this paragraph, an indigenous, tribal or other cultural community is considered generally recognised in particular if it is involved, directly or through representatives, in the activity of any body of the United Nations, in particular the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples or previously the Working Group on Indigenous Populations, or if it is a beneficiary or nominator of a beneficiary of funding from the United Nations, in particular the UN Voluntary Fund for Indigenous Populations.*

<sup>16</sup> *Stolen assets other than cultural objects are not covered by the special rules of Chapter III.*

*(b) 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; or*

*(c) the State in which the object was located at the time of the filing of the action.*

[Three options for paragraph 2]

*A2. 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 defendant shall be entitled to the reimbursement of such funds reasonably spent, at his choice, according to the law of the State in which the object was located at the time of the acquisition of possession or the law of the State in which the object was located at the time of its theft or illegal removal from that State.*

*B2. 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 may award the reimbursement provided by either the law of the State in which the object was located at the time of the acquisition of possession or the law of the State in which the object was located at the time of its theft or illegal removal from that State, whichever is more appropriate under the circumstances.*

*C2. 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.*

*3. For the purpose of this article, the place of acquisition of possession is the place in a State where the cultural object was delivered based on a legal relationship underlying the acquisition.*

#### **Article 11. Applicability of public law provisions**

*The public law character attributed to a provision of foreign law designated as applicable under this Chapter shall not prevent the application of that provision.*

### **Chapter IV. Other provisions**

#### **Article 12. Overriding mandatory provisions**

*2. Without prejudice to paragraph (1), in relation to claims for the recovery of stolen or illegally removed cultural objects, the court seized may give effect to the overriding mandatory provisions adopted for the protection of the national treasures by a foreign State other than the one whose law governs under this Regulation, and with which the situation has a close connection.*

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**Further amendments to the Proposal on the law applicable to rights *in rem* in tangible assets to be considered by GEDIP:**

- The Proposal refers to real rights in accordance with the legal terminology broadly used in English language instead of other concepts, such as rights *in rem*, which appear in EU legislative acts. This is indicated in footnote 1. For similar linguistic reasons, the word 'tangible' should be replaced by the term 'corporeal' everywhere in the Proposal on the law applicable to rights *in rem* in tangible assets.
- The term 'State' is to be used consistently in the text instead of 'state' or 'country'
- Art 9. (2) [after the amendments Art. 12(3)] should not refer to the third-party effects of assignments of claims
- The title of Chapter II should be 'General provisions' instead of 'Uniform rules'