

DRAFTING AN EU CHOICE-OF-LAW RULE FOR PROPERTY RIGHTS IN MEANS OF TRANSPORT: SOMETHING OLD, SOMETHING NEW

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SUMMARY: I. INTRODUCTION.- II. WHY AND FOR WHICH KINDS OF MEANS OF TRANSPORT IS A SPECIAL CHOICE-OF-LAW RULE DESIRABLE?.- III. TERMINOLOGY.- IV. CONNECTING FACTOR: 1. Connecting factor for watercraft.- 2. Connecting factor for aircraft.- 3. Connecting factor for railway vehicles.- 4. Connecting factor for motor vehicles.- V. CONCLUSION.

I. INTRODUCTION

1. Since the Treaty of Amsterdam, the EU has increasingly adopted private international law (PIL) instruments¹. While many of these

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¹ For a more comprehensive discussion of this topic with additional context, see C. S. RAPATZ, *Das Internationale Privatrecht der EU Vorbild oder Vormacht?*, Tübingen, Mohr Siebeck, 2023, pp. 1-32.

instruments contained conflict-of-law rules on a wide range of issues², choice-of-law rules regarding property law matters have largely³ remained untouched. However, despite the absence of legislative proposals in this field, considerable attention has been devoted to academic work⁴ on a comprehensive EU instrument concerning property rights in tangible assets in recent years. This research will prove valuable should the EU legislator indeed decide to adopt such an instrument.

2. If the EU legislator were indeed to decide to embark on that path, it is highly probable that the *lex situs* (*lex rei sitae*) principle would be chosen as the ‘general’ rule for determining the applicable law to tangible assets⁵, given its ancient lineage and widespread global application as the fundamental principle in choice-of-law rules concerning tangible property⁶. According to the *lex situs* principle, the assets’

² For example, contractual obligations (Regulation 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)), non-contractual obligations (Regulation 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)), and insolvency proceedings (Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (Insolvency Regulation)).

³ Several EU PIL instruments have touched upon property law matters. See, e.g., Art. 22 Council Regulation 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 (Matrimonial Property Regime Regulation), providing the possibility for spouses to designate the applicable law to their matrimonial property regime. Art. 22 Council Regulation 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (Registered Partnership Regulation) offers a similar approach for the property consequences of partners’ registered partnerships. Art. 31 Regulation 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation) imposes the obligation of ‘adaptation of rights *in rem*’ on Member States. This entails that a Member State must adapt a property right to the closest equivalent property right under its own law, whenever a property right, to which a person is entitled under the law applicable to the succession, is not known to the law of that Member State.

⁴ Numerous (groups of) legal scholars have been conducting research on one single comprehensive EU instrument regarding choice-of-law rules for property rights in tangible assets in recent years. See, e.g., the ongoing work conducted by GEDIP (Working Paper «The law applicable to rights *in rem* in corporeal assets» of 17 September 2023, accessible on gedip-egpil.eu), and by the Working Group on Property Law of the European Association of Private International Law (eapil.org). See also the recent Spanish research project «Regime of rights *in rem* over tangible property in European private international law: issues of international jurisdiction and applicable law».

⁵ This choice was also made by GEDIP. Art. 4 (General rule) of its Working Paper (reference in footnote 4) stipulates: «The proprietary rights in an asset are governed by the law of the State within the territory of which the asset is located».

⁶ B. AKKERMANS and E. RAMAEKERS, «Lex rei sitae in perspective: national developments of a common rule?», in AKKERMANS, B. and RAMAEKERS, E. (eds.), *Property Law Perspectives*, Cambridge, Intersentia, 2012, pp. 125-128; J. CARRASCOSA GONZÁLEZ, «Rights *in rem*, property and trust», in CALVO CARAVACA, A.-L. and CARRASCOSA GONZÁLEZ, J. (eds.), *European Private In-*

location (*situs*) serves as the connecting factor, thereby governing property rights in an asset according to the law of the state in which the asset is located.

However, the question arises whether means of transport, as specific types of assets, should be subject to the *lex situs* principle as well. One drawback of the *lex situs* rule is the successive change of the applicable law whenever the asset is moved to another jurisdiction, leading to mobile conflict⁷ (*conflit mobile*⁸ or *Statutenwechsel*⁹) situations. Consequently, one may contemplate whether means of transport should be afforded a distinct, ‘special’ choice-of-law rule (*lex specialis*), utilizing a different and more stable connecting factor than the *situs*.

3. The first section of this contribution explains why such a specialised choice-of-law rule is indeed desirable, while also identifying specific types of means of transport to which this applies. The second section delves into the terminology that could be employed for this specialised choice-of-law rule: should the EU legislator opt for a broader or narrower terminology (e.g., ‘aircraft’ *versus* ‘aeroplane’)¹⁰? The third section centres on determining the most suitable connecting factor for each type of means of transport: as will be elucidated, while the ‘state of registration’ is commonly utilised as a connecting factor for the choice-of-law rule in many Member States, it may indeed not always be the most effective choice for *every* category of means of transport. The fourth and final section encapsulates the conclusion of this contribution.

4. This contribution aims to capitalise on the insights that can be gained from assessing the diverse choice-of-law rules currently in place within the Member States. Furthermore, it explores various international conventions and EU instruments that include substantive law provisions, yielding insight into the practical operational dynamics of certain categories of means of transport. As will be demonstrated, this serves to balance the *pros* and *cons* of the various approaches to designing the special choice-of-law rule.

ternational Law, Granada, Comares, 2022, pp. 384, no. 892; H.-P. MANSSEL, «Connecting factor», in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law*, I, Cheltenham, Edward Elgar, 2017, pp. 442 and 449.

⁷ L. D’AVOUT, «Property and proprietary rights», in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law*, II, Cheltenham, Edward Elgar, 2017, pp. 1431-1432; F. RIGAUX and M. FALLON, *Droit International Privé*, Brussels, Larcier, 2005, pp. 681.

⁸ More elaborately on this term: M-L. NIBOYET and G. DE GEOUFFRE DE LA PRADELLE, *Droit International Privé*, Paris, LGDJ, 2007, pp. 212-218.

⁹ J. BASEDOW, «Der kollisionsrechtliche Gehalt der Produktfreiheiten im europäischen Binnenmarkt: favor offerentis», *RebelsZ*, vol. 59, 1995, no. 1, pp. 41.

¹⁰ *Infra* no. 9.

This paper does not aim to provide an exhaustive examination of a potential future EU choice-of-law rule for means of transport: it refrains from delving into questions regarding the EU's competence to adopt such a rule¹¹, the scope of the applicable law determined by the rule¹², or engaging in the literally drafting of the rule.

II. WHY AND FOR WHICH KINDS OF MEANS OF TRANSPORT IS A SPECIAL CHOICE-OF-LAW RULE DESIRABLE?

5. Several compelling arguments are traditionally put forward in support of a special choice-of-law rule for means of transport. Firstly, means of transport are inherently designed to cross borders regularly. Consequently, as previously mentioned, applying the *lex situs* rule would inevitably result in numerous mobile conflict situations¹³. Secondly, various types of means of transport have the capability to operate beyond the territorial jurisdiction of any state, particularly¹⁴ evident in the cases of water- and aircraft¹⁵. In the absence of (almost any¹⁶)

¹¹ At first glance, Art. 81(2)(c) TFEU seems the right choice for the legal basis of this rule. When assessing the EU's competence, one should, however, also give due consideration to Art. 345 TFEU («The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership»).

¹² See, e.g., Art. 7 of GEDIP's Working Paper (reference in footnote 4), stipulating that the applicable law governs i.a. the requirements to create, transfer, encumbered or acquire a proprietary right, the priority between competing proprietary rights over the same asset, the nature and content of the proprietary rights, the enforcement of security interest over an asset, and the extinction or loss of a property right.

¹³ *Supra* no. 2.

¹⁴ One could also think about space objects in outer space. The exact scope of Art. VIII Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty) is rather unclear: «A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into outer space, including objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the Earth».

¹⁵ C. CLIJMANS, «Artikel 89 – Recht toepasselijk op transportmiddelen», in ERAUW, J., FALLON, M., GULDIX, E., MEEUSEN, J., PERTEGAS, M., VAN HOUTTE, H., WATTÉ, N. and WAUTELET, P. (eds.), *Het Wetboek Internationaal Privaatrecht becommentarieerd - Le Code de droit international privé commenté*, Antwerp-Oxford/Brussels, Intersentia/Bruylant, 2006, pp. 457; F. RIGAUX and M. FALLON, *Droit International Privé*, Brussels, Larcier, 2005, pp. 681.

¹⁶ See, e.g., the Exclusive Economic Zone (EEZ) which is an area located outside any state's territory, but where the coastal state has certain limited 'sovereign rights' for the purpose of i.a. exploring and exploiting, conserving and managing natural resources (Art. 55-75 UN Convention on the Law of the Sea of 10 December 1982 (UNCLOS)). It is much debated *whether* and *to which extent* state law can apply in these areas. See B. A. SCHUIJLING, «Zekerheid op buitengaats installaties: *horror vacui*?», *Rechtsgeleerd Magazijn THEMIS*, vol. 182, 2021, no. 1, pp. 15-25; W. WURMNEST, «Windige Geschäfte? Zur Bestellung von Sicherungsrechten an Offshore-Windkraftanlagen», *RabelsZ*, vol. 72, 2008, no. 2, pp. 236-263.

applicable laws in such instances, these means of transport would find themselves in a legal vacuum. A third argument pertains to the significant economic value often associated with means of transport, emphasising the necessity for consistency and certainty regarding the applicable law governing property rights in these assets. This aspect becomes especially crucial for property rights that establish security interests¹⁷. Ensuring consistency and certainty in the applicable law governing these security interests facilitates access to credit related to means of transport, thereby promoting cross-border commerce. Lastly, the precise location of means of transport may be unknown in certain circumstances due to technical challenges. In such scenarios, applying the *lex situs* rule would be impractical, if not impossible, as the exact location cannot be determined¹⁸.

For means of transport encompassing one or more of the aforementioned aspects, adopting a special choice-of-law rule with a different connecting factor than the *situs* is advantageous. This holds true for four main categories¹⁹ of means of transport: watercraft, aircraft, railway vehicles, and motor vehicles.

6. Currently, most Member States have a special choice-of-law rule for water- and aircraft within their set of choice-of-law rules²⁰. However, a special rule for railway vehicles²¹ and motor vehicles²² is

¹⁷ H-P. MANSEL, «Artikel 45 EGBGB», in HENRICH, D. (ed.), *Staudinger BGB - EGBGB/ IPR Einführungsgesetz zum Bürgerlichen Gesetzbuche/IPR*, Berlin, De Gruyter, 2015, no. 8.

¹⁸ H-P. MANSEL, «Artikel 45 EGBGB», in HENRICH, D. (ed.), *Staudinger BGB - EGBGB/ IPR Einführungsgesetz zum Bürgerlichen Gesetzbuche/IPR*, Berlin, De Gruyter, 2015, no. 3.

¹⁹ Section III elaborates on the terminology of these four categories.

²⁰ See, e.g., the choice-of-law rules of Austria (§ 33(1) Federal Statute on Private International Law), Bulgaria (Art. 68 Private International Law Code), Czechia (§ 69(2) Act on Private International Law), Estonia (§ 22(1) Private International Law Act), Germany (Art. 45(1) Introductory Act to the Civil Code), Hungary (Section 42(1) Act on private international law), the Netherlands (Art. 127(2) and (3) Book 10 Civil Code), Poland (Art. 42 Act on Private International Law), Portugal (Art. 46(3) Book 1 Civil Code), Romania (Art. 2620(1) Book 7 Civil Code), Slovenia (Art. 18(3) Private International Law and Procedure Act), Spain (Art. 10(2) Civil Code), for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, Cheltenham, Edward Elgar, 2017. See, however, the recent French draft code of private international law, that does not include such a special rule. The draft is accessible via the website of *Le Comité français de droit international privé* (cf dip.fr).

²¹ See, e.g., the choice-of-law rules of Belgium (Art. 89 Code of Private International Law), Bulgaria (Art. 68 Private International Law Code), Estonia (§ 22(1) Private International Law Act), Germany (Art. 45(1) Introductory Act to the Civil Code), Hungary (Section 42(2) Act on private international law), Poland (Art. 42 Act on Private International Law), Portugal (Art. 46(3) Book 1 Civil Code), Romania (Art. 2620(1) Book 7 Civil Code), Spain (Art. 10(2) Civil Code), for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI, F. and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

²² See, e.g., the choice-of-law rules of Bulgaria (Art. 68 Private International Law Code), Portugal (Art. 46(3) Book 1 Civil Code), Romania (Art. 2620(1) Book 7 Civil Code), for which

less common. When comparing these last two types, it is interesting to note that motor vehicles are by far the least common. Nevertheless, it is advisable to establish a special rule for both railway vehicles and motor vehicles. Similar to water- and aircraft, railway vehicles²³ and motor vehicles typically possess considerable economic value and are frequently involved in cross-border activities. Notably, concerning motor vehicles, an additional consideration arises from their historical susceptibility to theft²⁴ and subsequent relocation to other countries. Implementing a special rule with a more stable connecting factor than the *situs* of the motor vehicle can simplify matters for owners seeking recovery and for other parties holding a (security) interest in it²⁵.

III. TERMINOLOGY

7. If the EU legislator indeed would intend to restrict the special choice-of-law rule's scope to watercraft, aircraft, railway vehicles, and motor vehicles, the next consideration is whether the terms 'watercraft', 'aircraft', 'railway vehicles', and 'motor vehicles' accurately depict these categories of means of transport. This section explores

a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.* Although Spanish PIL also has an explicit choice-of-law rule for 'automobiles and other road transport vehicles', it uses the *situs* of these vehicles as the connecting factor (Art. 10(2) Spanish Civil Code, for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*). As a result, the choice-of-law rule is merely a confirmation of the 'general' *lex situs* rule enshrined in Art. 10(1) Spanish Civil Code, due to which this rule is not further discussed in this contribution. The Belgian choice-of-law rule for means of transport (Art. 89 Code of Private International Law, for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*) also encompasses motor vehicles, since it applies to «[...] an aircraft or other means of transportation which is registered in a public register», which includes motor vehicles that are registered in a vehicle register. However, this is not entirely undisputed. *Pro*: F. RIGAUX, and M. FALLON, *Droit International Privé*, Brussels, Larcier, 2005, pp. 681. *Contra*: C. CLIJMANS, «Artikel 89 – Recht toepasselijk op transportmiddelen», in ERAUW, J., FALLON, M., GULDIX, E., MEEUSEN, J., PERTEGÁS, M., VAN HOUTTE, H., WATTÉ, N. and WAUTELET, P. (eds.), *Het Wetboek Internationaal Privaatrecht becommentarieerd - Le Code de droit international privé commenté*, Antwerp-Oxford/Brussels, Intersentia/Bruylant, 2006, pp. 458.

²³ Although major differences exist between national regulations and technical specifications applicable to railway vehicles, which may prevent these vehicles from running without hindrance throughout the Union (Recital 9 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 (Directive on the interoperability of the rail system)), more and more railway vehicles are nowadays designed to operate across borders, fostering cross-border transportation of freight and passengers (e.g. Eurostar).

²⁴ See, e.g., A.H. PERSSON, «Bona Fide Acquisition of Cars and other Motor Vehicles», *Scandinavian Studies In Law*, vol. 57, 2012, pp. 273-282.

²⁵ It goes without saying that other rules such as a 'special' choice-of-law rule for stolen goods or a 'special' rule for good faith (*bona fide*) acquirers must be taken into account as well.

this matter in question for all four categories and examines alternative terminology.

8. 'Watercraft' is a broad term encompassing various²⁶ means of transport capable of traveling under, in, or on water²⁷. However, this term is not commonly used in international conventions concerning watercraft or in national choice-of-law rules. Instead, terms such as 'ships'²⁸ and 'vessels'²⁹ are more prevalent³⁰. Another potential alternative is 'boats'. Nonetheless, these terms lack precise definitions³¹, leading to ambiguity in distinguishing between them³². Furthermore, some of these concepts appear to exclude certain types of means of transport, such as submarines, due to their narrow scope. However, it is desirable for submarines to also be covered by the special choice-of-law rule for means of transport, considering their ability to (frequently) navigate in different territorial waters, and operate in Exclusive Economic Zones (EEZs)³³ and international waters³⁴. Given these considerations, owing to its umbrella nature, the term 'watercraft' emerges as appropriate.

²⁶ In no. 15 it is suggested that the state where the owner registers the watercraft should serve as the connecting factor. So, despite the extensive reach of the term 'watercraft', the choice-of-law rule's scope will be limited to watercraft that are subject to registration.

²⁷ See, e.g., the very broad definition for 'watercraft' in the Oxford Dictionary: «A boat or other vessel that travels on water».

²⁸ 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), Poland (Art. 42 Act on Private International Law), for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

²⁹ 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 J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

³⁰ UNCLOS refers to both 'ship' (e.g., Art. 23) and 'vessel' (e.g., Art. 211).

³¹ For instance, consider the UNCLOS, which, although it utilises the terms 'ship' and 'vessel', does not offer a specific definition for these concepts.

³² Typically, it is asserted that 'vessel' encompasses a broader scope than 'ship'.

See in this regard, e.g., the definition of 'ship' in Art. 2 UN Convention on Conditions for Registration of Ships: «any self-propelled sea-going vessel used in international seaborne trade for the transport of goods, passengers, or both with the exception of vessels of less than 500 gross registered tons».

³³ *Supra* footnote 16.

³⁴ It is not uncommon that a submarine is deployed in Exclusive Economic Zones or international waters, for scientific research, for instance.

9. 'Aircraft' is a term widely used in international conventions³⁵, EU law³⁶, and national choice-of-law rules³⁷. Just like 'watercraft', it is a broad term that can cover all kinds of means of transport that can travel in the air. It includes, for example, airplanes, helicopters, and drones³⁸. Narrowing down the scope of the rule to, for example, (light type³⁹) 'aeroplanes'⁴⁰, would be too restrictive and would exclude certain categories that should be covered by the rule as well. Helicopters, for instance, are destined to enter different international air spaces and can fly in international airspace. 'Aircraft' is therefore an appropriate term.

10. In the same vein as water- and aircraft, 'railway vehicles' is a broad term⁴¹ encompassing all sorts of vehicles capable of movement along a fixed railway track, such as locomotives, wagons, and carriages.

³⁵ See, e.g., the Convention on International Civil Aviation of 7 December 1944 (Chicago Convention) and the Convention on the International Recognition of Rights in Aircraft of 19 June 1948 (Convention on the International Recognition of Rights in Aircraft).

³⁶ See, e.g., Regulation 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Regulation on the operation of air services).

³⁷ See, e.g., the choice-of-law rules of Austria (§ 33(1) Federal Statute on Private International Law), Bulgaria (Art. 68 Private International Law Code), Czechia (§ 69(2) Act on Private International Law), Estonia (§ 22(1) Private International Law Act), Germany (Art. 45(1) Introductory Act to the Civil Code), Hungary (Section 42(1) Act on private international law), the Netherlands (Art. 127(3) Book 10 Civil Code), Poland (Art. 42 Act on Private International Law), Romania (Art. 2620(1) Book 7 Civil Code), Spain (Art. 10(2) Civil Code), for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

³⁸ Interestingly, neither the Chicago Convention, the Convention on the International Recognition of Rights in Aircraft, nor the Regulation on the operation of air services provides a definition for 'aircraft'. The Cambridge Dictionary defines the term as «any vehicle, with or without an engine, that can fly, such as a plane or helicopter». The Oxford Dictionary defines it as «an aeroplane, helicopter, or other machine capable of flight».

³⁹ Note that Art. I(2)(a) and (b) Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment (Aircraft Protocol to the Cape Town Convention) excludes certain 'light type' aircraft from its scope. This seems, however, for the purpose of an EU harmonised choice-of-law rule, not desirable.

⁴⁰ The English translation of the Czech choice-of-law rule for means of transport (§ 69(2) Act on Private International Law) available on the Czech Government's website (*obcanský-zakonik.justice.cz*), refers to 'aeroplane'. A different translation, however, refers to 'aircraft' (J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*).

⁴¹ See in this regard also the definition of 'railway rolling stock' in Art. I(2)(e) Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Railway Rolling Stock (Rail Protocol to the Cape Town Convention): «vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto». See also the definition of 'vehicle' in Art. 2(3) Directive on the interoperability of the rail system: «a railway vehicle suitable for circulation on wheels on railway lines, with or without traction; a vehicle is composed of one or more structural and functional subsystems».

‘Railway vehicles’ is more preferable than, for example, ‘trains’, as the latter term pertains to a cohesive composition of various train components⁴², including locomotives, carriages, and wagons. Considering the legal, economic, and practical importance of each train component’s individuality⁴³, ‘railway vehicles’ appears better suited for the task than ‘trains’. Furthermore, ‘railway vehicles’ is a term likely to stand the test of time better than, for instance, ‘railway rolling stock’⁴⁴. The inclusion of ‘rolling’ in the latter term may exclude trains without wheels such as (high-speed) trains utilising magnetic levitation (‘maglev’) technology, or next-generation trains like the *Hyperloop*⁴⁵.

While the term ‘railway vehicles’ also includes metros and trams, due to its broad scope, most metros and trams will not fall under the special rule’s scope. This is because, as will be discussed later, the state of registration seems to be the most suitable connecting factor for railway vehicles⁴⁶, and metros and trams are typically not subject to licensing in the Member States⁴⁷.

11. ‘Motor vehicles’, like the other types of means of transport discussed, is a broad term encompassing any motor-driven vehicle intended for road use⁴⁸. This category includes cars, trucks, trailers, and motorcycles. As suggested in section IV.4, the proposed connecting factor for motor vehicles would be the state where the vehicle is registered. Therefore, only vehicles subjected to registration would fall within the scope of the special choice-of-law rule. Narrowing the scope to motor vehicles *operated by transport companies*, as observed in Romanian PIL⁴⁹, is not desirable, as usually *all* motor vehicles hold significant economic value and are regularly involved in cross-border activities.

⁴² See, e.g., the definition of ‘train’ in the Oxford Dictionary: «a series of connected railway carriages or wagons moved by a locomotive or by integral motors».

⁴³ After all, each vehicle can become a component of another train, it can be used for other purposes, it can be sold separately, and it should be registered individually (*infra* no. 20).

⁴⁴ Art. I(2)(e) Rail Protocol to the Cape Town Convention.

⁴⁵ In case the EU legislator would like to provide a definition for ‘railway vehicles’, it is recommendable to take note of these technological developments. A traditional way of defining a railway vehicle as a vehicle that travels *on* railway lines (similar to the definition of ‘vehicle’ in Art. 2(3) Directive on the interoperability of the rail system) should be avoided, because highspeed trains using magnetic levitation, e.g., hover slightly *above* a track.

⁴⁶ *Infra* no. 20.

⁴⁷ Recital 5 Directive on the interoperability of the rail system.

⁴⁸ See in this regard also the definition of ‘vehicle’ in Art. 3(16) Regulation 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (Regulation on the approval and market surveillance of motor vehicles).

⁴⁹ Art. 2620(1)(b) Book 7 Civil Code, for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

While one might consider excluding certain categories of motor vehicles that rarely cross borders, such as cars used for test drives after vehicle repairs, or vehicles registered solely for specific purposes, like agricultural tractors⁵⁰, this approach introduces complexity. Determining which vehicles fall under these exceptions can lead to qualification issues, raising doubts about whether a vehicle is covered by the special rule. To avoid such problems, it is advisable to include all types of motor vehicles⁵¹. In addition to that, the law of the state where these vehicles are registered typically aligns with the law of their *situs*⁵². Therefore, whether the *situs* or the state of registration serves as the connecting factor would yield similar outcomes in practice. Excluding these motor vehicles from the special rule's scope would not outweigh the associated drawbacks, such as increased complexity and the risk of legal uncertainty.

IV. CONNECTING FACTOR

12. If the EU legislator were to adopt a special choice-of-law rule for means of transport, focusing on watercraft, aircraft, railway vehicles, and motor vehicles, determining the appropriate connecting factor is essential. Below, a separate analysis is conducted for each type of means of transport to identify the relevant connecting factor.

1. Connecting factor for watercraft

13. Today, many Member States have a national choice-of-law rule for watercraft that utilises the flag state⁵³ or the state (or place)

⁵⁰ Similarly, see, e.g., Art. 2(2)(a) Regulation on the approval and market surveillance of motor vehicles.

⁵¹ If the EU legislator intends to exclude specific motor vehicles from the scope of the choice-of-law rule, it appears most suitable to do so based on their design speed rather than their type. A similar approach was used for the definition of 'motor vehicle' in Art. 3(16) Regulation on the approval and market surveillance of motor vehicles: «[...] any power-driven vehicle that [...] has a maximum design speed exceeding 25 km/h».

⁵² Take for example cars that are used for test drives following vehicle repairs. Commonly, such vehicles are equipped with a 'commercial plate', which often restricts their operation to the territory of issuance. For instance, the Belgian «beroepsplaat» imposes limitations, permitting the respective car to be driven solely on Belgian territory: Art. 24 Royal Decree regulating the registration of commercial plates and national plates for motor vehicles and trailers of 8 January 1996 («Koninklijk besluit tot regeling van de inschrijving van de commerciële platen en de nationale platen voor motorvoertuigen en aanhangwagens»).

⁵³ See, e.g., the choice-of-law rules of 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 J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

of registration⁵⁴ as the connecting factor. At first glance, this appears to be a rational choice, as the flag state or the state of registration can overcome the challenges associated with the *situs* as a connecting factor. After all, a watercraft's location is subject to more change than its flag state or state of registration. Additionally, according to the UN Convention on the Law of the Sea (UNCLOS), it is mandatory for watercraft⁵⁵ to fly the flag of the state where they are registered⁵⁶, thus clearly indicating to the outside world which law applies to their property rights. Hence, aligning with the flag state or state of registration results in a connecting factor that is as transparent as the *situs*.

However, it is essential to note that the flag state and the state of registration do not always correspond. While UNCLOS stipulates that a ship owner can register a ship in a particular state⁵⁷, granting it the nationality of that state and allowing it to fly its flag⁵⁸, this does not necessarily mean that the flag state and the state of registration are the same. In cases such as bareboat charter agreements⁵⁹, a ship may be registered in one state by the owner and then chartered to another party, who registers it in a different state's special register⁶⁰ (i.e. a bareboat charter register), allowing it to *temporarily*⁶¹ fly the flag of that second state. In this scenario, the ship's previous nationality is suspended during the valid registration in the second state's bareboat charter register⁶². It is important to note that typically, it is the first state

⁵⁴ 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 J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁵⁵ Note that the UNCLOS concentrates not on the registration of 'watercraft' but on 'ships'.

⁵⁶ Art. 91(1) UNCLOS.

⁵⁷ Art. 91(1) and 94 UNCLOS.

⁵⁸ Art. 91(1) UNCLOS: «Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly [...]».

⁵⁹ For a more comprehensive discussion of bareboat charter agreements: M. PIJACA and N. MANDIĆ, «Bareboat Charter Registry», *Transactions on Maritime Science*, vol. 5, 2016, no. 1, pp. 48-52.

⁶⁰ After all, this is not prohibited by Art. 91(1) UNCLOS.

⁶¹ Typically, once the bareboat charter agreement ends, the ship is no longer eligible for registration in the state's bareboat charter register. Consequently, the ship is also barred from flying that state's flag.

⁶² Art. 12 UN Convention on Conditions for Registration of Ships. See in this regard also Art. 16 UN International Convention on Maritime Liens and Mortgages. This is only possible, however, if both states concerned allow it. For an illustration within the national law of a Member State, consult Art. 3(g) Dutch Law on the Nationality of ships engaged in Bareboat Chartering of 8 October 1992 («Wet nationaliteit zeeschepen in rompbevrachting») and Art. 2.2.1.9(§1) and Art. 2.2.1.10(§2) Belgian Maritime Code of 8 May 2019 («Belgisch Scheepva-

(where the ship owner registered the ship) that retains authority over the registration of property rights in the ship, including the registration of mortgages or hypothecs⁶³, and property rights in ships are typically vested according to the law of the first registering state⁶⁴.

14. Therefore, using the flag state as a connecting factor may not be ideal for an EU choice-of-law rule for property rights in watercraft, as the flag state may not have control over the registration of property rights, especially in cases of bareboat charter agreements. Similarly, utilising the state (or place) of registration without further specification could lead to legal uncertainty regarding which state is intended, in case a watercraft is registered in multiple states.

15. A preferable approach is therefore to explicitly designate the first state (where the watercraft owner initially registered it) as the connecting factor⁶⁵. After all, it is this state that retains authority over the registration of property rights, and property rights can usually only be vested according to the law of that same state.

2. Connecting factor for aircraft

16. Contrary to watercraft, aircraft can only be registered in one state at a time and are granted the nationality of that state⁶⁶. Therefore, the complexity of ‘double’ registration in two different states is not a concern. For example, in the international practice of leasing aircraft for short or longer periods, whether ‘wet’⁶⁷ or ‘dry’⁶⁸ leasing, aircraft can only be registered in one state at any given time⁶⁹.

artwetboek»). D. DAMAR, «Flag», in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law*, I, *op. cit.*, pp. 758 and 763.

⁶³ Art. 16 UN International Convention on Maritime Liens and Mortgages. For an illustration within the national law of a Member State, consult Art. 84M Malta Merchant Shipping Act of 1973: «Mortgages and encumbrances may not be registered under this Act in respect of a ship registered under this Part of this Act, and the registrar shall refuse to register any such mortgages and encumbrances; such power of registration shall remain vested in the underlying registry». See also Art. 84K(1): «This Act shall not assert any ownership rights over a ship registered under this Part of this Act and it shall have no effect with regards to title and transfer and transmission of such ship or shares therein». See also the Belgian example: Art. 2.2.1.9(§5) and Art. 2.2.1.10(§3) Belgian Maritime Code of 8 May 2019 («Belgisch Scheepvaartwetboek»). D. DAMAR, «Flag», in BASEDOW, J., RÜHL, G., FERRARI, F. and DE MIGUEL ASENSIO, P. (eds.), *Encyclopedia of Private International Law*, I, *op. cit.*, pp. 763.

⁶⁴ Art. 1(a) UN International Convention on Maritime Liens and Mortgages.

⁶⁵ A similar approach has been chosen in Belgium: Art. 2.2.4.1(§1) Belgian Maritime Code of 8 May 2019 («Belgisch Scheepvaartwetboek»).

⁶⁶ Art. 17-18 Chicago Convention.

⁶⁷ ‘Wet’ leasing entails leasing an aircraft where the lessor typically manages the air operator’s certificate, crew, and insurance.

⁶⁸ ‘Dry’ leasing involves leasing an aircraft *only*. The lessee typically handles the air operator’s certificate, crew, and insurance themselves.

⁶⁹ Art. 12 Regulation on the operation of air services.

17. Currently, many Member States utilise the state of registration⁷⁰ (or insignia⁷¹ or nationality⁷², which essentially denote the same concept) as the connecting factor for aircraft. This approach appears, indeed, to be the most desirable option. International law mandates that aircraft bear the nationality (and registration marks) of the state where they are registered⁷³, thereby clearly indicating to the outside world which law governs property rights in the aircraft. The state of registration thus functions as a connecting factor that is as transparent⁷⁴ as the *situs*. On top of that, it is a more reliable⁷⁵ and stable solution than the *situs*, since aircraft are typically registered in a particular state for an extended period, minimizing the potential for mobile conflict. One last reason why the state of registration is the most effective choice for a connecting factor is that, according to international law, property rights in aircraft can only be established in accordance with the law of the state in which the aircraft is registered⁷⁶.

3. Connecting factor for railway vehicles

18. While fewer Member States currently have a special choice-of-law rule for property rights in railway vehicles compared to those for water- and aircraft, such a rule is still prevalent⁷⁷. As previously mentioned, it is desirable for the EU harmonised special rule to encompass railway vehicles as well⁷⁸.

⁷⁰ See, e.g., the choice-of-law rules of Belgium (Art. 89 Code of Private International Law), Bulgaria (Art. 68(2) Private International Law Code), Czechia (§ 69(2) Act on Private International Law), 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 J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁷¹ See, e.g., the Hungarian choice-of-law rule: Section 42(1) Act on private international law, for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁷² See, e.g., the choice-of-law rules of Estonia (§ 22(1) Private International Law Act) and Germany (Art. 45(1) Introductory Act to the Civil Code), for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁷³ Art. 20 Chicago Convention.

⁷⁴ Another advantage is that in many countries, aircraft registration requires mandatory disclosure of ownership information and the beneficiary of a usufruct in the aircraft. This information can subsequently be accessed by third parties during registry searches. See, e.g., Art. 7 Belgian Royal Decree concerning the regulation of aviation of 15 March 1954 («Koninklijk besluit regeling der luchtvaart») and Art. 13 Dutch Regulation concerning registration of Dutch civil aircrafts of 8 October 2001 («Regeling inschrijving Nederlandse burgerluchtvaartuigen»).

⁷⁵ As described above (*supra* no. 5), it may sometimes not be possible to determine the *situs* of aircraft due to technical difficulties, and even if the *situs* can be determined, it may be in international airspace.

⁷⁶ Art. I Convention on the International Recognition of Rights in Aircraft.

⁷⁷ *Supra* no. 6.

⁷⁸ *Supra* no. 6.

19. Unlike water- and aircraft, where the connecting factors used by Member States are relatively uniform, the diverse choices made in Member States for a rule for railway vehicles indicate clear divisions in opinions.

For instance, the national choice-of-law rules for railway vehicles in Austria⁷⁹ and Bulgaria⁸⁰ utilise, respectively, the actual head office of the railroad enterprise employing the vehicles, and the place of business of the person operating the railway rolling stock⁸¹. These connecting factors are often challenging to establish due to their complexity. Determining who qualifies as the ‘person operating the railway rolling stock’ according to Bulgarian PIL or how to ascertain this person’s ‘place of business’ can present difficulties⁸². Similar reservations can be made for the Austrian choice-of-law rule. Therefore, this approach does not seem desirable for an EU harmonised choice-of-law rule for railway vehicles.

Another approach can be found in Estonia and Germany, where both countries use the state of authorisation of the railway vehicle as the connecting factor⁸³. However, this approach may not be preferable, considering the Directive on the interoperability of the rail system⁸⁴. According to this Directive, the authorisation of a railway vehicle⁸⁵ can be granted not only by a Member State but also by the EU Agency for Railways⁸⁶. Hence, relying on the *state* of authorisation as the connecting factor is not the most suitable approach.

20. A better alternative is to use the railway vehicle’s state of registration as the connecting factor, as it is stable and easy to determine.

⁷⁹ § 33(1) Federal Statute on Private International Law (a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*).

⁸⁰ Art. 68 Private International Law Code (a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*).

⁸¹ Note that the Bulgarian choice-of-law rule refers to ‘railway rolling stock’ and not to ‘railway vehicles’.

⁸² For example, does the ‘place of business’ concern a company’s registered office or the location where the company has its principal place of business? See in this regard the concept of the ‘centre of main interests’ (COMI) used in Art. 3(1) Insolvency Regulation.

⁸³ 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 J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁸⁴ 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 (Directive on the interoperability of the rail system).

⁸⁵ Note that the Directive uses the term ‘vehicle’ instead of ‘railway vehicle’: Art. 2(3).

⁸⁶ The EU Agency for Railways typically grants the authorisation for railway vehicles having an area of use in multiple Member States: Art. 21(5) Directive on the interoperability of the rail system.

Several Member States currently employ this approach⁸⁷. According to the Directive on the interoperability of the rail system, every railway vehicle used on EU territory must first be registered⁸⁸ in the European Vehicle Register⁸⁹, which is a European register kept at EU level under the auspices of the EU Agency for Railways. The registration process is taken care of by (the administrations of) one of the Member States where the railway vehicle will be used⁹⁰. Upon registration, each railway vehicle is assigned a unique European Vehicle Number that must be physically attached to the vehicle⁹¹. In this manner, determining the applicable law to property rights in a railway vehicle is straightforward: by using the unique European Vehicle Number, one can inquire in the European Vehicle Register to identify the Member State where the railway vehicle is registered.

Considering that the register is *managed* by the EU Agency for Railways and not by a Member State (although the *registration process* is carried out by a Member State's administration), it is evident not to use the state where the register is *managed* or *kept*⁹² as the connecting factor. The 'state of registration' or, alternatively, the 'state under whose authority the registration occurred', is more suitable.

4. Connecting factor for motor vehicles

21. As discussed earlier in this text, a special choice-of-law rule for motor vehicles is desirable, despite its limited use in the Member States' national PIL⁹³.

22. Which connecting factor is best suited for motor vehicles? One of the few Member States that currently employs a special rule for motor vehicles is Bulgaria. Bulgarian PIL utilises the state of the

⁸⁷ See, e.g., the national choice-of-law rule for means of transport in 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 J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁸⁸ Art. 22(1) Directive on the interoperability of the rail system.

⁸⁹ 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 Directive on the interoperability of the rail system.

⁹⁰ Art. 22(2), Art. 22(3), and Art. 47 Directive on the interoperability of the rail system. This creates a strong connection between a railway vehicle's operational territory and its applicable law.

⁹¹ Art. 46(1) Directive on the interoperability of the rail system.

⁹² Compare the Czech choice-of-law rule for 'vessels' and 'aircraft' which refers to «the state in jurisdiction of which the *register is kept*» (own emphasis): § 69(2) Act on Private International Law, for which a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*

⁹³ *Supra* no. 6.

place of business of the person operating the motor vehicle as the connecting factor⁹⁴. While reminiscent of the connecting factor used in several Member States for railway vehicles⁹⁵, it is subject to similar critiques. It can often be challenging to firstly determine who the person operating the motor vehicle is (for example, in the case of an employee driving a company car, would this be the driver, the employer, or the leasing company?), and secondly, where this person's place of business⁹⁶ is.

23. Therefore, it seems preferable to use a more straightforward connecting factor, one that is also more stable than the *situs*, in order to minimise conflicts. For motor vehicles, the state of registration appears to be the most suitable solution. According to EU law, every motor vehicle's official documents should include a reference to the Member State of registration⁹⁷. Furthermore, the standardised EU format for number plates requires clear indication of the country where the motor vehicle is registered⁹⁸. Consequently, determining the applicable law for a motor vehicle can easily be done by examining its number plate or documents. This makes the state of registration a transparent and straightforward connecting factor. This approach, already employed in Belgian⁹⁹ and Portuguese PIL¹⁰⁰, appears to be the most appropriate way forward.

V. CONCLUSION

24. As suggested by the title of this contribution, a future, harmonised choice-of-law rule for property rights in means of transport would entail both traditional ('old') and innovative ('new') elements. The exploration of the rationale for an EU 'special' choice-of-law rule for means of transport identified four categories where such a rule is desirable: watercraft, aircraft, railway vehicles, and motor vehicles.

⁹⁴ Art. 68 Bulgarian Private International Law Code (a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*).

⁹⁵ *Supra* no. 19.

⁹⁶ See the discussion in footnote 82.

⁹⁷ Art. 3 *juncto* IV Annex I *juncto* IV Annex II Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles.

⁹⁸ See the Annex of Council Regulation 2411/98 of 3 November 1998 on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers are registered.

⁹⁹ Art. 89 Belgian Code of Private International Law (a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*).

¹⁰⁰ Art. 46(3) Book 1 Portuguese Civil Code (a translated version in English is available in J. BASEDOW, G. RÜHL, F. FERRARI and P. DE MIGUEL ASENSIO (eds.), *Encyclopedia of Private International Law*, IV, *op. cit.*).

While proposing a special rule for water- and aircraft is less groundbreaking, given that many Member States already have established a choice-of-law rule for these means of transport, suggesting a choice-of-law rule for railway vehicles and motor vehicles represents a significant innovation, as many Member States currently lack such a rule. The discussion has also examined the terminology surrounding these categories, advocating for broad terms such as 'watercraft', 'aircraft', 'railway vehicles', and 'motor vehicles' to effectively encompass the diverse range of means of transport. This approach is to a large extent new as well.

The quest for a suitable connecting factor for each of the four categories of means of transport has revealed that the state of registration, a concept familiar to several Member States, emerges as the most preferable option for all four categories. Serving as a stable and transparent connecting factor, it provides a convenient and straightforward approach for determining the applicable law. For many Member States, this would entail a new consideration, as some have previously opted for a different connecting factor. Last but not least, the analysis supports an additional notable new refinement for watercraft: a more detailed description of the state of registration, since simply referencing 'the state of registration' could lead to legal ambiguity. As previously argued, aligning with the state where the watercraft owner initially registered it, is advisable.

