The law applicable to contractual obligations – The Rome I Regulation

This Regulation replaces the Rome Convention that established uniform rules for determining the law applicable to contractual obligations in the European Union (EU).

ACT


SUMMARY

This Regulation applies to contractual obligations in civil and commercial matters in the event of a conflict of laws. It does not apply to revenue, customs or administrative matters, or to evidence and procedure.

Nor does the Regulation apply to the obligations relating to the following:

- a natural person’s status or legal capacity;
- family relationships;
- matrimonial property regimes;
- negotiable instruments such as bills of exchange, cheques and promissory notes;
- arbitration and choice of court;
- law of companies and other corporate or unincorporated bodies;
- the binding of a principal or a company to a third party;
- trusts;
- dealings that occur before a contract is concluded;

Any law indicated in this Regulation should be applied, even if it is not that of a Member State.

Freedom of choice

The parties to a contract are to choose the governing law. It may be applied to only a part or the whole of the contract. Provided that all the parties agree, the applicable law
may be changed at any time. If the law chosen is that of a country other than that relating most closely to the contract, the provisions of the latter law need to be respected. If the contract relates to one or more Member States, the applicable law chosen, other than that of a Member State, must not contradict the provisions of Community law.

**Applicable law in the absence of choice**

Where the parties have not chosen the applicable law for contracts for the sale of goods, provision of services, franchises or distribution, it will be determined based on the country of residence of the principal actor carrying out the contract. For contracts concerning immovable property, the law of the country where the property is located is applied, except in the cases of temporary and private tenancy (maximum six consecutive months). In such cases the applicable law is that of the landlord’s country of residence. In the case of sale of goods by auction, the law of the country of the auction will apply. With regard to certain financial instruments governed by a single law, the applicable law will be that law.

If none, or more than one of the above rules apply to a contract, the applicable law will be determined based on the country of residence of the principal actor carrying out the contract. If, however, the contract is related more closely to another country than provided by these rules, the law of that country will be applied. The same applies when no applicable law can be determined.

**Rules applicable to specific contracts**

For the following types of contract, the Regulation lays down options for the selection of applicable law and determines the law to be applied in the absence of choice:

- contracts for the carriage of goods – in the absence of choice, the applicable law will be that of the country of residence of the carrier, provided that this is also the place of receipt or delivery, or the residence of the consignor. Otherwise, the law of the country to which the delivery will be made will apply;
- contracts for the carriage of passengers – the applicable law may be chosen from either the country of residence of the passenger or carrier, the country where the central administration of the carrier is located, or the country of departure or destination. In the absence of choice, the law of the country of residence of the passenger will apply,
provided that it is also the place of departure or destination. Yet, if the contract is more closely related to another country, then the law of that country will apply;

- consumer contracts between consumers and professionals – the applicable law is that of the country of residence of the consumer, provided that this is also the country where the professional carries out his/her activities or to which his/her activities are directed. The parties may also, based on freedom of choice, apply another law, as long as it provides the same level of protection to the consumer as that of his/her country of residence;

- insurance contracts – in the absence of choice, the applicable law will be that of the country of residence of the insurer. However, if the contract is more closely related to another country, that country’s law will apply;

- individual employment contracts – the applicable law may be determined on the basis of the freedom of choice principle, provided that the level of protection granted to the employee remains the same as with the applicable law in the absence of choice. In the latter case, the law governing the contract will be that of the country where, or from where, the employee carries out his/her tasks. If this cannot be determined, the applicable law will be that of the country where the place of business is located. However, if the contract is more closely related to another country, that country’s law will apply.

**Scope of the law applicable**

The law this Regulation determines as applicable to a contract will regulate interpretation, performance, penalties for breaching obligations, assessment of damages, termination of obligations, instructions for actions, and penalties for invalid contracts. The Community law that establishes conflict-of-law rules for contractual obligations relating to particular matters takes precedence over this Regulation, except in the case of insurance contracts.

The Commission will submit a report on the application of this Regulation to the European Parliament, the Council and the European Economic and Social Committee by 17 June 2013.

The Regulation will apply to contracts that are concluded after 17 December 2009.

**Background**

The [Vienna Action Plan](#) of 1998 acknowledged the importance of harmonised conflict-of-law rules in the implementation of the mutual recognition principle for decisions in civil
and commercial matters. The joint Commission and Council programme of 2000 provides measures for this harmonisation. The Hague Programme of 2004 reasserted the importance of pursuing work on conflict-of-law rules for contractual obligations, with its Action Plan providing for the adoption of the Rome I proposal. This ensuing Regulation replaces the Rome Convention of 1980 on the law applicable to contractual obligations, transforming it into a Community instrument and modernising it.

REFERENCES

<table>
<thead>
<tr>
<th>Act</th>
<th>Entry into force</th>
<th>Deadline for transposition in the Member States</th>
<th>Official Journal</th>
</tr>
</thead>
</table>