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**(ROME I)**

**ROME REGULATION ON THE  
APPLICABLE LAW TO  
CONTRACTUAL OBLIGATIONS**

**REGULATION (EC) No 593/2008 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL**

**of 17 June 2008**

It is based upon and replaces its predecessor – the Rome Convention on the Law Applicable to Contractual Obligations 1980.

## **SCOPE OF APPLICATION**

1. **MATERIAL:** Contractual obligations  
in civil and commercial matters.
2. **PERSONAL:** Erga omnes
3. **TEMPORAL:** Contracts concluded after 17  
December 2009
4. **TERRITORIAL:** Territory of the EU Member States

### **ARTICLE 1. MATERIAL SCOPE**

- **Apply to:**

1. Situations involving a **conflict of laws**.
2. Contractual obligations.
3. Civil and commercial matters.

- **Not apply to:**

1. Revenue
2. Customs
3. Administrative matters

## Concept of “civil and commercial matters”

- **An autonomous concept** of EU law.
  - The reference to the interpretation given by the ECJ to the same concept in the context of the Brussels I Regulation.

REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (**recast**)

In its judgements under Brussels I and previously under Brussels Convention **the ECJ offered general guidance** in determining what constitutes civil and commercial matter:

*(C-29/76, LTU v. Eurocontrol; C-814/79, Netherlands v. Reinhard Ruffer; C-172/91, Sonntag v. Waidmann; C-292/05, Lechouritou v Dimosio).*

In abovementioned cases the term was defined **negatively**

- a matter is not “civil and commercial” if:
  - public authority is involved in creating obligations
  - this public authority acts in the exercise of its powers
- The meaning of the term must be **uniform and independent** of the national laws of Member States.
- Must be drawn, firstly, from the objectives and general scheme of the EU text and, secondly, from the general principles underpinning the corpus of national legal systems.
- **Not apply to public law matters.** The Regulation gives some examples of them: revenue, customs or administrative matters.

## Concept of “contractual obligations”

- This is also **an autonomous concept**.

- Its interpretation must be uniform and independent from the national laws of the Member States

- The Brussels I Regulation may also in this case provide a useful hermeneutic reference for interpreting the term “contractual obligations” (the ECJ judgements under Article 5.1 Brussels I).

*(C-26/91, Jakob Handte v. Traitements Mécano-chimiques des surfaces SA; C-51/97, Réunion européenne SA v. Spliethoff's Bevrachtingskantoor BV and Master of the vessel “Alblasgracht 002”).*

- The ECJ has stated that contractual obligations encompass “...legal obligations **freely consented** to by one person towards another”

*(C-26/91, Jakob Handte v. Traitements Mécano-chimiques des surfaces SA; C-334/00, Tacconi v. Wagner).*

## Concept of “conflict of laws”

A conflict of laws concept restricts the applicability of the Regulation to **situations linked to at least two different countries.**

The official version of Rome I, in German language, avoids the wording “in situations involving a conflict of laws” and instead reads “featuring a connection to the law of different countries.” In substance there is no difference.

- Conflict of laws has its foundation in using the appropriate law which is the most rational and fundamental in the understanding of the case at hand.
- A situation in which one or more elements are alien to the domestic social life of a country, and that entail applying several systems of law.
- The most obvious case is that the parties involved are domiciled or habitually resident in different countries.

## **EXCLUSIONS**

- 1. Status or legal capacity of natural persons (without prejudice to Article 13)**

“In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.”

- 2. Obligations arising out of family relationships, including maintenance obligations.**
- 3. Obligations arising out of matrimonial property, wills and succession.**
- 4. Obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments.**
- 5. Arbitration agreements and agreements on the choice of court.**
- 6. Questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organization or winding-up of companies and other bodies, and the personal liability of officers and members for the obligations of such company or body.**
- 7. The question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party.**

**8. Trusts.**

**9. Obligations arising out of dealings prior to the conclusion of a contract.**

**10. Insurance contracts arising out of operations carried out by organisations.**

The Regulation **do not apply to evidence and procedure** (without prejudice to Article 18).

“1. The law governing a contractual obligation under this Regulation shall apply to the extent that, in matters of contractual obligations, it contains **rules which raise presumptions of law or determine the burden of proof.**

2. A contract or an act intended to have legal effect **may be proved** by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 11 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.”.

## ARTICLE 2. **PERSONAL SCOPE**

### UNIVERSAL APPLICATION

### ERGA OMNES

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

Rome I asks for **universal application**.

The Regulation is not only applicable as among Member States of the Regulation or Member States of the European Union. Like the Rome Convention, it also applies in case the law of a Non-Member State is made applicable.

## ARTICLE 28. TEMPORAL SCOPE

### APPLICATION IN TIME

- Date of entry into force
- Date of application

The Regulation applies to

**contracts concluded**

**after**

**17 December 2009**

- The Rome I Regulation entered into force on 24 July 2008, but its application is postponed so as to cover only the contracts concluded as from 17 December 2009.
- The Regulation clarifies the difference between the date of “entry into force” of the text and the date of “application in time”, and expressly establishes that it only applies to contracts concluded after the latter, so as to avoid the problems posed by the Rome II Regulation.
- Some problems may arise as to the contracts lasting many years (*i.e.* tenancy, leasing).

## **TERRITORIAL SCOPE**

Territory of the EU Member States

- **United Kingdom**
- **Denmark**

The Rome I Regulation includes **all Member States save for Denmark** which remains under the Rome Convention regime.

RECITAL 46

“In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, **Denmark is not taking part in the adoption of this Regulation and is not bound by it** or subject to its application.”

The United Kingdom after some hesitations at the beginning finally decided to be in.

- Consequently, Article 1(4) makes a distinction between Member States to the Regulation and Member States of the European Union, the latter being addressed within the Regulation only in Article 3(4) and Article 7.
- For States with several territorial units having separate rules regulating contractual obligations, each territorial unit is considered as a country when determining the law applicable under this Regulation (**Article 22**).