Civil and commercial judicial cooperation: converting the Rome Convention on the law applicable to contractual obligations into a Community Regulation, Rome I

2005/0261(COD) - 17/06/2008 - Final act

PURPOSE: to convert the Rome Convention on the law applicable to contractual obligations into a Community Regulation and to modernise certain of its rules.

LEGISLATIVE ACT: Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I).

CONTENT: the Council adopted a Regulation aimed at harmonising conflict-of-law rules concerning contractual obligations, accepting all the amendments passed by the European Parliament at first reading. The new Regulation will replace the 1980 Rome Convention on the law applicable to contractual obligations, while modernising some of its rules.

The Regulation will apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters, with a list of specified exceptions. Any law specified by the Regulation shall be applied whether or not it is the law of a Member State.

Uniform rules: in the context of the European judicial area, it is important to improve certainty as to the law applicable, the predictability of the outcome of litigation and the free movement of judgments. The new Regulation will ensure that, even though the substantive law of the Member States is different, all courts of the Member States will apply the same law – be it their own or that of another EU country – to the contract in question.

Scope of the application: this Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

It shall not apply, in particular, to revenue, customs or administrative matters.

The following shall be excluded from the scope of this Regulation:

- questions involving the status or legal capacity of natural persons;
- obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;
- obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
- obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- arbitration agreements and agreements on the choice of court;

- questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;
- 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;
- the constitution of trusts and the relationship between settlors, trustees and beneficiaries;
- obligations arising out of dealings prior to the conclusion of a contract;
- insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

Freedom of choice: the Regulation is based on the principle of party autonomy, i.e. in most cases the parties are free to choose the law that will govern their contract. However, in the absence of choice, the Regulation sets out clear and predictable rules to determine the law applicable to a contract. Apart from the general regime, it also contains specific conflict-of-law rules for particular cases such as consumer contracts, contracts of carriage and individual employment contracts.

Review clause: by 17 June 2013, the Commission will submit a report on the application of the Regulation. The report shall include:

(a) a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any; and

(b) an evaluation on the application of Article 6, (Consumer contracts)in particular as regards the coherence of Community law in the field of consumer protection.

By 17 June 2010, the Commission shall submit a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced.

The Regulation shall apply to contracts concluded after 17 December 2009.

Application: ENTRY INTO FORCE: 24/07/2008.

APPLICATION: from 17 December 2009 except for Article 26 (List of Conventions) which shall apply from 17 June 2009.