



Serbia Screening Chapter 24

The Rome I Regulation and the Rome Convention on the law applicable to contractual obligations

Directorate-General Justice
Unit A.1 Civil justice policy



Background

*Link between Brussels I - Rome I and Rome II
Negotiated since end 1960's*

Split Rome I – Rome II in 1980

*1980 Rome Convention on the law applicable to
contractual obligations*





Objective and interpretation

Foreseeability as to applicable law independently of forum seised

Prevent forum-shopping

Create conditions for abolition of exequatur

Less far-reaching solution than harmonisation of substantive law

Aligning rules of Rome Convention on BXL I Regulation

Autonomous interpretation



Scope

Ratione loci – universal character

Ratione temporis

Ratione materiae

- **Situations involving a conflict of laws**
- **Contractual obligations in civil and commercial matters**
- **No revenue, customs or administrative matters**
- **Exceptions**

Status or legal capacity of natural persons

Obligations arising out of family relations, including maintenance

Obligations arising out of matrimonial property regimes and successions

Negotiable instruments

Choice of court and arbitration

Company law and liability of company directors and members

Question whether agent can bind principal/organ can bind company

Trusts

Evidence and civil procedure

Precontractual obligations

Certain types of insurance contracts



Freedom of choice

General principle: freedom of choice of law in contract (Art. 3)

Choice must be expressed or clearly demonstrated by circumstances of case

Change of choice of law

No prejudice to application of national or Community mandatory rules

Substantive and formal validity (Art. 10 – 11)

Incapacity (Art. 13)





Applicable law in the absence of choice (Art. 4)

Specific rules for main types of contracts (§1)

Law of state of habitual residence of party effecting characteristic performance (§2)

Escape clause (§3)

Characteristic performance cannot be defined (§4)





Special rules for specific types of contracts

Contracts of carriage (Art. 5)

Carriage of goods

Carriage of passengers

Consumer contracts (Art. 6)

Insurance contracts (Art. 7)

Individual employment contracts (Art. 8)





Interference with the applicable law

Overriding mandatory provisions (Art. 9)

Public policy (Art. 21)



Other provisions

Scope of the applicable law (art. 12)

Voluntary assignment and contractual subrogation (art. 14)

Legal subrogation (art. 15)

Multiple liability (art. 16)

Set-off (art. 17)

Exclusion of renvoi (art. 20)

Definition of habitual residence (art. 19)



Thank you for your attention!