



## **Serbia Screening Chapter 24**

# **The Rome II Regulation on the law applicable to non-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*

*Renewed consultations 1990's*

*COM proposal 2003*

*Adoption of Regulation 2007 – entry into force  
11.01.09*



# 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*

*Autonomous interpretation*



# Structure of Rome II

*Scope*

*Non-contractual obligations arising out of a tort or delict*

*Non-contractual obligations arising out of an act other than a tort or delict*

*Freedom of choice*

*Common rules*

*Other and final provisions*

# Scope

*Ratione loci*

*Ratione temporis*

*Ratione materiae*

- **Situations involving a conflict of laws**
- **Non-contractual obligations in civil and commercial matters**
- **No revenue, customs or administrative matters**
- **Exceptions**
  - Obligations arising out of family relations, including maintenance
  - Obligations arising out of matrimonial property regimes and successions
  - Negotiable instruments
  - Company law - liability of company directors, members, auditors
  - Trusts
  - Nuclear damages
  - Violations of privacy and personal rights by the media
  - Evidence and procedure



# General rule for torts

*Law of country in which the damage occurs*

*Exceptions:*

Law of country of common habitual residence of parties

Law of country with which situation has a manifestly closer connection





# Special rules for specific torts

*Product liability*

*Unfair competition and restrictions to competition*

*Environmental damage*

*Infringement of intellectual property rights*

*Industrial action*





# Rules for acts other than torts

*Unjust enrichment*

*Agency without authority (negotiorum gestio)*

*Culpa in contrahendo*





# Freedom of choice

*Choice of law possible after dispute arose*

*Choice of law between businessmen possible  
also before dispute arises*

*Choice must be expressed or demonstrated with  
reasonable certainty by circumstances of case*

*No prejudice to application of national or  
Community mandatory rules*

# Common rules

*Scope of the applicable law*

*Overriding mandatory rules*

*Rules of safety and conduct*

*Direct action in insurance matters*

*Subrogation and multiple liability*

*Exclusion of renvoi*

*Public policy*



# **Thank you for your attention!**