

Regulation (EC) No 864/2007 of the European Parliament and of the Council
of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

CHAPTER I

SCOPE

Article 1

Scope

- 1 This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).
- 2 The following shall be excluded from the scope of this Regulation:
 - a non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;
 - b non-contractual 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;
 - c non-contractual 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;
 - d non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;
 - e non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;
 - f non-contractual obligations arising out of nuclear damage;
 - g non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.
- 3 This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.
- 4 For the purposes of this Regulation, ‘Member State’ shall mean any Member State other than Denmark.

Article 2

Non-contractual obligations

1 For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.

2 This Regulation shall apply also to non-contractual obligations that are likely to arise.

3 Any reference in this Regulation to:

- a an event giving rise to damage shall include events giving rise to damage that are likely to occur; and
- b damage shall include damage that is likely to occur.

Article 3

Universal application

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

CHAPTER II

TORTS/DELICTS

Article 4

General rule

1 Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.

2 However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

3 Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 5

Product liability

1 Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:

- a the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
- b the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,
- c the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2 Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Article 6

Unfair competition and acts restricting free competition

1 The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.

2 Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.

3

- a The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected.
- b When the market is, or is likely to be, affected in more than one country, the person seeking compensation for damage who sues in the court of the domicile of the defendant, may instead choose to base his or her claim on the law of the court seised, provided that the market in that Member State is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises; where the claimant sues, in accordance with the applicable rules on jurisdiction, more than one defendant in that court, he or she can only choose to base his or her claim on the law of that court if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in the Member State of that court.

4 The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 7

Environmental damage

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

Article 8

Infringement of intellectual property rights

1 The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.

2 In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.

3 The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 9

Industrial action

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

CHAPTER III

UNJUST ENRICHMENT, *NEGOTIORUM GESTIO* AND *CULPA IN CONTRAHENDO*

Article 10

Unjust enrichment

1 If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

2 Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

3 Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.

4 Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 11

Negotiorum gestio

1 If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.

2 Where the law applicable cannot be determined on the basis of paragraph 1, and the parties have their habitual residence in the same country when the event giving rise to the damage occurs, the law of that country shall apply.

3 Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the act was performed.

4 Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

Article 12

Culpa in contrahendo

1 The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.

2 Where the law applicable cannot be determined on the basis of paragraph 1, it shall be:

- a the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred; or
- b where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country; or
- c where it is clear from all the circumstances of the case that the non-contractual obligation arising out of dealings prior to the conclusion of a contract is manifestly more closely connected with a country other than that indicated in points (a) and (b), the law of that other country.

*Article 13***Applicability of Article 8**

For the purposes of this Chapter, Article 8 shall apply to non-contractual obligations arising from an infringement of an intellectual property right.

CHAPTER IV

FREEDOM OF CHOICE*Article 14***Freedom of choice**

- 1 The parties may agree to submit non-contractual obligations to the law of their choice:
 - a by an agreement entered into after the event giving rise to the damage occurred;
 - or
 - b where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

- 2 Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.
- 3 Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the Member States, the parties' choice of the law applicable other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

CHAPTER V

COMMON RULES*Article 15***Scope of the law applicable**

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;

- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (c) the existence, the nature and the assessment of damage or the remedy claimed;
- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (f) persons entitled to compensation for damage sustained personally;
- (g) liability for the acts of another person;
- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

Article 16

Overriding mandatory provisions

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

Article 17

Rules of safety and conduct

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

Article 18

Direct action against the insurer of the person liable

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

Article 19

Subrogation

Where a person (the creditor) has a non-contractual claim upon another (the debtor), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to

exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

Article 20

Multiple liability

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

Article 21

Formal validity

A unilateral act intended to have legal effect and relating to a non-contractual obligation shall be formally valid if it satisfies the formal requirements of the law governing the non-contractual obligation in question or the law of the country in which the act is performed.

Article 22

Burden of proof

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

2 Acts 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 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

CHAPTER VI

OTHER PROVISIONS

Article 23

Habitual residence

1 For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2 For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

Article 24

Exclusion of renvoi

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

Article 25

States with more than one legal system

1 Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2 A Member State within which different territorial units have their own rules of law in respect of non-contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Article 26

Public policy of the forum

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

Article 27

Relationship with other provisions of Community law

This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

Article 28

Relationship with existing international conventions

1 This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

2 However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

CHAPTER VII

FINAL PROVISIONS

Article 29

List of conventions

1 By 11 July 2008, Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2 The Commission shall publish in the *Official Journal of the European Union* within six months of receipt:

- (i) a list of the conventions referred to in paragraph 1;
- (ii) the denunciations referred to in paragraph 1.

Article 30

Review clause

1 Not later than 20 August 2011, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. The report shall include:

- (i) a study on the effects of the way in which foreign law is treated in the different jurisdictions and on the extent to which courts in the Member States apply foreign law in practice pursuant to this Regulation;
- (ii) a study on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

2 Not later than 31 December 2008, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, taking into account rules relating to freedom of the press and freedom of expression in the media, and conflict-of-law issues related to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾.

Article 31

Application in time

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

Article 32

Date of application

This Regulation shall apply from 11 January 2009, except for Article 29, which shall apply from 11 July 2008.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

M. LOBO ANTUNES

(1) OJ L 281, 23.11.1995, p. 31.