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LEX CONTRACTUS FOR SPECIFIC CONTRACTS UNDER THE ROME I REGULATION

Abstract

The choice of law in contract has emerged from three main factors the first factor is the place where contract is made, the performance of the contract and the nationality or the place where contract is made. The issue of choice of law in contract becomes more pertinent when there are number of connecting factors involved in the contract. This issue is very common in all countries and almost all countries have tried various methods to solve it out. Contracts are the foundation of economic activity. They are concluded in all shapes and sizes. In the case of cross-border contractual arrangements in particular, it is vital to determine which law applies to the contract It is also important to investigate whether general conditions also apply, and if so, which set will prevail if several sets have been declared applicable. It is vital to clearly lay down a choice of law and the applicability of general conditions in the agreement, so that no disputes may arise about this in the future.[1] This article analyses the law applicable to specific contracts the European Union choice of law rules, such as contracts for carriage; certain consumer contracts; insurance contracts and individual employment contracts.

Key words: *Rome I Regulation, lex contractus, individual employment contracts, contract for carriage, insurance contracts, consumer contracts.*

I. INTRODUCTION

Private international law traditionally was, and for a part still is, an issue of national law. Each state has its own rules to deal with jurisdiction, applicable law and recognition and enforcement of foreign judgments. Europe has taken an interest in issues of private international law since the 1957 Treaty on the European Economic Community. The 1997 Amsterdam Treaty

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[1] Anne-Marie van Dijk, "Law applicable to an international contract" available at: https://www.boelszanders.nl/en/publication/law-applicable-to-an-international-contract/

introduced the wider concept of judicial co-operation and brought the three core issues of private international law into the scope of the European Community. The three core issues are now found in Article 81(2)(a) and (c), TFEU. Private international law in principle deals with the cross-border aspects of all questions of private law. However, an important consideration is that the adoption of EU legislation on a private international law matter concerning family law requires unanimous action of the Council, after consultation of the European Parliament (Article 81(3), TFEU).[2]

In European conflict of law context, the most remarkable evolution of private international law in the past two decades appears to have been its swift and intense Europeanization. Today, private international law is to a large degree European private international law. The impact of the rule of non-discrimination, of fundamental rights and, especially, mutual recognition even mark a kind of European conflict revolution.[3] In particular, when a given PIL rule leads to the conclusion that a court in a given State (X) is competent to adjudicate a private law dispute with an international element, that decision can usually be traced to the existence of a certain connection – the existence of one or more connecting factors – which serves to provide a legally sufficient link between the forum State (and its courts) on the one hand and the parties and circumstances of the particular case on the other. Similar connecting factors are also at work when a competent court in a given State (X) decides to choose and apply the substantive law of that State or of a different State (Y).[4]

But, what is European Private International Law for contractual obligations? It consists of three main questions:

1. which court has jurisdiction over the contract,
2. which law is applicable in such contract matters and
3. under which conditions may a foreign decision be recognised and enforced in another country.

The main question in this paper is the second one: which law is applicable in contract matters, with special attention to specific contracts:

a) Contracts for carriage;
b) Certain consumer contracts;
c) Insurance contracts and
d) Individual employment contracts.

Within the European PIL, the European legislation provided uniform European rules for choice of law in relation to contractual obligations arising in civil and commercial contracts. In 2008 the Rome I Regulation was adopted, and came into force is such a way that it applies to contracts made after 17 December 2009.[5] The Rome I Regulation is an integral legal instrument dealing with the law applicable in contractual matters. It presents a revised version of the Rome Convention of 1980.

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[2] A European Framework for private international law: current gaps and future perspectives, 2012, p. 7, available at: http://www.europarl.europa.eu/document/activities/cont/201212/20121219ATT58300/20121219ATT58300EN.pdf

[3] J. Meeuen 'Instrumentalisation of Private International Law in the European Union: Towards a European Conflict Revolution' 9 *European Journal of Migration and Law* (2007) p. 287.

[4] J. Lookofsky, K. Hertz, *EU-PIL European Union Private International Law in Contract and Tort* (JurisNet, Copenhagen 2009) p. 15.

[5] Regulation (EC) 593/2008, [2008] OJ L177/6.

II. SCOPE OF APPLICATION OF THE ROME I REGULATION

At the legislative level, the Europeanisation of private international law has come a long way over the past few decades, and in the last ten years in particular. Although the current legislative framework has a number of gaps and lacks coherence, the existing European instruments generally offer a sound basis for resolving private international law matters.[6]

The Rome I Regulation represents an integral part of an ever-growing initiative on the part of the European Union to create a harmonized system of rules in the sphere of Private International Law. Nowadays, the initiative on the European level goes even further - to the substantive law, including the possible development of a "European" contract law. Indeed, the Rome I Regulation allows for the possibility of there being rules of substantive contract law, including standard terms and conditions.

The material scope of the Rome I Regulation is defined by Article 1. Article 1(1) sets out the general rule for the application of the Regulation, whereas Article 1(2) and (3) exclude certain matters from the scope. Under Article 1 of Rome I, the material scope of application is limited to contractual obligations in civil and commercial matters involving a conflict-of-laws problem and it does not cover revenue, customs or administrative matters. Thus, all civil and commercial contracts fall into the scope of the Regulation unless they are expressly excluded. Along with several other issues, arbitration and choice-of-court agreements are expressly excluded by the Rome I Regulation.[7] Because, certain matters excluded from the substantive scope of application of the Regulation Rome I are either dealt with in other EU instruments (e.g. obligations arising out of family relationships, including maintenance, wills and successions, choice of court agreements falling within the scope of the Regulation Brussels I, culpa in contrahendo, evidence) or are currently discussed (e.g. obligations arising out of matrimonial property regimes and property regimes of registered partnerships).

The meaning of civil and commercial matters is expressed in the same manner as in the Brussels I Regulation (the Rome I Regulation does not apply to revenue, customs or administrative matters) and is to be interpreted consistently with that Regulation. The list of exclusions is much longer, however. These include questions involving the status or legal capacity of natural persons. Questions governed by the law of companies and other legal persons are excluded. Obligations arising out of family relationships and maintenance obligations, matrimonial property regimes, wills and succession are also excluded, as are bills of exchange, cheques, etc. Importantly, jurisdiction and arbitration agreements are excluded from the Rome I Regulation. It might be considered that the Brussels I Regulation exclusively deals with jurisdiction agreements and the New York Convention with arbitration agreements.[8] Finally, the Rome I Regulation does not apply to evidence and procedure.

The Rome I Regulation applies universally or erga omnes meaning that it is irrelevant whether the law of a Member State or a non-Member State is designated as applicable (Article 2). It also excludes renvoi, so that the reference to a certain law is a reference directly to the

[6] Xandra Kramer A Common Discourse in European Private International Law? A View from the Court System, in Jan von Hein, Eva-Maria Kieninger & Giesela Rühl (eds), How European is European Private International Law, Intersentia 2018/19.

[7] Burcu Yüksel (2011) The Relevance of the Rome I Regulation to International Commercial Arbitration in the European Union, Journal of Private International Law, 7:1, p. 150.

[8] Rogerson Pippa, Collier's Conflict of laws, Cambridge University Press, Fourth edition, 2013, p. 296.

substantive rules of that law (Article 20). This exclusion improves foreseeability in legal relations and harmony of decisions intended by the EU legislator.[9]

Therefore, where a contractual obligation falls within the scope of Rome I, its rules will be applied by the courts of Member States even if the application of those rules results in a non-EU law (for example: Macedonian law) being the governing law of any contractual obligations.

III. GENERAL CHOICE OF LAW RULES

The Courts of all 28 EU member states, apply the same rules for determining choice of law irrespective of the nationality of the parties. Rome I Regulation stipulates which national system of law has to be applied. It was already emphasized that the Rome I Regulation has universal character, which means that these rules apply irrespective of whether the designated law is the law of a Member State or of another country. Faced with an issue of contract, it is best to commence by identifying the applicable law.

On the basis of the Rome I Regulation, the main rule is the party autonomy. This is the most important conflict rule for contracts. Party autonomy gives the parties the power to choose in their contract the law that will govern their relationship.[10] Thus, the traditional function of the party autonomy as part of Private International Law is selecting of the rules that govern private relationships with international elements. What is noteworthy is not only that such expansion is being facilitated by the communitarisation of conflict of laws - the same process that has paved way for its instrumentalisation of private international law of the economy - and is widely supported in the doctrine, but also that experts' support is expressed in terms that reflect the classical dogmas. The method of recognition and party autonomy in cross-border economic matters has come under strict scrutiny for their adverse social effects.[11]

In cases where the parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. A choice is likely to be demonstrated with reasonable certainty where the contract is in a standard form that is known to be governed by a particular law or in light of previous dealings between the parties. Where there is a choice of court agreement, this is often enough to infer that the law of that court was intended to be chosen, but this is not always the case. In the case of an arbitration agreement, if the selection criteria for the arbitrators is specified, this will more readily permit an inference of a choice of law, but if arbitrators are identified by reference to some international body, then it is much less likely that the choice will have been found to have been demonstrated with reasonable certainty.[12]

In cases where there is no express choice of law, or one that is not demonstrable with reasonable certainty, the Rome 1 Regulation provides specific rules, depending on the type of contract. Therefore, in cases of absence of choice of law, the law of the country of the party delivering the characteristic (most important) performance applies.

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[9] Kunda Ivana, Carlos Manuel Gonçalves de Melo Marinho, Practical Handbook on European Private International Law, 2010, p. 10.

[10] Giuditta Cordero Moss, International Commercial Contracts, Cambridge University Press, 2013, p. 135.

[11] Alberto Horst Neidhardt, The Transformation of European Private International Law, A Genealogy of the Family Anomaly, European University Institute Department of Law, p. 39, available at: http://cadmus.eui.eu/bitstream/handle/1814/60158/Neidhardt_2018_LAW.pdf?sequence=1&isAllowed=y

[12] See also: https://e-justice.europa.eu/content_which_law_will_apply-340-ni-maximizeMS_EJN-en.do?member=1#toc_3_1

This doctrine is borrowed from Swiss law as all of know Switzerland is not a part of EU so this is consider as an innovative step. In the case of a contract for a supply of goods or services not the payment of money for them which is the contraistic performance. The presumption of a contract having its characteristic performance most closely connected with the a particular country will not apply however if characteristic performance cannot be determined if it appears from the circumstances as a whole that the contract is more closely connected with another country.[13]

In summary, general conflict of law rules enacted in Rome I Regulations are the following:

- Where there has been an express choice of law in the contract, the Courts will apply that chosen law (Article 3 (1)).[14]
- The Court may determine that, on the individual facts of the case, there has been an implied choice of law by the parties (Article 3 (2)).[15]
- Application of mandatory rules (Article 3 (3 and 4)).[16]
- Where there has been no express or implied choice, the law of the contract will be the law of the country that is most closely connected to the contract. There is a presumption that the applicable law will be the law of the "habitual residence" of the party whose contractual obligation was to provide goods or services rather than pay for those services (Article 4).
- There is a supplemental provision where the Court can ignore this general rule where there is another country that is more closely connected with the contract than that indicated by the presumption.[17]

[13] See: https://www.lawteacher.net/free-law-essays/commercial-law/choice-of-law-in-contract-commercial-law-essay.php

[14] Article 3 (1) Rome I Regulation: A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

[15] Article 3 (2) Rome I Regulation: The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

[16] Article 3 (3) (4) Rome I Regulation: (3).Where all other elements relevant to the situation at the time of the choice 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. (4) Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law 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.

[17] Article 4 (2) (3) (4) Rome I Regulation: Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence. (3) Where it is clear from all the circumstances of the case that the contract 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. (4) Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.

IV. CONFLICT OF LAW RULES FOR SPECIFIC CONTRACTS

Although a choice of law made by the parties which satisfies Article 3 cannot be dined effect there are certain contracts, and other issues, for which the rules of another system of domestic law may be superimposed so as to limit the hegemeony of the *lex contractus*. It is also worth making it plain at this point there are certain contracts where, if the parties do not make an express choice of law, Article 4 does not supply the governing law. There are four kind of contract for which special legislative provision is made.[18] Particular types of contracts have special rules for determining the applicable law. Some rules are to protect the party considered the weaker in the bargain such as consumers or employees. Some rules are to deal with specialist concerns, such as insurance or carriage of goods. Consequently, for contracts for carriage, certain consumer contracts, and insurance contracts and for individual employment contracts, Rome I Regulation contains special conflict of law rules.

1. Contracts for carriage – Article 5 of the Rome I Regulation

In the international context, contracts of carriage are regulated by a large number of conventions.[19] Recital 22 of Rome I Regulation gives the same definition for contracts for carriage as Article 4 (4) of the Rome Convention. For instance, as regards the interpretation of contracts for the carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the Rome Convention. Consequently, single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods. For the purposes of the Rome I Regulation, the term 'consignor' should refer to any person who enters into a contract of carriage with the carrier and the term 'the carrier' should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.

Article 5 Rome I Regulation distinguishes between contracts of carriage of goods and of passengers. Carriage of goods is regulated by Article 5(1),[20] whereas carriage of passengers is

[18] Adrian Brigs, The Conflict of Laws, Third edition, Oxford University Press, 2013, p. 243.

[19] See: Peter Arnt Nielsen, The Rome I Regulation and Contracts of Carriage, in Franco Ferrari, Stefan Leible, European Commentaries on Private International Law, Rome I Regulation, 2009, pp. 99-102. Some of the most important conventions on international carriage of goods or passengers are the Berne Convention concerning International Carriage by Rail of 1980 (the COTIF Convention), the Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road (the CMR Convention), the Convention on the Contract for the International Carriage of Passengers and Luggage by Road from 1973 (the CVR Convention), the Convention relating to the Carriage of Passengers and their Luggage by Sea of 1974 as amended in 1976 (the Athens Convention), the Hague Rules of 1924 as amended by the Brussels Protocol of 1968 (the Hague-Visby Rules) and the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air from 1929 as amended in 1955 and 1961 (the Warsaw Convention) with Additional Protocols Nos. 1 and 2 of 1975 (the Montreal Protocols).

[20] See Article 5 (1) Rome I Regulation: To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

dealt with in Article 5(2).[21] Party autonomy is the main connecting factor, but numerous restrictions apples.

Article 5(1), together with the general rule of displacement in Article 5(3), sets out the rules relating to contracts for the carriage of goods. In particular, freedom of the parties to choose the applicable law, which is routinely exercised in relation to contracts for the international carriage of goods, remains unchanged. In particular, insofar as the parties have not chosen the law applicable to their contract, the law applicable shall be the law of the country of habitual residence of the carrier, provided that the place of receipt or the place of delivery of the goods or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed between the parties is situated shall apply. Thus, pursuant to Article 5 (1) of the Rome I Regulation, a contract for the carriage of passengers is primarily governed by the law which parties selected among the options listed in the Regulation.

Article 5(2), together with the general rule of displacement in Article 5(3), sets out the rules relating to contracts for the carriage of passengers. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply. As for the party autonomy, which is the main connecting factor, if the contract is one for the carriage of passengers, the applicable law which may be chosen is limited to the following ones:

(a) the country of the habitual residence of passenger; or
(b) the country of the habitual residence of carrier; or
(c) the country in which the carrier has his or its central administration; or
(d) the country of the place of departure; or
(e) the country of the place of destination.

Hence, absent a valid choice of law the passenger in general will enjoy the protection of the law which is familiar to him or to which he at least has easy access. Only in case neither the place of departure nor the place of destination is in the country of the passenger's habitual residence, the law of the country of the habitual residence of the carrier will apply.[22]

[21] See Article 5 (2) Rome I Regulation: To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the country where the carrier has his habitual residence shall apply. The parties may choose as the law applicable to a contract for the carriage of passengers in accordance with Article 3 only the law of the country where: (a) the passenger has his habitual residence; or (b) the carrier has his habitual residence; (c) the carrier has his place of central administration; (d) the place of departure is situated; (e) the place of destination is situated.

[22] Volker Behr, ROME I REGULATION A—MOSTLY—UNIFIED PRIVATE INTERNATIONAL LAW OF CONTRACTUAL RELATIONSHIPS WITHIN—MOST—OF THE EUROPEAN UNION, Journal of Law and Commerce Vol. 29:233], p. 251.

The general rule of displacement is contained in Article 5 (3) of the Rome I Regulation. Article 5(3) contains an escape clause with the same wording as Article 4(3). That means that the law designated by the strict choice of law rules of Article 5(1) and (2) in the absence of an agreed choice shall be disregarded if it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, and that the law of that other country shall apply instead.

It can be concluded that the inclusion of a special rule for such contracts in the Rome I Regulation resulted from the desire of a number of Member States to create a greater degree of consumer protection in the field of contracts for carriage.

2. Consumer contracts – Article 6 of the Rome I Regulation

Consumer protection in choice of law is a fairly young concept. In fact, the idea that consumers might be as much in need of protection in choice of law as in other areas of law did not loom large before the second half of the 20th century.[23] In the legal literature, consumer protection is generally explained, and justified, with the concept of the "weaker party." Consumers are considered to be "weaker" than their contracting partners, the professionals, and assumed to be unable to protect their interests due to inferior bargaining power.[24]

Questions related to the law applicable to cross-border consumer contracts are subject to ongoing discussions for the European legislator and in academic circles. Similar to carriage contracts insurance contracts cover a mix of situations, some strictly business related, others consumer related. As it is stated in the Recital 23 of the Rome I Regulation, consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer has his habitual residence, directs his activities by any means to that country or to several countries, including that country, and the contract is concluded as a result of such activities.[25]

Article 6 of Rome I Regulation defines the term "consumer" as a natural person who concludes a contract for purpose which can be regarded as being outside his trade or profession (positive definition). Only when a natural person acts outside his trade or profession can he gain the identity of consumer as well as the corresponding protection, but Article 6 does not spell out how to operate the criteria. As the seventh recital of Rome I Regulation stresses, the substantive scope and the provisions of Rome I Regulation should be consistent with Brussels I Regulation, so case laws of the European Court of Justice (the ECJ) on jurisdiction can be quoted. In Benincasa v Dentalkit, 24 where Benincasa, a nonprofessional, concluded a franchise contract with the company Dentalkit, Benincasa argued that he should be protected as a consumer because he was not yet carrying on a business when he concluded the contract. However, the

[23] Ole Lando, Consumer Contracts and Party Autonomy in the Conflict of Laws, 15 NORDiSK TIDSSKRIFT FOR INTERNATIONAL RET INITR] 208 (1972)
[24] y Hugh Beale, Inequality of Bargaining Power, 6 OXFORDJ, Legal Studies, 123 (1986) (U.K.)
[25] See Recital 25 of the Rome I Regulation.

ECJ held that a consumer should conclude a contract outside and independent of any trade or professional purpose whether present or future.[26]

The moderate recognition of party autonomy in Article 6 of the Rome I Regulation requires that the judge first verify if the parties have properly chosen the law applicable according to the provisions of the Rome I Regulation.[27] According to Article 6 (2) of the Rome I Regulation, notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1. Additionally, Article 6 provides that without prejudice to the articles on carriage and on insurance, consumer contracts shall be governed by the law of the consumer's habitual residence, if there is no valid choice of law.

Finally, not all consumer contracts are within the protective umbrella, only those which are not explicitly excluded (Article 6(4))[28] and which are entered into under these specific circumstances: 1) the professional pursues commercial or professional activities in the country of consumer‟s habitual residence, or directs such activities to that country, and 2) the contract falls within the scope of such activities. [29]

In conclusion, the ratio of having some degree of party autonomy for consumer contracts, combined with specific provision for certain financial instruments, is to strike an appropriate balance between consumer and business interests, and to protect the consumer as a weaker party in everyday operations.

3. Insurance contracts – Article 7 of the Rome I Regulation

As a starting point, under Article 1(1) (j) of the Rome I Regulation, some insurance contracts are out of scope of the Rome I Regulation. Insurance contracts arising out of operations carried out by organizations 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

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[26] Ziyu Liu, Consumer Protection in Choice of Law: European Lessons for China, p. 8, available at: http://scriptiesonline.uba.uva.nl/document/493250

[27] Francesca Ragno, The Law Applicable to Consumer Contracts under the Rome I Regulation, in Franco Ferrari, Stefan Leible, European Commentaries on Private International Law, Rome I Regulation, 2009, p. 151.

[28] Article 6 (4) Rome I Regulation: Paragraphs 1 and 2 shall not apply to:

(a)a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

(b)a contract of carriage other than a contract relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

(c)a contract relating to a right *in rem* in immovable property or a tenancy of immovable property other than a contract relating to the right to use immovable properties on a timeshare basis within the meaning of Directive 94/47/EC;

(d)rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;

(e) a contract concluded within the type of system falling within the scope of Article 4(1)(h).

[29] Op. cit. Ivana Kunda, pp. 19-20.

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 do not fall under Rome I Regulation.[30] In other words, if insurance is offered by insurers from outside the European Union (for example from North Macedonia) for labor related death or illness is not governed by Rome I Regulation.

Article 7 of the Rome I Regulation determines the applicable law for insurance contracts. This Article shall apply to insurance contracts for large risks, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. However, it shall not apply to reinsurance contracts.

Insurance contracts for 'large risks'are governed by the law chosen by the parties. If no law has been chosen such contracts are governed by the law of the country where the insurer has his habitual residence. There is the usual exception for a more closely connected law. Other than large risk insurance, the parties may choose a law to govern their contract only from a limited list of possibilities. In the absence of choice the contract is governed by the law of the Member State in which the risk is situated.[31]

It seems that Article 7 differentiates between contracts where the policy-holder is deemed to be in need for special protection and contracts where there is no need for such protection. Therefore the provision distinguishes between contracts on mass risks on the one side and contracts on large risks and reinsurance contracts on the other side. This differentiation is crucial for an understanding of the existing international insurance law. If the insurance contract covers so-called mass risks, Rome I Regulation aims at effectively protecting the policy-holder. This is why in case of contracts on mass risks, the freedom to choose the applicable law is the exception, not the rule. Absent a choice of law, the applicable conflict-of-law rules favour the interests of the policy-holder by pointing to the law to which the policy-holder – and not necessarily the insurer – has the closest connection. The situation is different if there are contracts on so-called large risks or reinsurance contracts. In these cases, the parties of the contract can freely choose the applicable law. If there is no choice of law, the law of the (re-) insurer applies in most cases. So basically the policy-holder is expected to protect his own interests while negotiating the contract, i. e. by introducing a choice of law clause in the contract.[32]

Finally, it shall be pointed out that Article 7 does not apply to reinsurance contracts. They are governed by the general provisions regarding party autonomy and determining the applicable law in the absence of choice (Articles 3 and 4 of Rome I Regulation respectively).

4. Individual employment contracts – Article 8 of the Rome I Regulation

Individual employment contracts are protected by special conflicts provisions in Article 8 of the Rome I Regulation. The wording of Article 8 of the Rome I Regulation does not contain a proper definition of what is to be understood by individual employment contracts, a definition that cannot even be inferred from its preamble. However, the terminology employed in the new provision includes certain changes with respect to Article 6 of the Rome Convention, seeking a

[30] See Article 1(1) (j) of the Rome I Regulation.
[31] Op. cit. Pippa Rogerson, p. 318.
[32] Urs Peter Gruber, Insurance Contracts, in Franco Ferrari, Stefan Leible, European Commentaries on Private International Law, Rome I Regulation, 2009, p. 112.

coincidence with the content of Section 5, Chapter II, of the Brussels and Lugano system. The EU aims to bring about a convergence between EU instruments and the concepts and definitions they include, with a view to establishing a relationship between *forum* and *ius*, at least in some cases.[33]

The parties can choose the law to govern an individual employment contract using Article 3. In particular, an individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of Article 8.

If the parties failed to chose the applicable law to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country. If that country cannot be identified, in the absence of a choice of law, the contract is governed by the law of the country where the place of business through which the employee was engaged is situated.

Finally, there is a escape clause, under which where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.[34]

V. CONCLUSION

The unification of conflict of law rules is positive for international relations, because it makes the applicable law more predictable, favours the international harmony of solutions and avoids *forum shopping*. Rome I Regulation is a major towards unification of private international law within the European Union. The Rome I Regulation presents a revised version of the Rome Convention of 1980. It applies in cross-border transactions and designates the applicable law for contractual obligations in civil and commercial matters. Although the party autonomy is the main connecting factor, several restrictions and limitations were analyzed in this paper. The applicable law, whether chosen or not, refers only to the domestic law of the country. Thus, the question of *renvoi* is excluded.

This paper has discussed the *lex contractus* to cross-border specific contracts, such as: contracts for carriage, consumer contract, insurance contracts and individual employment contracts, under the provisions of the Rome I Regulation.

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