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1. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH OTHER EU PROVISIONS: ARTS. 23 AND 24

1.1. ARTICLE 23: RELATIONSHIP WITH OTHER PROVISIONS OF COMMUNITY LAW

“Article 23. Relationship with other provisions of Community law.
With the exception of Article 7, 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 contractual obligations”.

● Basic rule: “Lex specialis derogat generalis”

● Which provisions of EU Law: Primary and Secondary EU Law

● Exclusion of those rules not codified EU rules which have been established by the ECJ

(Case C-381/98, Igmar)
1. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH OTHER EU PROVISIONS: ARTS. 23 AND 24

1.1. ARTICLE 23: RELATIONSHIP WITH OTHER PROVISIONS OF COMMUNITY LAW

- Examples of secondary EU Law (Regulations and Directives) containing conflict-of-law provisions:
  Consumer (Art. 6) and Employment (Art. 8) Contracts:

- Directives:
  - Directive 93/13/EEC, on unfair terms in consumer contracts: Art. 6 (2)
  - Directive 96/71/EC, concerning the posting of workers in the framework of the provision of services: Art. 3 (1)
  - Directive 97/7/EC, on the protection of consumers in respect of distance contracts. Art. 12 (2)
  - Directive 99/144/EC, on certain aspects of the sale of consumer goods and associated guarantees: Art. 7 (2)
  - Directive 2002/65/EC, concerning the distance marketing of consumer financial services: Art. 12 (2)
  - Directive 2008/48/EC, on credit agreements for consumers: Art. 22 (4)
  - Directive 2008/122/EC, on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts: Art. 12 (2)

- Regulations: Relationship towards Rome II Regulation (Art. 12 (1) e) of Rome I Regulation

- However:
  - Directives on Electronic Commerce and Services contain no conflict-of-law provision
  - Insurance Contracts (Art. 7) is no longer an example of this: from the Insurance Contracts to Art. 7
1. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH OTHER EU PROVISIONS: ARTS. 23 AND 24

1.2. ARTICLE 24: RELATIONSHIP WITH THE ROME CONVENTION

1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.
2. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to that Convention shall be understood as a reference to this Regulation”.

● Rome I Regulation replaces Rome Convention 1980, within its territorial scope of application:

● Exceptions (lack of coincidence of their territorial scope of application) and application of the Rome Convention 1980:
  - Denmark,

● But it is of application in:
  - Ireland and UK (opt in)
  - Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint Martin, Aland Islands, Azores, Madeira, Canary Islands
2. THE RELATIONSHIP WITH THE EXISTING INTERNATIONAL CONVENTIONS: ARTS. 25 AND 26

2.1. ARTICLE 25. RELATIONSHIP WITH EXISTING INTERNATIONAL CONVENTIONS

“Article 25. 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 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.”

Recital 41: Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time when this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the Official Journal of the European Union on the basis of information supplied by the Member States.

Recital 42: The Commission will make a proposal to the European Parliament and to the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude, on their own behalf, agreements with third countries in individual and exceptional cases, concerning sectoral matters and containing provisions on the law applicable to contractual obligations.
2. THE RELATIONSHIP WITH THE EXISTING INTERNATIONAL CONVENTIONS: ARTS. 25 AND 26

2.1. ARTICLE 25. RELATIONSHIP WITH EXISTING INTERNATIONAL CONVENTION

- Consistency between the international law obligations of the MS and the unity of EU Law

- Differences between:
  - Exclusively inter MS conventions (Rome I regulation takes precedence) and
  - Conventions to which at least one MS is a party when the Rome I Regulation was adopted (Rome I regulation will not prejudice their application)

- Rome I Regulation does not affect international uniform law conventions (within their scope of application): CISG, CMR, COTIF

- Still binding conventions:
  - Hague Conventions of 1955 and 1986, on the Law Applicable to international Sale of Goods (Denmark, Finland, France, Italy, Sweden)
  - Hague Convention 1978, on the Law Applicable to Agencies (France, The Netherlands, Portugal)

- Exceptions:
2. THE RELATIONSHIP WITH THE EXISTING INTERNATIONAL CONVENTIONS: ARTS. 25 AND 26

2.2. ARTICLE 26. LIST OF CONVENTIONS

1. By 17 June 2009, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.
2. Within six months of receipt of the notifications referred to in paragraph 1, the Commission shall publish in the Official Journal of the European Union:
   (a) a list of the conventions referred to in paragraph 1;
   (b) the denunciations referred to in paragraph 1”.

- Transparency and legal clarity


- Rome I Regulation does not affect future Conventions concluded by the EU: external exclusive competence of the UE
3. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

3.1. THE INTERRELATION BETWEEN ROME I AND CISG

- An International Uniform Law Convention *versus* an EU Conflict of law Regulation

- Scope of application (substantive and territorial) of CISG and Rome I Regulation: the “direct” and “indirect” approaches
  - Substantive: Important areas of sale of goods contracts are left to domestic law in CISG. The scope of application of CISG is narrower than that of the Rome I Regulation.
  - Territorial: CISG enjoys a wider scope than the territory of the EU. Not all MS are parties to CISG (Ireland, Malta, Portugal, UK)

“Article 1.
(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:
(a) when the States are Contracting States; or
(b) when the rules of private international law lead to the application of the law of a Contracting State. (...)”

- The possible “choice” of the CISG by the parties via Rome I Regulation
  - Opting in to the CISG (Art. 6 Rome I Regulation)
  - Opting out of the CISG (Art. 6 CISG)
3. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

3.1. THE INTERRELATION BETWEEN ROME I AND CISG

1. 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.
2. 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.
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.
5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13”.

Recital 13: This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.
3. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

3.2. THE INTERRELATION BETWEEN BRUSSELS I AND CISG/ INCOTERMS 2010: CONSEQUENCES FOR ROME I

- The “hermeneutic consistency/ unity” between Rome I and Brussels I bis Regulations


- What are Sales Contracts?

Recital 14: As far as the applicable law in the absence of choice is concerned, the concept of ‘provision of services’ and ‘sale of goods’ should be interpreted in the same way as when applying Article 5 of Regulation (EC) No 44/2001 in so far as sale of goods and provision of services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.
3. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

3.2. THE INTERRELATION BETWEEN BRUSSELS I AND CISG/ INCOTERMS 2010: CONSEQUENCES FOR ROME I

“Article 7. A person domiciled in a Member State may be sued in another Member State:
(1) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
(2) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
   — in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
   — in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
(3) if point (b) does not apply then point (a) applies; (...)”.

● Case Law of the ECJ (supply of goods or supply of services):
  - Case C-381/08, Car Trim (contracts for the supply of goods to be produced or manufactured)
  - Case C-469/12, Krecji Lager & Umschlagbetrieb (contract for the storage of goods)
  - Case C-533/07, Falco Privatstiftung (IP licensing agreement)
  - Case C-195/15, Granarolo SpA (long-standing business relationships)

“Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a long-standing business relationship, such as that at issue in the main proceedings, is to be classified as a ‘contract for the sale of goods’ if the characteristic obligation of the contract at issue is the supply of goods or as a ‘contract for the provision of services’ if the characteristic obligation is a supply of services, a matter which is for the referring court to determine”
3. EU REGULATION Nº 593/2008 (ROME I): RELATIONSHIPS WITH THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

3.2. THE INTERRELATION BETWEEN BRUSSELS I AND CISG/ INCOTERMS 2010: CONSEQUENCES FOR ROME I

- Rome I and Brussels I Regulations and INCOTERMS 2010

- The different “connecting factors” in Rome I and Brussels I Regulations and its:
  - Rome I Regulation (Art. 4 (1) a): place of habitual residence of the seller
  - Brussels I bis Regulation (Art. 7 (1) b): place of delivery

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:
   (a)
   a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence; (...).”

- The recourse to INCOTERMS 2010 for their application: Case C-87/10, Electrosteel
  “In order to verify whether the place of delivery is determined ‘under the contract’, the national court seised must take account of all the relevant terms and clauses of that contract which are capable of clearly identifying that place, including terms and clauses which are generally recognised and applied through the usages of international trade or commerce, such as the Incoterms drawn up by the International Chamber of Commerce in the version published in 2000”.
THANK YOU¡

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