

Rome II Regulation Applicable in EU

Starting from today, 11 January 2009, Regulation no. 864/2007 on the law applicable to non-contractual obligations (Rome II) is applicable in the Member States (see its Art. 32), excepting Denmark.

In the comments to one of our previous posts, some **debate was raised as to the proper construction of Art. 31 (“Application in time”) of the Regulation**, according to which the new regime applies to “events giving rise to damage which occur after its entry into force”. A very large majority of scholars (almost all the published articles) takes the view that, for the purposes of Art. 31, the date of entry into force coincides with the date of application of the Regulation, so that it would be applicable to events giving rise to damage occurring on or after 11 January 2009.

Other elements, taken from the legislative process (see the comments to the abovementioned post), would suggest the opposite view that, following the ordinary rules set by Art. 254(1) of the EC Treaty, the Regulation entered into force on 20 August 2007, thus applying to events occurred on or after this previous date. The latter interpretation is shared by the SCADplus (summary of EU legislation) webpage on Rome II, which holds no official value, and is referred to by Prof. *Hartley* in his article on the Rome II Reg. (“Choice of Law for Non-Contractual Liability: Selected Problems Under the Rome II Regulation”, in ICLQ (2008), p. 899 ff., at footnote 2 on p. 899, quoting Prof. *Morse* in *Dicey and Morris*).

Two others points are worth mentioning, as regards the final provisions of Rome II:

1. according to Art. 29(2), the Commission is expected to publish in the OJ the **list of existing 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” (mainly, the 1971 Hague Convention on Traffic Accidents and the 1973 Hague Convention on Products Liability): the deadline for Member States to notify of such conventions

was set to 11 July 2008. To my knowledge, the list has not yet been published;

2. according to the review clause in Art. 30(2), not later than 31 December 2008 **the Commission** was expected **to present 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 [...]”. Neither this study has been released, as yet, as far as I know.

Readers are encouraged to report on first cases of application of the new Regulation before national courts.