

When to Depart from Rome?

The Commission has published lists of the Conventions which Member States have notified under Art. 26(1) of the Rome I Regulation and Art. 29(1) of the Rome II Regulation.

It appears that Belgium alone among the Member States has not notified the Commission of any derogating conventions, even though it has ratified the Hague Traffic Accidents Convention and signed (but not ratified) the Hague Products Liability Convention, two instruments to which Art. 29(1) Rome II was clearly intended to apply.

The reasons for these omissions are unclear, with the deadlines for notification having long passed (28 July 2008 in the case of Rome II and 17 June 2009 in the case of Rome I). The failure to notify should not prevent Belgian Courts from applying the Hague Traffic Accidents Convention, just as it should not prevent any other Member State court from applying any convention involving a third state, to determine the law applicable to contractual or non-contractual obligations. Belgium's apparent lack of engagement with EU private international law instruments, resulting in doubt for those litigating before Belgian courts, is however unfortunate. It is unclear whether the Commission intends to take steps to address this.