Regulation 864/2007 on the law applicable to non-contractual obligations (Rome II)

Directorate-General Justice and Consumers

Unit A.1 Civil justice

Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Background

Link between Brussels I - Rome I and Rome II

Negotiated since end of 1960's

Split Rome I – Rome II in 1980

Renewed consultations 1990's

COM proposal 2003

Adoption of Regulation 2007 – entry into force 11.01.09

Objective and interpretation

Foreseeability as to applicable law independently of forum seised

Prevent forum-shopping

Create conditions for abolition of exequatur

Less far-reaching solution than harmonisation of substantive law

Autonomous interpretation

Structure of Rome II

Scope

Non-contractual obligations arising out of a tort or delict

Non-contractual obligations arising out of an act other than a tort or delict

Freedom of choice

Scope

- **Situations involving a conflict of laws**
- **Non-contractual obligations in civil and commercial matters**
- **No revenue, customs or administrative matters**
- **Exceptions**

  Obligations arising out of family relations, including maintenance

  Obligations arising out of matrimonial property regimes and successions

  Negotiable instruments

  Company law - liability of company directors, members, auditors

  Trusts

  Nuclear damages

  Violations of privacy and personal rights by the media

  Evidence and procedure

General rule for torts

Law of country in which the damage occurs

Exceptions:

- Law of country of common habitual residence of parties
- Law of country with which situation has a manifestly closer connection

Special rules for specific torts

Product liability

Unfair competition and restrictions to competition

Environmental damage

Infringement of intellectual property rights

Industrial action

Rules for acts other than torts

Unjust enrichment

Agency without authority (negotiorum gestio)

Culpa in contrahendo

Freedom of choice

Choice of law possible after dispute arose

Choice of law between businessmen possible also before dispute arises

Choice must be expressed or demonstrated with reasonable certainty by circumstances of case

No prejudice to application of national or Community mandatory rules