European Commission

# The Rome I Regulation and the Rome Convention on the law applicable to contractual obligations

Directorate-General Justice and Consumers
Unit A.1 Civil justice policy

***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 1960's*

*Split Rome I – Rome II in 1980*

*1980 Rome Convention on the law applicable to contractual obligations*

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# 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*

*Aligning rules of Rome Convention on BXL I Regulation*

*Autonomous interpretation*

# Scope

*Ratione loci – universal character*
*Ratione temporis*
*Ratione materiae*

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

  Status or legal capacity of natural persons
  Obligations arising out of family relations, including maintenance
  Obligations arising out of matrimonial property regimes and successions
  Negotiable instruments
  Choice of court and arbitration
  Company law and liability of company directors and members
  Question whether agent can bind principal/organ can bind company
  Trusts
  Evidence and civil procedure
  Precontractual obligations
  Certain types of insurance contracts

# Freedom of choice

*General principle: freedom of choice of law in contract (Art. 3)*

*Choice must be expressed or clearly demonstrated by circumstances of case*

*Change of choice of law*

*No prejudice to application of national or Community mandatory rules*

*Substantive and formal validity (Art. 10 – 11)*

*Incapacity (Art. 13)*

# Applicable law in the absence of choice (Art. 4)

*Specific rules for main types of contracts (§1)*

*Law of state of habitual residence of party effecting characteristic performance (§2)*

*Escape clause (§3)*

*Characteristic performance cannot be defined (§4)*

# Special rules for specific types of contracts

*Contracts of carriage (Art. 5)*

- Carriage of goods
- Carriage of passengers

*Consumer contracts (Art. 6)*

*Insurance contracts (Art. 7)*

*Individual employment contracts (Art. 8)*

# Limitations of the applicable law

*Overriding mandatory provisions (Art. 9)*

*Public policy (Art. 21)*

# Other provisions

*Scope of the applicable law (art. 12)*

*Voluntary assignment and contractual subrogation (art. 14)*

*Legal subrogation (art. 15)*

*Multiple liability (art. 16)*

*Set-off (art. 17)*

*Exclusion of renvoi (art. 20)*

*Definition of habitual residence (art. 19)*