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Chapter I: Scope

Article 1: Material scope

1. This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

(a) questions involving the status or legal capacity of natural persons, without prejudice to Article 13;

(b) obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations;

(c) obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;

(d) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

(e) arbitration agreements and agreements on the choice of court;

(f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;

(g) the question whether an agent is able to bind a principal, or an organ to bind a company or other body corporate or unincorporated, in relation to a third party;

(h) the constitution of trusts and the relationship between settlors, trustees and beneficiaries;

(i) obligations arising out of dealings prior to the conclusion of a contract;

(j) insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or to a trade or group of trades, in the event
Article 1

of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Article 18.

4. In this Regulation, the term ‘Member state’ shall mean Member states to which this Regulation applies. However, in Article 3(4) and Article 7 the term shall mean all the Member states.

A. Introduction

I. General Purpose

II. Autonomous and Inter-Instrumental Interpretation

III. Internal and External Delimitation of European Private International Law

B. Requirements for Application: Art. 1(1)

I. Contractual Obligations

1. Autonomous Definition and Inter-Instrumental Interpretation

a) Status Quo under Brussels I

b) Application to European Private International Law

2. Borderline Cases

a) Obligation to Contract

b) Restitution as a Consequence of a Void Contract

c) Prize Notifications

d) Rights of Redress and Direct Claims

II. Civil and Commercial Matters

1. General Outline

2. Acta Iure Gestionis and Public Procurement Law

III. Situations involving Conflict of Laws

C. Specified Exclusions: Art. 1(2)

I. Legal Capacity: Art. 1(2)(a)

II. Family Relationships: Art. 1(2)(b)

III. Matrimonial Property Regimes, Wills, Succession: Art. 1(2)(c)

IV. Negotiable Instruments: Art. 1(2)(d)

V. Agreements on Arbitration and Choice of Court: Art. 1(2)(e)

A. Arbitration

B. Choice of Court

VI. Company Law: Art. 1(2)(f)

A. Creation and Winding-Up

B. Legal Capacity

C. Internal Organisation and Liability

D. Limits of Art. 1(2)(f)

VII. Agency: Art. 1(2)(g)

A. General Questions Relating to Agency

B. Falsus Procurator and Apparent Authority

VIII. Trusts: Art. 1(2)(h)

IX. Pre-contractual Obligations: Art. 1(2)(i)

X. Insurance Contracts: Art. 1(2)(j)

D. Evidence and Procedure: Art. 1(3)

I. Limited Exception in Art. 18

II. Distinction between Procedural and Substantive Matters

III. Ascertainment and Application of Foreign Law

E. Member states, Exclusion of Denmark: Art. 1(4)
A. Introduction

I. General Purpose

Art. 1 delineates the **material scope of the Rome I Regulation**. Art. 1(1) declares Rome I applicable “in situations involving a conflict of laws, to contractual obligations in civil and commercial matters”, while Art. 1(2) and (3) exclude certain matters from the ambit of the Regulation, Finally, Art. 1(4) defines the notion of “Member state” for the purpose of this Regulation. The rationale behind Art. 1 is to define the **scope and limits** of the European Union’s private international law of contractual obligations vis-à-vis other European and national as well as international choice-of-law regimes. Thus, Art. 1 fulfils an **internal** as well as an **external delimitation function** (see infra para. 6 et seq.).

In addition to Art. 1, the relationship of Rome I and other private international law instruments in the field of contractual obligations is also governed by Arts. 23 through 26. This concerns, *inter alia*, special choice-of-law regimes in European Directives on consumer protection (Art. 23) as well as international conventions (Arts. 25, 26).

Whereas Art. 2 relates to the territorial application of Rome I as *loi uniforme*, Art. 28 addresses the applicability of the Regulation in time.

II. Autonomous and Inter-Instrumental Interpretation

With regard to the “**substantive scope**” of Rome I, Recital (7) declares that

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3 Lüttringhaus, 77 RabelsZ (2013), 31, 41 et seq.

consistency should be achieved with the Rome II Regulation on non-contractual obligations\(^5\) and the Brussels I Regulation\(^6\) (including its recent recast\(^7\)) on jurisdiction.\(^8\) Since the material scope in each Regulation is defined by its respective Art. 1, similar terminology used in these provisions should be interpreted autonomously and interdependently. This inter-instrumental interpretation is an essential precondition for the much-wanted consistency between European choice-of-law and jurisdiction provisions.\(^9\) Another important argument in favour of a coherent reading of the respective Regulations stems from the relationship between Rome I and Rome II: These instruments are designed as complementary Regulations and are to constitute a uniform European private international law of obligations.\(^10\)

5 But while it is in principle desirable to align similar concepts in the respective Art. 1 of Rome I, Rome II and Brussels I, it must be kept in mind that choice-of-law provisions on the one hand and jurisdiction provisions, on the other, serve distinct purposes.\(^11\) Hence, an identical construction of the terminology has to be justified by overarching motives dominating European choice-of-law and jurisdiction instruments alike.\(^12\) With regard to the respective Art. 1 of Rome I, Rome II and


\(^{8}\) See also the similar wording in Recital (7) Rome II.


\(^{10}\) European Commission’s Proposal for a Regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I), COM (2005) 650 final, 2. See e.g. Lüttringhaus, RIW 2008, 193, 195 and 199; Haftel, JDI 2010, 761, 775 et seq.

\(^{11}\) MPI, 71 RabelsZ (2007), 225, 237.
Brussels I, the justification of this inter-instrumental interpretation lies in the delimitation function of these provisions in the system of European private international law and jurisdiction.\footnote{Lüttringhaus, 77 RabelsZ (2013), 31, 37 et seq.}

III. Internal and External Delimitation of European Private International Law

While Arts. 23 through 26 also shape the scope of application of Rome I vis-à-vis a certain number of other European and international instruments, Art. 1 remains the primary tool for coordinating the applicability of choice-of-law regimes from different legal sources. To a certain extent, Art. 1 (as well as Art. 1 Rome II) is a meta-conflict-of-laws rule: The provision determines, first, if a European rather than a national or international conflict-of-laws regime is applicable \textit{(external delimitation)}, and, second, once Union choice-of-laws rules apply, which of the various EU Regulations is to govern the question at hand \textit{(internal delimitation)}.\footnote{See as to the terminology Basedow/Drasch, NJW 1991, 785, 787.}

Although Art. 1 Rome I is self-standing, the function of this delimitation provision\footnote{See with regard to “Abgrenzungsnormen” in general Basedow, Schlosser: Materialisches Recht und Prozeßrecht und die Auswirkungen der Unterscheidung im Recht der Internationalen Zwangsvollstreckung (1992), p. 131, 141 et seq.} may only be assessed in the context of other private international law instruments. For example, whereas Rome I applies to “contractual obligations”, Rome II covers the antipode, \textit{i.e.} “non-contractual obligations”. Hence, Art. 1 of the respective Regulation delineates the “contractual” and “non-contractual” sphere in European private international law. This may further be illustrated by questions relating to \textit{culpa in contrahendo}, which are expressly excluded from “contractual obligations” in Art. 1(2)(i) Rome I. Instead, they fall within the scope of the “non-contractual obligations” addressed by Art. 1(1) Rome II.\footnote{See Art. 1(2)(i) Rome I and Recital No. 30, Art. 2(1), Art. 12 Rome II. See e.g. Bach, Huber: Rome II Regulation (2011), Art. 1 paras. 19 et seq.; Lüttringhaus, RIW 2008, 193 et seq.; Plender/Wilderspin, The European Private International Law of Obligations (3rd ed. 2009), para. 5-065.}

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