

ROME CONVENTION

ROME I REGULATION

COMMENTARY

**NEW EU CONFLICT-OF-LAWS RULES FOR
CONTRACTUAL OBLIGATIONS**

December 17, 2010

Volume 1

Alexander J. Belohlavek

JURIS

TABLE OF CONTENTS

Auctorium/About the author	V
Gratiarum/Acknowledgement	VI
Table of Contents	VII
Index compendiorum	LXXV
INTRODUCTORY METHODICAL REMARKS TO THE OVERVIEW	
OF ABBREVIATIONS	LXXXV
I. Legislation (<i>ICZI</i> , <i>ISKI</i> and other countries, including Community rules and international agreements)	LXXXVI
II. Published sources	CVI
III. Abbreviations used in citations of legal sources (including citations of jurisprudence) and abbreviations of significant judicial bodies in certain countries	CXXXI
IV. Courts (general), government bodies, bureaus, governmental and non-governmental international organisations, institutions and non-governmental organisations, professional associations excluding permanent arbitration courts and arbitration centers	CXLVIII
V. Permanent arbitration courts and arbitration centres, their rules and guidelines, and professional associations in the field of arbitral proceedings	CLV
VI. Abbreviations used when referring to individual countries and states	CLVIII
VII. Other abbreviations	CLXIV
VIII. Abbreviations of certain often cited works	CLXXI
PROLOGUE	
	1
P.I. • HISTORICAL DEVELOPMENT OF INTERNATIONAL AND EUROPEAN PRIVATE LAW	1
P.I.I. Judicial cooperation as a central concept of European international private law	1
P.I.2. Certain milestones of the development of European international private law significant from the perspective of contractual obligation relationships	4
P.I.3. <i>Convention [Rome Convention]</i>	6
P.I.3.1. Genesis of the <i>Convention</i> and its interpretation	6
P.I.3.2. Enlargement of the contracting parties	6
P.I.4. Transition from the <i>Convention</i> to the <i>Regulation</i>	8
P.I.A1. The <i>Hague Programme</i>	8
P.I.A2. <i>Green Paper</i>	9
P.I.A3. <i>Draft Regulation</i>	10
P.I.A4. Reading the <i>Draft Regulation</i> before the EP and the compromise amendments	11
P.I.A5. Adoption of the <i>Regulation</i>	13
P.I.A6. Predominantly evolutionary conception of the <i>Regulation</i> from the perspective of the connections with the provisions of the <i>Convention</i>	16
P.I.A7. Future legislative development in relation to the <i>Regulation</i>	16

P.I.5.	Conception of the conflict (regulation of contractual obligations in the <i>Community</i> environment and in Community law	17
P.I.5.1.	Conception of the <i>Convention</i>	17
P.I.5.2.	Conception of the <i>Regulation</i>	19
P.I.5.3.	Conception of the <i>Regulation</i> in comparison to the <i>Convention</i>	20
P.I.6.	Primary principles of the <i>Regulation</i>	21
P.I.6.1.	Aims and key principles of the <i>Regulation</i>	21
P.I.6.2.	Free and limited choice of law	22
P.I.6.3.	Conjunction of the conflict regulation of directives with the conception of the <i>Regulation</i> (on law applicable to insurance contracts, consumer protection legislation)	22
P.I.6.4.	Conformity with the procedural law of conflict of laws	23
P.I.6.5.	Conformity of the conflict regulation of contractual and non-contractual obligations	23
P.I.6.6.	Conformity with the fundamental principles of the single market (relation to the TEC, market liberties)	24
P.I.7.	Legal foundation of the <i>Regulation</i> within the mechanisms of <i>Community</i> law	25
P.I.8.	Structure and content of the <i>Regulation</i>	27
P.I.9.	Interpretation of the <i>Convention</i>	28
P.I.9.1.	Legal foundation for the interpretation of the <i>Convention</i>	28
P.I.9.2.	ECJ authority to interpret the <i>Convention</i>	31
P.I.10.	Interpretation of the <i>Regulation</i>	32
P.I.10.1.	Interpretation of the <i>Regulation</i> from the perspective of its nature and legal force as an act of <i>Community</i> law	32
P.I.10.2.	Historical context of the creation of the <i>Regulation</i>	32
P.I.10.3.	Significance of existing experience with the application of the <i>Convention</i> and the <i>Report</i>	33
P.I.10.4.	Interpretation of law as an issue of procedure	33
P.I.10.5.	Position of the ECJ within the interpretation of the <i>Regulation</i> and other acts of <i>Community</i> law	34
P.I.11.	Significance of procedural interpretation for the substantive conflict law regulation of the <i>Convention</i> and of the <i>Regulation</i>	35
P.I.12.	Principles of the interpretation of the <i>Regulation</i>	36
P.I.12.1.	Unified interpretation as a prerequisite of the unified effect of <i>Community</i> law	36
P.I.12.2.	Effective protection of individual (subjective) rights	36
P.I.12.3.	Application of the <i>ratione materiae</i> principle—the material scope of the <i>Regulation</i> in connection to its interpretation (the strict definition of the effects of the <i>Regulation</i> exclusively within the conflict of laws)	36
P.I.12.4.	Application of the <i>ratione temporis</i> principle—the time applicability of the <i>Regulation</i> in connection to its interpretation	37
P.I.13.	Approach to legal information as a condition of the unified interpretation and a prerequisite for legal certainty	38
P.I.13.1.	Irreplaceable significance of comparative legal science	38
P.I.13.2.	Insufficient access to legal information on a supranational level	39
P.I.14.	Significance of the Preamble for the interpretation of the <i>Regulation</i>	41
P.I.15.	Interpretation of the <i>Regulation</i> and the significance of the <i>Report</i> (i.e. the <i>Report</i> of Giulian Lagarde)	42

P.II.	. PURPOSE, CONTENT, STRUCTURE AND METHOD OF THE PROCESSING OF THIS PUBLICATOIN	45
P.II.1.	Purpose of this publication	45
P.II.2.	Content scope	46
P.II.2.1.	Conflict regulation of European and international private law in the field of contractual obligation relationships	46
P.II.2.2.	Substantive law regulation of contractual obligation relationships	47
P.II.2.3.	Structure of the commentary to the <i>Regulation</i> and to the <i>Convention</i>	48
P.II.2.4.	Segmentation of this publication	49
P.H.2.5.	Segmentation of the individual Titles (commentaries to Articles)	50
P.II.3.	Citations of sources of law	51
P.II.3.1.	Reasons of citations of domestic sources and foreign sources (of national origin)	51
P.II.3.2.	Non-binding nature of the orientational translations of the citation of sources of law	52
P.II.3.3.	Citations of sources of Czech law of national origin	52
P.II.3.4.	Citations of the TEC	53
P.II.4.	Decisions explicitly applying the <i>Convention</i> or directly related to the <i>Convention</i> and other jurisprudence	53
P.II.5.	Manuscript freeze: its updated nature or lack thereof	54
•	Comparative table of the <i>Convention</i> and the <i>Regulation</i> (arranged by the subject of regulation)	55
•	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) without the Preamble	61
•	Convention on the law applicable to contractual obligations of 19 June 1980 (Consolidated version) without the Preamble	71
	* * *	
•	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [<i>Regulation</i>]	79
•	The Preamble Convention on the law applicable to contractual obligations (Consolidated version)	87
•	The Preamble	89
	* * *	
	Article 1 of the <i>Regulation</i>!Article 1 of the <i>Convention</i>	91
A:	The qualification and positive limitation of the material extent of the <i>Regulation</i> and the <i>Convention</i>	93
1.I.	Broad significance of the <i>Regulation</i>	93
1.II.	Presence of the international element	94
1.III.	Contract typology and its significance from the private international law perspective	95

1.111.1.	Contract for purposes of the substantive ascertainment of subjective rights	95
1.111.2.	A contract for the resolution of conflict of laws	95
I.IV.	The terms <i>contractual obligation relationship</i> and <i>contractual obligation within the Convention and the Regulation</i>	97
1.IV.1.	Obligation <i>versus</i> obligation relationship	97
1.IV.2.	The Civil Law concept	97
1.IV.3.	Common Law	98
I.V.	Procedural and harmonising relationships of the formulating changes in the <i>Regulation</i> in comparison to the <i>Convention</i>	98
I.VI.	Extent of the qualification problem	99
I.VI.1.	The difference between the autonomous conflict qualification and the substantive qualification <i>lex causae</i>	99
1.VI.2.	The procedure for the resolution of a qualification problem	100
1.VI.3.	The impossibility of solving a qualification problem through an <i>analogy</i>	102
I.VII.	The definition of contractual and non-contractual (tort) obligations	102
1.VII.1.	The absence of a regulatory defining base for conflict qualification	102
1.VII.2.	Autonomous qualification as a solution alien to an individual legal system, yet characteristic of all legal systems of Member States and the law of the <i>Community</i>	103
1.VII.3.	Doctrinal conflict of differences of qualification provided by the Civil Law concept and by <i>Common Law</i>	103
I.VIII.	Differences between national concepts of a contract and the base of an abstract autonomous conflict law qualification	106
1.VIII.1.	The different approach in conceptual issues (<i>essentialia negotii</i>) and in partial issues: the absence of an international defining determination	106
1.VIII.2.	Common attributes as the possible future base of an autonomous definition of a contract and a contractual obligation relationship	106
1.VIII.3.	The significance of the <i>close connection</i> and the <i>characteristic performance</i> for the qualification of a contractual obligation relationship	107
1.VIII.4.	The autonomous interpretation as a unique chance to make law less formalistic	108
I.IX.	The significance of general principles of law	109
I.X.	A <i>contrario</i> qualification of contractual obligations using the definition of non-contractual obligations provided by the <i>Treaty of Brussels and Regulation 44/2001</i>	110
1.X.1.	The aim of the autonomous interpretation according to the case law of ECJ	110
1.X.2.	The willingness to assume an obligation	110
1.X.3.	The determination of a contract and claims following from a contract for the purpose of determining competences (international [court] jurisdiction)	111
I.XI.	Civil and commercial matters	112
1.XI.1.	The formulation difference between the <i>Regulation</i> and the <i>Convention</i> : accustoming to the articulation of <i>Regulation 44/2001</i>	112
1.XI.2.	The autonomous interpretation	112

1.XII.	The negative determination of the material scope of the Regulation and the Convention	113
1.XII.1.	The general negative determination—and Article 1(1) of the Regulation!Article 1(1) of the Convention	113
1.XII.2.	The conception of the <i>Regulation</i> in the context of the <i>Convention</i> ..	113
1.XII.3.	A comparison of the negative catalogue in Article 1(2) of the <i>Regulation!</i> Article 1 (2) of the <i>Convention</i>	114
1.XII.3.1.	The editorial character of the majority of formulation modifications	114
1.XII.3.2.	The risk of generalising the comparison of the <i>Convention's</i> and the <i>Regulation's</i> negative catalogues	114
1.XII.3.3.	Particular individual exceptions from the material extent	115
1.XIII.	Case law	116
1.XIII.1.	Case law to contractual obligations, their qualification and an extract from general case law related to the issues in the Convention/Regulation	116
1.XIII.1.1.	ECJ —The Court of Justice of the European Communities	116
1.XIII.1.2.	Case law of Member States	121
1.XIII.1.2.1.	(A) Austria	121
1.XIII.1.2.2.	(CZ) Czech Republic	132
1.XIII.1.2.3.	(D) Germany	139
1.XIII.1.2.4.	(F) France	141
1.XIII.1.2.5.	(I) Italy	142
1.XIII.1.2.6.	(SK) Slovakia	143
1.XIII.1.2.7.	(UK) The United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	144
1.XIII.1.3.	Case law of Non-Member States	147
1.XIII.1.3.1.	(HK) Hong Kong (Special Administrative Region of (PRC))	147
1.XIII.2.	Case law on the conflict determination of contractual and non-contractual obligations (non-contractual obligation relationships)...	147
1.XIII.2.1.	(A) Austria	147
1.XIII.2.2.	(UK) The United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	148
1.XIII.3.	Case law to a conflict determination of commercial matters and the extent of the conflict problem in <i>corporation relationships</i>	149
1.XIII.3.1.	(D) Germany	149
	Literature	150
1.XIV.	The international element—a positive condition of the material scope—re Article 1(1) of the Regulation/Article 1(1) of the Convention 0161	164
1.XIV.1.	The qualification and recognition of an international element ..	165
1.XIV.1.1.	The qualification of an international element	165
1.XIV.1.1.1.	The international element as the basic qualification issue for the conflict of law and the material scope	165
1.XIV.1.1.2.	The national qualification of the international element versus autonomous <i>Community</i> interpretation (international)	165
1.XIV.1.1.3.	Superficial approach of doctrine to the qualification of the international element (notoriety?—By no means)	166
1.XIV.1.1.4.	Issue of qualification with regard to international elements	167

1.XIV.1.2.	Determination of an international element	167
1.XIV.1.3.	International elements in the objects of legal relationships	170
1.XIV.2.	Significance of an international element for a legal relationship under conflict regulations	170
1.XIV.3.	Significance of the <i>rei sitae</i> and the <i>loci solutionis</i>—the circumstances of a case, the expectations of parties, obvious inadequacy of the assessment of the relationship as a relationship with an international element	172
1.XIV.4.	Collateral relationships and the location of the fulfilment of the purpose of the contract	173
1.XIV.5.	Forum selection and/or proceeding venue selection as a potential international element from the viewpoint of the conflict of law qualification of a legal relationship	173
1.XIV.6.	Choice of foreign law as a qualifying factor for a legal relationship	176
1.XIV.7.	Legal relationship of a domestic nature as the object of a proceeding before a court (body) of another country	177
1.XIV.8.	The alternative approach: the dismissal of the <i>international element</i> theory	179
1.XIV.9.	European private international law and the international element	181
1.XIV.9.1.	Concept of the international (<i>Community</i>) element	181
1.XIV.9.2.	Concept of the international (<i>cross-border</i>) element under the <i>Convention</i> and the <i>Regulation</i>	181
1.XIV.9.3.	Formal comparison	182
1.XIV.9.3.1.	Comparison of the <i>Regulation</i> and the <i>Convention</i>	182
1.XIV.9.3.2.	<i>Regulation</i> language versions	183
1.XIV.9.4.	The objective nature of international elements	183
1.XIV.9.5.	Interpretation of the international element under the <i>Report</i>	183
1.XIV.9.6.	The connection to a <i>legal system</i> vs the connection to a <i>state</i>	185
1.XIV.9.7.	The necessity of the extensive concept of the international element as a condition of the fulfilment of the purpose of the <i>Regulation/Convention</i>	186
1.XIV.9.8.	Significance of the existence of the international element for the choice or the determination of the forum	187
1.XIV.10.	Case law	189
1.XIV.10.1.	ECJ—The Court of Justice of the European Communities	189
1.XIV.10.2.	Case law of Member States	190
1.XIV.10.2.1.	(CZ) Czech Republic	190
	Literature	190
1.XV.	Unilateral acts, donations, unilateral contractual obligations and relationships which are analogous from the qualification perspective and from the perspective of the determination of the applicable law under the governing conflict of law rules	0188
1.XV.1.	Unilaterally binding contracts (contractual obligation relationships)	192
1.XV.2.	Atomisation of the essential characteristic features of a legal relationship as a prerequisite and basis for the qualification of a	

	contractual obligation (contractual obligation relationship)— primary qualification	192
1.XV.3.	Exclusion of certain contractual obligation relationships (contractual obligations)—secondary qualification	193
1.XV.4.	Unilateral contractual obligation relationships vs. unilateral non-contractual obligations (as concerns the synallagmatic nature of obligations and obligation relationships from the perspective of international private law) and the absence of an intersection of the expressions of will of the parties (absence of consensus)	194
1.XV.4.1.	Testamentary dispositions	194
1.XV.4.2.	Donations (<i>gifts</i>)	195
1.XV.5.	Certain special provisions regulating unilateral obligation relationships under national rules of private international law	196
1.XV.5.1.	(A) Austria	196
1.XV.5.2.	(CZ) Czech Republic	196
1.XV.5.3.	(E) Spain	197
1.XV.5.4.	(I) Italy	197
1.XV.6.	Donations and the qualification thereof	198
1.XV.6.1.	Donatio under Roman Law	198
1.XV.6.2.	Donations in ECJ case law and in <i>Community</i> law	200
1.XV.6.2.1.	ECJ case law	200
1.XV.6.2.2.	<i>Community</i> law	201
1.XV.6.3.	Donations from the perspective of selected national legal systems (comparative approach and private international law) ...	201
1.XV.6.3.1.	(A) Austria	201
1.XV.6.3.1.1.	General national laws on donation (civil law)	201
1.XV.6.3.1.2.	Donation under Austrian private international law	205
1.XV.6.3.2.	(CZ) Czech Republic	206
1.XV.6.3.2.1.	General national laws on donation (civil law)	206
1.XV.6.3.2.2.	Donations under Czech private international law (conflict of law rules of national origin)	209
1.XV.6.3.2.3.	Intended recodification of Czech Private International law	210
1.XV.6.3.3.	(D) Germany	211
1.XV.6.3.4.	(E) Spain	213
1.XV.6.3.4.1.	Civil law conception of donations under Spanish law	213
1.XV.6.3.4.2.	Spanish national laws on private international law	214
1.XV.6.3.5.	(F) France	214
1.XV.6.3.6.	(I) Italy	216
1.XV.6.3.6.1.	General national laws on donations (civil law)	216
1.XV.6.3.6.2.	Donations under Italian private international law legislation	217
1.XV.6.3.7.	(CH) Switzerland	218
1.XV.6.3.8.	(PL) Poland	222
1.XV.6.3.9.	(SE) Sweden	225
1.XV.6.3.10.	(SK) Slovakia	226
1.XV.6.3.10.1.	Donation agreements under Slovak law	226
1.XV.6.3.10.2.	Donations under Slovak private international law	226
1.XV.6.3.11.	(UK) The United Kingdom of Great Britain and Northern Ireland and the <i>Common Law</i>	226

I.XV.6.3.11.1.	Regulation of donations under <i>Common Law</i> (English law)	226
I.XV.6.3.11.2.	Donations from the perspective of (UK) conflict of law rules, especially (UK/EN) rules	226
I.XV.6.3.11.3.	Conflict of law qualification of <i>donations</i> under English law in connection with the <i>Regulation (Convention)</i> and the solution of the qualification conflict of <i>donations</i> in relation to the <i>Regulation (Convention)</i> from the perspective of English law and the Civil law legal systems	227
I.XV.7.	Donations and mandatory rules; special cases of donations ...	229
I.XV.7.1.	Contractual qualification of donations under Canon Law (The Roman Catholic Church and other Churches)	230
I.XV.7.2.	The historical development of <i>donations</i> as a legal institution in Canon Law and national restrictions related to the acceptance of the Church by public law authorities	231
I.XV.7.3.	Donations to the Church from the perspective of private international law, public order, and reflection on the sources of international (<i>public</i>) law	232
I.XV.8.	Other types of donations	233
I.XV.9.	Donee's obligations resulting from the acquisition of ownership	233
I.XV.9.1.	Constitutional basis for restrictions of ownership, the social function of ownership and the doctrine stipulating that <i>ownership entails obligations</i> as an antipole of the individualistic doctrine of ownership	233
I.XV.9.2.	Examples of the provisions pertaining to ownership under selected constitutional regimes (although it appears to feature, to a certain extent, in virtually all constitutional regimes; often in connection with provisions (if any) stipulating an exceptional option to expropriate and specifying the necessary conditions for such expropriation)	235
I.XV.9.3.	The proclamatory nature of the civil law regulation following the constitutional limits of the right of ownership	237
I.XV.10.	A close connection between donations and public law regulation	239
I.XV.10.1.	Obligations of the donee (recipient of the gift) under public law ...	239
I.XV.10.2.	Fiscal and other similar obligations	239
I.XV.II.	Donations and unified conflict of law rules of the <i>Convention</i> and the <i>Regulation</i>	240
I.XV.11.1.	Absence of explicit provisions and the consensus of expressions of will as the main prerequisite for a contractual obligation (contractual obligation relationship)	240
I.XV.11.2.	Conflict of law qualification of donations as contractual obligations	240
I.XV.11.2.1.	Definition of the general features of contractual relationships from the perspective of donations	240
I.XV.11.2.2.	Synallagmatic obligations and synallagmatic performance	240
I.XV.11.3.	Absence of any negative delimitation of the material scope in relation to donations	243
I.XV.12.	Conflict of law determination of the law applicable to donations	243

1.XV.12.1.	Choice of the applicable law	243
1.XV.12.2.	Law applicable to donations determined according to general connecting factors	244
1.XV.12.2.1.	Determination of the applicable law according to characteristic performance (most often on part of the donor)	244
1.XV.12.2.2.	Exceptional cases in which the characteristic performance is associated with the performance provided by an individual/entity other than the donor	244
1.XV.12.2.3.	Donations of immovable property and immobilised things (combination of obligation status and property rights status related to the gift)	245
1.XV.12.2.4.	Special cases of donations and unilateral dispositions with comparable effects	245
1.XV.12.2.4.1.	Testamentary donations (mortis causa dispositions)	245
1.XV.12.2.4.2.	Release of debts	245
1.XV.13.	Case law of Member States	248
1.XV.13.1.	(A) Austria	248
1.XV.13.2.	(CZ) Czech Republic	249
1.XV.13.3.	(PL) Poland	250
	Literature	269
B:	Negative definition of the material scope of the Regulation	270
1.XVI.	Personal law—negative exemption concerning the scope of application—Concerning Article 1(2) (a) of the <i>Regulation</i>/ Article 1(2) (b) of the <i>Convention</i> 0262	270
1.XVI.1.	Legal capacity of natural persons	270
1.XVI.2.	Conflict of law rules in MPSaP (CZ)	271
1.XVI.2.1.	Legal capacity	271
1.XVI.2.2.	Jurisdiction of Czech courts in matters of capacity and guardianship	271
1.XVI.2.3.	Jurisdiction of Czech courts over issues concerning declarations of death	272
1.XVI.3.	Community law—The Green Paper on Succession and Wills (Green Paper (succession))	272
1.XVII.	Obligations arising out of family relationships—negative exemption concerning the material scope—Concerning Article 1(2)(b) of the <i>Regulation</i>/Article 1(2)(b) of the <i>Convention</i>	III
1.XVII.1.	Subject matter and sources of substantive law of national origin	277
1.XVII.2.	Qualification of family relationships in connection with contractual obligations	278
1.XVII.2.1.	Qualification of contractual obligations and contracts that are considered a domain of family law	278
1.XVII.2.2.	Delimitation of the qualification in case law	278
1.XVII.2.2.1.	Representation in common affairs and the exercise of rights	278
1.XVII.2.2.2.	Lease relationships	279

LXVII.2.2.3.	Separation agreement on the settlement of the mutual relationships between spouses as a concept of family law, as opposed to the law of contractual obligations	280
1.XVII.3.	Qualification of the contractual obligations and family relationships in connection with divorce and the relationships between the parents, upbringing and maintenance, determination of parenthood and the relationships between children and third parties	281
1.XVII.4.	The connection between the special rules governing relationships analogous to family relationships and the general civil law rules (including contractual obligations)—registered partnership	283
LXVII.4.1.	General definition of registered partnership and the purpose thereof	283
LXVII.4.2.	Registered partnership from the perspective of the negative delimitation of the scope of the Convention and the Regulation	284
LXVII.4.3.	Subject matter of the statutory regulation of registered partnerships	284
1.XVII.5.	Conflict rules in MSPaP (CZ)	285
LXVII.5.1.	Legal capacity	285
LXVII.5.2.	Inheritance law	285
LXVII.5.3.	Family law—relationships between spouses	285
LXVII.5.4.	Family law—relationships between parents and children	285
LXVII.5.5.	Family law—guardianship	286
LXVII.5.6.	Jurisdiction of Czech courts in family matters	286
1.XVII.6.	Community law	287
LXVII.6.1.	Family law rules in Community legislation—Regulation 2201/2003	287
LXVII.6.2.	Anticipated new provisions (amendment) of Regulation 2201/2003 in relation to forum selection and the choice of law ..	291
1.XVII.7.	Maintenance obligation	294
LXVII.7.1.	Procedural regulation of jurisdiction and recognition under Regulation No 44/2001	294
LXVII.7.2.	New substantive rules (conflict rules) and procedural rules under Regulation No 4/2009	295
LXVII.7.3.	Material scope of Regulation No 4/2009	298
LXVII.7.3.1.	Authority ([international] jurisdiction) under Regulation No 4/2009	298
LXVII.7.3.2.	Conflict rules (substantive) under Regulation No 4/2009	299
1.XVII.8.	Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations	300
LXVII.8.1.	Adoption of the Protocol as a result of membership of the <i>Community</i> in HCCH	300
LXVII.8.2.	Amount of maintenance	300
LXVII.8.3.	Conditions of application	300
1.XVII.9.	Community law—Regulation No 664/2009	301
LXVII.9.1.	Purpose of the regulation	301
1.XVII.9.2.	Material scope of the regulation	303
LXVII.9.3.	Future review of the application of Regulation No 664/2009	305

1.XVII.10.	Case law	305
1.XVII.10.1.	ECJ—Court of Justice of the European Communities	305
1.XVII.10.2.	Case law of Member States	309
1.XVII.10.2.1.	(A) Austria	309
1.XVII.10.3.	ECtHR case law	310
	Literature	310
1.XVIII.	Obligations in matrimonial property regimes and inheritance status—a negative exception from the material scope of Article 1(2) (c) of the Regulation/Article 1(2) (b) of the Convention 0303	312
1.XVIII.1.	The scope of application and the sources of the substantive law provisions of a national origin (CZ)	312
1.XVIII.2.	Qualification of inheritance regimes in relation to contractual obligations (in case law): agreement to settle the inheritance	313
1.XVIII.3.	Conflict of law rules in private international and procedural law (CZ)	314
1.XVIII.3.1.	Inheritance law	314
1.XVIII.3.2.	Competence of Czech judicial bodies concerning matters of inheritance	314
1.XVIII.4.	Community Law	315
1.XVIII.4.1.	Green Paper on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition—The Green Paper (<i>matrimonial</i>)	315
1.XVIII.4.1.1.	<i>Community</i> priorities in family law and family property regimes	315
1.XVIII.4.1.2.	Definition of certain basic terms and their significance for autonomous (unified) qualification of definition of terms within Article 1 of the <i>Regulation</i> /Article 1 of the <i>Convention</i> { <i>prenuptial agreement, regulation of matrimonial property regimes, civil partnership, unmarried cohabitation</i> }	315
1.XVIII.4.1.3.	Concept of conflict regulation provided by the <i>Green Paper</i> {<i>matrimonial</i>}	316
1.XVIII.4.2.	The connection between the <i>Convention</i>/the <i>Regulation</i> (conflict of law rules for contractual obligations) and relationships of persons not joined by marriage or by civil partnership	318
1.XVIII.5.	Case law	318
1.XVIII.5.1.	ECJ—The Court of Justice of the European Communities	318
1.XVIII.5.2.	Case law of Member States	319
1.XVIII.5.2.1.	(A) Austria	319
	Literature	321
1.XIX.	Bills of exchange, cheques, negotiable instruments—negative exception from the material scope—Article 1(2) (d) of the Regulation/Article 1(2) (c) of the Convention	322
1.XIX.1.	Qualification of bill (or cheque) obligations in the under Civil Law (<i>Geneva Convention</i>), Common Law and in the <i>Community</i> environment	322

1.XIX.1.1.	Concept of bills of exchange and promissory notes in Czech law and in the law of Continental Europe	322
1.XIX.1.2.	The connection between a bill of exchange and other obligation relationships (especially of a contractual nature)	323
1.XIX.2.	Sources of Law	324
1.XIX.3.	The restriction of contractual autonomy as an obvious reason for ruling out negotiable instrument relationships from the conflict regime of the <i>Convention</i> and the <i>Regulation</i>	325
1.XIX.4.	Differences in the level of contractual autonomy of substantive law regulation	326
1.XIX.5.	Contractual qualification under the Common Law	328
1.XIX.5.1.	Negotiable instruments	328
1.XIX.5.2.	Higher qualitative level of a <i>contractual obligation</i>	328
1.XIX.5.3.	Basic types of <i>negotiable instruments</i>	329
1.XIX.5.3.1.	Promissory notes	329
1.XIX.5.3.2.	Bills of exchange	329
1.XIX.5.4.	<i>Negotiable instruments</i> under the United States regime and the (US) legal system	330
1.XIX.6.	The law of negotiable instruments from the perspective of Community legislation	331
1.XIX.7.	International law of negotiable instruments (CZ) and the conflict approach to determine the different statuses of bills of exchange	332
1.XIX.7.1.	The relation between the conflict regulation of the SSZ (CZ) and of the MPSaP (CZ) as a typical example of the relation between special and general regulations of private international law	332
1.XIX.7.2.	The possibility of choice of law	334
1.XIX.8.	The relationship between the law of negotiable instruments and European private international law regulations	338
1.XIX.9.	The significance of the qualification of bill of exchange and similar relationships from the Community perspective	341
1.XIX.10.	Solutions for the nature of bill of exchange relationships	342
1.XIX.11.	Bill of exchange contract	344
1.XIX.12.	Content of a <i>bill of exchange</i> in relation to the choice of governing law	346
1.XIX.13.	Contemporary evaluation of the possibility of the choice of law in Czech case law	347
1.XIX.14.	Case law of Member States	348
1.XIX.14.1.	(CZ) Czech Republic	348
	Literature	353
1.XX.	Substantive law contracts versus procedural contracts Consensus on the course of action within a proceeding, evidence and proof (agreements on the choice of court)—negative material scope exceptions—ad Article 1 (3) of the <i>Regulation!</i> Article 1 (2)(d) of the <i>Convention</i> —and the qualification of mediation, forum selection and arbitration agreements and other agreements relating to the procedural exercise of subjective rights	355

I.XX.1.	Substantive law contracts and procedural contracts	355
I.XX.1.1.	Arbitration agreements and agreements on the choice of court as an expression of compromise between the substantive law and procedural conception of contracts and legal acts	355
I.XX.1.2.	The meeting of the expressions of will in the primary contract and the dispute resolution provisions	356
I.XX.1.3.	The object of agreements on dispute resolution methods	357
I.XX.1.4.	[Potential] dispute resolution as a qualitative factor of a substantive law relationship	358
1.XX.2.	The cause and effects of procedural agreements (arbitration agreements and agreements on the choice of court)	358
1.XX.3.	The functional dependency of choice of court and arbitration agreement	359
1.XX.4.	The prevailing procedural effect and the terminological classification	360
1.XX.5.	Applicable law in relation to procedural agreements	361
1.XX.6.	Procedural agreements under the <i>Regulation</i> and the <i>Convention</i>	362
I.XX.6.1.	Choice-of-court agreements and arbitration agreements	362
I.XX.6.2.	Proof, evidence and procedural agreements in the narrow sense within the meaning of the material scope of the <i>Regulation</i> and the <i>Convention</i>	362
I.XX.6.2.1.	The importance of distinguishing between proof and evidence	362
I.XX.6.2.2.	Proof and onus of proof	362
1.XX.7.	Arbitration agreements, agreements on the choice-of-court and procedural agreements under selected legal systems	363
i.XX.7.1.	(A) Austria	363
I.XX.7.2.	(D) Germany	363
I.XX.7.3.	(CH) Switzerland	364
1.XX.8.	Agreement on mediation or other methods of dispute resolution different from court/arbitration proceedings	366
I.XX.8.1.	Mediation agreements versus agreements establishing jurisdiction	366
I.XX.8.2.	Substantive law nature of mediation agreements and similar clauses	366
I.XX.8.3.	The law applicable to the effects of mediation agreements	367
I.XX.8.4.	Autonomous classification of agreements on dispute resolution mechanisms	368
I.XX.8.5.	The approach adopted by certain selected countries by a failure to adhere to the agreed mediation procedure (especially from the perspective of case law)	369
I.XX.8.5.1.	(D) Germany	369
I.XX.8.5.1.1.	Substantive law nature of mediation agreements and similar clauses	369
I.XX.8.5.1.2.	Analogy with expiration of the procedural possibility to raise a substantive law objection of limitation of actions	369
I.XX.8.5.2.	(F) France	370
I.XX.8.5.3.	(CH) Switzerland	370
I.XX.8.5.3.1.	Judgment of the Zurich (CH) Court of Appeal of 1999	370

I.XX.8.5.3.2.	Substantive law nature of mediation agreements, exceptionally with procedural effects	372
I.XX.8.5.3.3.	Suspension of proceedings as a possible solution	372
I.XX.8.5.3.4.	Application of the applicable substantive law	373
I.XX.8.5.4.	(IRL) Ireland	373
1.XX.9.	Case law of Member States	374
I.XX.9.1.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	374
	Literature	374
I.XXI.	Arbitration agreements—negative exception of the subject matter—re: Article 1 (2) (e)/of the Regulation/Article 1 (2) (d)/of the Convention	376
I.XXI.1.	<i>Lex arbitri</i> as a qualitative equivalent of <i>lex fori</i> and interaction of procedural and substantive conflict of law issues in arbitral proceedings	376
I.XXI.1.1.	Relatively independent statuses	376
I.XXI.1.2.	Relationship between substantive and procedural law: specifics in arbitration—the law governing an arbitration agreement, the merits of a dispute and the proceedings	378
I.XXI.1.3.	Choice of procedural law	379
I.XXI.2.	The reasons for exclusion of the conflict of law status of an arbitration agreement from the scope of the <i>Regulation</i> and the <i>Convention</i>	380
I.XXI.3.	The law governing an arbitration agreement as an independent category between the statuses of <i>lex arbitri</i> and <i>lex causae</i>	381
I.XXI.4.	Relation of the law applicable to the proceedings and the law applicable to the arbitration agreement	382
I.XXI.4.1.	Difference between the procedural status and the status of an arbitration agreement	382
I.XXI.4.2.	Mutual relations between the procedural status and the status of an arbitration agreement	383
I.XXI.4.3.	Definition of <i>lex arbitri</i>	384
I.XXI.4.4.	Different approaches to procedural strategy in proceedings before [ordinary] courts and in arbitral proceedings	385
I.XXI.4.5.	Differences between national and international proceedings	385
I.XXI.5.	Freedom to determine procedural rules	386
I.XXI.6.	Refusal to apply procedural standards of [ordinary] courts to international arbitration	389
I.XXI.7.	Legislation concerning the procedural standards of arbitral proceedings in selected countries	393
I.XXI.7.1.	(D) Germany	393
I.XXI.7.2.	(F) France	394
I.XXI.7.3.	(CH) Switzerland	397
I.XXI.7.4.	(UK/EN) United Kingdom of Great Britain and Northern Ireland (law: England and Wales)	399
I.XXI.7.5.	(US) United States of America	400
I.XXI.7.6.	Status of an arbitration agreement—the law governing an arbitration agreement	406

1.XXI.7.6.1.	<i>Lex fori</i> versus <i>lex arbitri</i>	406
1.XXI.7.6.2.	Legislation applicable to arbitration agreements in the context of the European law	406
1.XXI.7.6.3.	Choice of the status of an arbitration agreement and solution contained in certain national <i>lex arbitri</i> legislation	407
1.XXI.7.6.4.	Relation to the place of proceedings and/or to the substantive [conflict of law] status of the subject-matter of a dispute	408
1.XXI.8.	Substantive law applicable to arbitral proceedings	410
1.XXI.8.1.	International element in arbitral proceedings and its impact on the substantive status of the merits of a dispute	410
1.XXI.8.2.	Free choice of law	411
1.XXI.8.3.	ICC Rules and other rules of permanent arbitration courts	411
1.XXI.8.3.1.	Article 17 of the ICC Rules	411
1.XXI.8.3.2.	Rules of other permanent arbitration courts	412
1.XXI.8.4.	Application of conflict of law rules and the conflict of law method by arbitral tribunals	413
1.XXI.8.5.	Cumulative method of determination of conflict of law rules	413
1.XXI.8.6.	Application of certain standard rules and provisions	413
1.XXI.8.7.	Voie directe	414
1.XXI.8.8.	Determination of the governing law carried out by arbitrators in international practice	414
1.XXI.8.9.	Subjective assessment factors for the determination of the governing substantive law	416
1.XXI.9.	Consideration and application of non-state substantive systems in arbitral proceedings	417
1.XXI.10.	Arbitration versus <i>Regulation</i> and <i>Convention</i>	418
1.XXI.10.1.	Arbitration and the <i>Regulation</i> from the point of view of the arbitration practice	418
1.XXI.10.2.	Arbitration and the <i>Regulation</i> from the point of view of <i>Community</i> law	419
1.XXI.11.	Deciding according to equity	420
1.XXI.11.1.	Exception from the application of substantive rules in arbitration	420
1.XXI.11.2.	The effects of an agreement on deciding according to equity—exclusively on substantive law	421
1.XXI.11.2.1.	Czech <i>lex arbitri</i> legislation	421
1.XXI.11.2.2.	ICC Rules	421
1.XXI.11.2.3.	UNCITRAL Rules	421
1.XXI.11.2.4.	Non-uniform doctrinal specification of the difference between <i>ex aequo et bono</i> and <i>amiable compositeur</i>	422
1.XXI.11.3.	Deciding as an <i>amiable compositeur</i>	424
1.XXI.11.4.	Admissibility of <i>depegage</i> in consequence of partial authorisation to decide according to <i>equity</i> or as an <i>amiable compositeur</i>	425
1.XXI.11.5.	Arbitrator's right to modify an agreement between parties	426
1.XXI.11.6.	Deciding <i>ex aequo et bono</i>	428
1.XXI.11.7.	Certainty of the authorisation granted to arbitrators	428
1.XXI.11.8.	Deciding outside the law versus deciding within the scope of a particular legal system	430

I.XXI.11.9.	The content of deciding <i>ex aequo et bono</i> in terms of the extent and method of exercising the powers	432
I.XXI.11.10.	Prohibition against acting at will	432
I.XXI.11.11.	Authorisation of arbitrators to decide according to equity as a mandate with exclusively substantive effects	433
I.XXI.11.12.	Principles of deciding <i>ex aequo et bono</i>	434
I.XXI.11.13.	Predictability of decision-making	435
I.XXI.11.14.	Importance of public policy as a factor limiting deciding according to equity	435
I.XXI.11.15.	English <i>common law</i> approach	435
I.XXI.11.16.	Case-law opinions in (F)	436
I.XXI.11.17.	Approach of (US)	437
I.XXI.11.18.	Relation between deciding according to equity and "lex mercatoria"	438
I.XXI.11.19.	ICSID arbitration in practice	438
I.XXI.12.	Position of arbitration in the community law regime <i>pro Jutoro</i> : proposed change to <i>Regulation 44/2001</i> and the development of European private international law	440
I.XXI.12.1.	Proposed change to <i>Regulation 44/2001</i> (<i>Regulation of 22 December 2000 on competence of a court and the recognition and execution of court rulings in civil and business matters</i>)	440
I.XXI.12.2.	Interrelation between arbitration and <i>Regulation 44/2001</i>	441
I.XXI.12.3.	Commission Report (EC) and Green Paper [to <i>Regulation 44/2001</i>]	446
I.XXI.12.4.	Rules for specification of the place of arbitration	448
I.XXI.13.	Uniform conflict of law rules for law applicable to arbitration agreements	452
I.XXI.13.1.	Consideration of uniform conflict of law for arbitration agreements	452
I.XXI.13.2.	Recognition and enforcement of court judgments issued in relation to arbitration	452
I.XXI.13.3.	Professional public regarding the intention to expand the contextual scope of <i>Regulation 44/2001</i>	454
I.XXI.13.4.	National reports on the Green Paper [<i>regarding Regulation 44/2001</i>]	456
I.XXI.13.4.1.	Theme of rejection in the majority of national standpoints as an example of separation of the Brussels administration from the reality of the international environment	456
I.XXI.13.4.2.	Specific standpoints of various Member States	457
I.XXI.13.4.2.1.	Standpoint of the (CZ) Czech Republic	457
I.XXI.13.4.2.2.	Standpoint of (D) Germany	457
I.XXI.13.4.2.3.	Standpoint of (D) France	457
I.XXI.13.4.2.4.	Standpoint of (I) Italy	458
I.XXI.13.4.2.5.	Standpoint of (NL) the Netherlands	458
I.XXI.13.4.2.6.	Standpoint of (UK) the United Kingdom of Great Britain and Northern Ireland	458
I.XXI.13.5.	Heidelberg Report	459
I.XXI.13.5.1.	Dissenting conclusion of the <i>Heidelberg Report</i> in context of the risks of limited application and the uniform international interpretation and application of the New York Convention	459

1.XXI.13.5.2.	Position of <i>Heidelberg Report</i> on Individual Aspects of EC proposal	460
1.XXI.13.5.2.1.	Recognition of foreign (declaratory) court judgments on the validity of the arbitration agreement (points /121/ to /123/ of the <i>Heidelberg Report</i>)	460
1.XXI.13.5.2.2.	Related measures (point /124/ of the <i>Heidelberg Report</i>)	465
1.XXI.13.5.3.	Proposals for explicit regulation of arbitration in Regulation 44/2001 (point /125/ and others of the <i>Heidelberg Report</i>) in relation to [substantive] conflict rules of the <i>Convention and Regulation</i>	466
1.XXI.13.5.4.	Recognition (points /127/ to /130/ of the <i>Heidelberg Report</i>) and prevalence thereof over jurisdiction of [general] courts as a facet of public policy	468
1.XXI.13.5.5.	Proposal for future regulation (points /131/ to /136/ of the <i>Heidelberg Report</i>)	470
1.XXI.13.5.6.	IBA Report (<i>International Bar Association</i>)	471
1.XXI.13.5.6.1.	Adverse opinion by IBA	471
1.XXI.13.5.6.2.	Measure in support of arbitration proceedings	472
1.XXI.13.5.7.	Ruling on the validity of the arbitration agreement or arbitral awards	473
1.XXI.13.6.	Coordination of proceedings concerning the validity of the arbitration treaty between arbitration courts and [general] courts	476
1.XXI.13.7.	Obstacles to pending disputes	477
1.XXI.13.8.	Proposal Contained in the Green Paper [on <i>Regulation No. 44/2001</i>] regarding Uniform Conflict Rule for Determining Governing Law of an Arbitration Agreement (connecting to the law of the place of arbitration), and Interplay with the [<i>Rome</i>] <i>Convention</i> and the [<i>Rome I</i>] <i>Regulation</i>	479
1.XXI.13.9.	Recognition of arbitration awards	480
1.XXI.14.	Case law	480
1.XXI.14.1.	Case law of Member States	480
1.XXI.14.1.1.	(A) Austria	480
1.XXI.14.1.2.	(CZ) Czech Republic	481
1.XXI.14.1.3.	(D) Germany	482
1.XXI.14.1.4.	(F) France	490
1.XXI.14.1.5.	(SE) Sweden	491
1.XXI.14.1.6.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	493
1.XXI.14.2.	Case law of Non—Member States	500
1.XXI.14.2.1.	(CH) Switzerland	500
1.XXI.14.2.2.	(HK) (HK) Hong Kong [Special administrative region of (PRC)]	500
1.XXI.14.2.3.	(Iran)	502
1.XXI.14.2.4.	(TU) Turkey	503
1.XXI.14.3.	From the arbitration practice	505
1.XXI.14.3.1.	(CZ) Czech Republic	505
1.XXI.14.3.2.	(ICC)	507
	Literature	507

Appendices to Section XXI of the Commentary to Article 1 of the Regulation/Convention (Arbitration proceedings): overview of certain issues in selected countries	520
• Table Annex No. 01: Overview of the law applicable to arbitration agreements	520
• Table Annex No. 02: Overview of the law applicable to arbitral proceedings	523
• Table Annex No. 03: Overview of conflict of laws legislation ...	527
• Table Annex No. 04: Overview of laws on decision making ex aequo et bono decisions and/or acting as amiable compositeur	531

I.XXII. Prorogation agreements (choice of court agreements)—negative exception from the material scope—ad Article 1 (2) (e) of the Regulation! Article 1 (2) (d) of the Convention	534
I.XXII.1. Prorogation agreements	534
1.XXII.2. Forum selection under the (CZ) regulation	536
1.XXII.2.1. Forum selection under the current regulation of MPSaP (CZ) in comparison to regulations of some other countries	536
1.XXII.2.2. The new private international law (CZ) regulation	538
1.XXII.2.3. Mutual legal assistance treaties	538
1.XXII.3. Laws of other than national origin in the European context	539
1.XXII.3.1. Exclusion of prorogation agreements from the material scope of the <i>Regulation</i> (and of the <i>Convention</i>)	539
1.XXII.3.2. Historical foundation in the form of the <i>Brussels convention</i>	539
1.XXII.3.3. The Lugano convention	541
1.XXII.3.4. <i>Regulation 44/2001</i>	542
1.XXII.3.4.1. General regulation and concept of <i>Regulation 44/2001</i>	542
1.XXII.3.4.2. Special regulation of the <i>Regulation 44/2001</i>	543
1.XXII.4. The Hague conventions (HCCH) on the Choice of Court	543
1.XXII.4.1. The Hague convention (HCCH) on the Choice of Court concluded 25 November 1965	543
1.XXII.4.2. Basic principles of the Convention (HCCH, 1965)	544
1.XXII.4.2.1. Recognition of the choice of law (the first principle)	544
1.XXII.4.2.2. Positive and negative effect of the choice (the second principle) ...	545
1.XXII.4.2.3. Enforceability of decisions issued in proceedings before an agreed <i>forum</i> (the third principle)	546
1.XXII.4.3. The Hague Convention (HCCH) on Choice of Court Agreements of 30 June 2005	546
1.XXII.4.3.1. Origination of the Convention (HCCH, 2005)	546
1.XXII.4.3.2. Comparison with CREFAA (recognition and enforcement of foreign arbitral awards) and the basic principles	547
1.XXII.4.3.3. Subject of the convention	547
1.XXII.4.3.4. Concept of the regulation included in the Convention (HCCH, 2005)	548
1.XXII.4.3.5. Basic rules of the Convention (HCCH, 2005)	548
1.XXII.4.3.6. Other principles included in the Convention (HCCH, 2005)	549
1.XXII.4.3.7. Relationship with other instruments (<i>The Brussels Convention, Regulation 44/2001, The Lugano convention</i>)	549

1.XXII.4.3.8.	Regional Economic Integration Organisations	551
1.XXII.5.	Another regulation of forum selection of the Community origin	551
1.XXII.6.	Case law	552
1.XXII.6.1.	ECJ—The European Court of Justice	552
1.XXII.6.2.	Case law of Member States	552
1.XXII.6.2.1.	(CZ) Czech Republic	552
1.XXII.6.2.2.	(F) France	553
	Literature	556
1.XXIII.	Obligations taken over by an agent in relation to a third party—negative exception from the material scope—ad Article 1(2)(g) of the Regulation!Article 1(2)(f) of the Convention—Material scope of the issue and extent of this treatise in this part of the publication (commentaries)	560
1.XXIII.1.	Material scope of the negative definition under Article 1 (2)(g) of the Regulation/Article 1 (2)(g) of the Convention	561
1.XXIII.2.	Professional representation and consultancy services	563
1.XXIII.2.1.	Qualification of contracts for the provision of legal services	563
1.XXIII.2.1.1.	Qualification of the sphere of contractual relations	563
1.XXIII.2.1.2.	Power of attorney	563
1.XXIII.2.1.3.	The <i>Community</i> qualification and determination of the subject of the contract	564
1.XXIII.2.1.4.	Service according to the <i>Community</i> law	564
1.XXIII.2.2.	Choice of applicable law—regime of the <i>Convention</i>	565
1.XXIII.2.2.1.	Choice of law	565
1.XXIII.2.2.2.	Closest connection	565
1.XXIII.2.2.3.	Characteristic performance	565
1.XXIII.2.3.	Practise of a profession as a business activity	566
1.XXIII.2.4.	Principal place of business, other than principal place of business	566
1.XXIII.2.5.	The international element in the subject of the person providing the characteristic performance—foreign legal practitioners and the principal place of business of foreign legal practitioners	567
1.XXIII.2.5.1.	European legal practitioners	567
1.XXIII.2.5.2.	Visiting European legal practitioners	567
1.XXIII.2.5.3.	Established European legal practitioner	567
1.XXIII.2.5.4.	The place of provision of characteristic performance, head office and place of business (of a legal practitioner, consultant, agent)	568
LXXIII.2.5.5.	The place of business of a foreign law company	568
1.XXIII.2.5.6.	Subsidiary company of the foreign law company	568
1.XXIII.2.5.7.	Relocation of the Seat of a Foreign Law Company	568
1.XXIII.2.6.	The international element in persons providing the characteristic performance—services provided by a domestic legal practitioner (law company) in relation to foreign countries (the foreign element) from the conflict of law perspective	569
LXXIII.2.6.1.	Services provided by a domestic legal practitioner for foreign clients	569

1.XXIII.2.6.2.	Services provided by a domestic legal practitioner abroad for clients abroad	569
1.XXIII.2.6.3.	Services provided by a domestic legal practitioner abroad for clients coming from their own home state	569
1.XXIII.2.7.	The applicable law in the regime of the <i>Convention</i>	569
1.XXIII.2.8.	The Client as a consumer	570
1.XXIII.3.	Limitation of the material scope of the <i>Regulation</i> the <i>Convention</i> and the application of other conflict of law rules [application of MPSaP (CZ)]	571
1.XXIII.4.	<i>The Proposal for a Regulation</i>	572
1.XXIII.5.	Applicable law in the regime of the <i>Regulation</i>	573
1.XXIII.5.1.	Choice of law	573
1.XXIII.5.2.	The regime different from the regime of the <i>Convention</i>—special conflict of law rules under Article 4 (1) (b)	573
1.XXIII.5.3.	Regime identical to the regime of the <i>Convention</i>	573
1.XXIII.6.	Provision of services by tax advisers, notaries public and patent attorneys	574
1.XXIII.7.	Non-contractual obligations	575
1.XXIII.8.	The <i>Hague Convention (HCCH)</i> of 14 March 1978 on the Law Applicable to Agency	575
1.XXIII.8.1.	Concept of the <i>Convention (HCCH, 1978)</i>	575
1.XXIII.8.2.	Subject of the regulation: the international element in agency agreements	576
1.XXIII.8.3.	Positive delimitation of the scope	576
1.XXIII.8.4.	Negative delimitation of the scope: Exclusion of some types of agency relationships	576
1.XXIII.8.5.	Option for a Contracting State to reserve the right not to apply the <i>Convention</i>	577
1.XXIII.8.6.	Non-application of the regime of the <i>Convention</i> the <i>Regulation</i> to employment relationships	578
1.XXIII.8.7.	Universal application	578
1.XXIII.8.8.	Relations between the principal and agent	578
1.XXIII.8.8.1.	Choice of law	578
1.XXIII.8.8.2.	Applicable law in the absence of choice	579
1.XXIII.8.9.	Relations with a third party	580
1.XXIII.8.9.1.	Existence and extent of relations with a third party, partial dependence on the internal relationship between the agent and the principal	580
1.XXIII.8.9.2.	Choice of law	581
1.XXIII.8.9.3.	Common conflict of law and auxiliary rules applicable to internal and external relations	581
1.XXIII.9.	National regulations	581
1.XXIII.10.	Case law of Member States	582
1.XXIII.10.1.	(CZ) Czech Republic	582
	Literature	583

I.XXIV.	Constitution of trusts and the relationship between settlors, trustees and beneficiaries—negative exception to the material scope—re Article 1(2)(h) of the <i>Regulation</i>/Article 1(2)(g) of the <i>Convention</i> 0571	585
I.XXIV.1.	Trusts in the context of EC private international law	585
I.XXIV.2.	Trust as an institute from the point of view of private international law	586
I.XXIV.3.	Systematic classification of <i>trusts</i>: comparison between <i>common law</i> and <i>civil law</i> (<i>analogy</i>)	587
I.XXIV.4.	Autonomous qualification	590
I.XXIV.5.	Convention on the Law Applicable to Trusts and on their Recognition	595
I.XXIV.5.1.	The <i>Trust Convention</i> as a product of the <i>Hague Conference</i> on Private International Law	595
I.XXIV.5.2.	Trust definition	596
I.XXIV.5.3.	Choice of law by unilateral legal act	596
I.XXIV.5.4.	Principle of conservation of the effect of a trust and the connecting factor of closest connection	597
I.XXIV.5.5.	Recognition of <i>trusts</i>	598
I.XXIV.6.	Absence of provisions concerning <i>trusts</i> or analogous constructions in the national doctrine	601
I.XXIV.7.	Public policy	602
I.XXIV.8.	Priority application of <i>mandatory rules</i> (<i>internationally mandatory rules</i>) in the context of <i>trust constructions</i>	604
I.XXIV.9.	<i>Trust</i> and the duty to <i>identify the capital</i>, its sources and persons involved in financial transactions	606
I.XXIV.10.	Ultimate (end) beneficiary in the international context	610
I.XXIV.11.	Compatibility of the concept of trusts with the identification duty	613
I.XXIV.12.	Case law of Member States	614
I.XXIV.12.1.	(D) Germany	614
	Literature	615
I.XXV.	Pre-contractual obligations—a negative exception from the material scope—ad Art. 1(2)(i) of the <i>Regulation</i> 0602	618
I.XXV.1.	Pre-contractual contractual autonomy	618
I.XXV.2.	<i>Culpa in Contrahendo</i> according to R. von Jhering—the duty to observe the necessary <i>diligentia</i> (<i>diligentia in contrahendo</i>) ...	618
I.XXV.3.	The material scope of pre-contractual liability—incorrectness at the pre-contractual stage	619
I.XXV.4.	The purpose of liability for negotiations held at the pre-contractual stage	619
I.XXV.5.	The scope of <i>culpa de contrahendo</i>	619
I.XXV.6.	The diversity of the legal basis, circumstances and consequences	619
I.XXV.7.	Unjustified termination of pre-contractual negotiations	619
I.XXV.8.	Breach of the duty of disclosure and abuse of information acquired through pre-contractual negotiations	620
I.XXV.9.	Termination of pre-contractual negotiations without serious cause	620

1.XXV.10.	Certain national doctrines and conceptual approaches to the provisions of pre-contractual liability	621
1.XXV.10.1.	(A) Austria	621
1.XXV.10.1.	Legal concept: culpa in contrahendo	621
1.XXV.10.1.2.	Scope of liability	621
1.XXV.10.1.3.	Conditions for liability	622
1.XXV.10.2.	(D) Germany	622
1.XXV.10.2.1.	The legal basis of pre-contractual liability in German law	622
1.XXV.10.2.2.	Creation of an obligation	623
1.XXV.10.2.3.	Obligations towards third parties	623
1.XXV.10.2.4.	Invalidity/unenforceability of a contract: acting in good faith	624
1.XXV.10.2.5.	The qualitative aspect of relations between parties	625
1.XXV.10.2.6.	Conditions for the creation of a pre-contractual obligation relationship	625
1.XXV.10.2.7.	Creation of an obligation	626
1.XXV.10.2.8.	Culpa in contrahendo as a part of the constitution of obligation pursuant to German law	626
1.XXV.10.3.	(F) France	627
1.XXV.10.3.1.	The doctrine of delict	627
1.XXV.10.3.2.	The basis of liability	627
1.XXV.10.3.3.	The scope of liability	627
1.XXV.10.3.4.	Duty of disclosure	627
1.XXV.10.4.	(CH) Switzerland	628
1.XXV.10.4.1.	The doctrine of a contractual obligation	628
1.XXV.10.4.2.	The conditions (presumptions) of liability	628
1.XXV.10.4.3.	The scope of pre-contractual obligations	629
1.XXV.10.5.	(I) Italy	629
1.XXV.10.6.	(NL) Netherlands	629
1.XXV.10.7.	(UK) The United Kingdom of Great Britain and Northern Ireland (law: England and Wales) and the concept of <i>common law</i>	629
1.XXV.10.7.1.	The superiority of contractual autonomy	629
1.XXV.10.7.2.	The intention to enter a contract vs an actual obligation to enter into a contract	630
1.XXV.10.7.3.	Means of sanctioning breaches of obligations at the pre-contractual stage	630
1.XXV.10.7.4.	The basis of liability established by contract negotiations	631
1.XXV.10.7.5.	Estoppel	632
1.XXV.10.7.6.	A preliminary agreement as a condition of the successfulness of a claim related to the pre-contractual stage	632
1.XXV.10.7.7.	The duty of disclosure	633
1.XXV.10.7.8.	Breaking off contract negotiations	633
1.XXV.10.7.9.	The pre-contractual stage	633
1.XXV.10.7.10.	Consequences of breaching an obligation: damage, compensation for damage and the duty to continue contract negotiation	634
1.XXV.II.	<i>The Vienna Convention</i>	634
1.XXV.12.	Liability in connection with pre-contractual negotiations in <i>Community law</i> (in conflict of laws rules)	634
1.XXV.12.1.	The amendment to the concept of the <i>Regulation</i> compared to the <i>Convention</i>	634

1.XXV.12.2.	Procedural relevance to the <i>Treaty of Brussels, Regulation 44/2001</i> and ECJ case-law	635
1.XXV.12.3.	Categorisation and subsequent classification of obligations arising out of dealings prior to the conclusion of a contract pursuant to <i>Community</i> conflict law	635
1.XXV.12.4.	Conflict solutions in the interaction of the <i>Regulation</i> (contractual obligations) and <i>Regulation 864/2007</i> (non-contractual obligations)	636
1.XXV.12.5.	<i>Regulation 864/2007</i> (non-contractual obligations)	637
1.XXV.12.6.	Other express reflection in <i>Community</i> regulations	639
1.XXV.12.6.1.	Directive 2008/52/EC (Mediation)	639
1.XXV.12.6.2.	Regulations on the protection of consumers	639
1.XXV.13.	Private law unification	640
1.XXV.13.1.	Non-normative unification attempts	640
1.XXV.13.2.	Principles of European contract law (PECL)	640
1.XXV.13.3.	PECL versus UNIDROIT Principles	641
1.XXV.13.4.	European Contract Code (ECC)	641
1.XXV.14.	The concept of pre-contractual liability in Czech law	643
1.XXV.14.1.	Current normative provision	643
1.XXV.14.2.	Case law	643
1.XXV.14.3.	Proposed new Civil Code	643
1.XXV.15.	Case law	644
1.XXV.15.1.	ECJ—The Court of Justice of the European Communities	644
1.XXV.15.2.	Case law of Member States	644
1.XXV.15.2.1.	(CZ) Czech Republic	644
1.XXV.15.2.2.	(D) Germany	645
1.XXV.15.2.3.	(UK) The United Kingdom of Great Britain and Northern Ireland (law: England and Wales) (UK/EN)	645
	Literature	648
Gs	Rationae loci	650
1.XXVI.	A Member State and territorial jurisdiction—ad Article 1(4) of the <i>Regulation</i> 0633	650
1.XXVI.1.	Territorial jurisdiction (<i>rationae loci</i>) of the <i>Convention</i>	650
1.XXVI.2.	Territorial jurisdiction and the universal character of the <i>Convention</i> (and the <i>Regulation</i>)	651
1.XXVI.3.	Territorial jurisdiction (<i>rationae loci</i>) of the <i>Regulation</i>	651
LXXVI.3.1.	The definition of a Member State	651
1.XXVI.3.2.	The position of (DK), (IRL) and (UK)	652
1.XXVI.3.2.1.	Specific features of the position of (DK), (IRL) and (UK) within the <i>Community</i> (from the view of <i>Community</i> law)	652
1.XXVI.3.2.2.	The position of (UK) and (IRL)	652
HXXVI.3.2.3.	The position of (DK) in relation to the <i>Regulation</i>	655
	Literature	655
Article 2 of the <i>Regulation!</i> Article 2 of the <i>Convention</i>		657
2.1.	Universality of application	657

2.11.	The conditions of the universal application (the conditions of the universality of the <i>Regulation</i>)	658
2.11.1.	The court of Member State	659
2.IV.	Suspension of other conflict rules	659
2.V.	Universal application of the <i>Convention</i>	659
2.VI.	Case law	660
2.VI.1.	(I) Italy	660
2.VI.2.	(UK) United Kingdom of Great Britain and Northern Ireland—law of England and Wales (UK/EN)	660
	Literature	661
 Article 3 of the <i>Regulation</i>!Article 3 of the <i>Convention</i>		 663
3.1.	Freedom of contract as a fundamental principle of EC contract law and principles of choice-of-law rules in the <i>Regulation</i> and <i>Convention</i>	664
3.11.	Freedom to contract the choice-of-law provision; its purpose and part in public policy—protection of legal certainty	665
3.11.1.	Autonomy as a <i>humane</i> manifestation of fundamental human freedoms	665
3.11.2.	Concern over predictability and legal certainty	666
3.11.3.	Freedom of Choice of Law as part of Public Policy	666
3.III.	The freedom of choice versus free choice of law: the autonomous function of the word freedom ("<i>svoboda</i>" in Czech) under Article 3 of the <i>Regulation</i> (error in the Czech version of the translation)	667
3.IV.	Choice of Law at Common Law	667
3.IV.1.	Importance of a comparative excursion into certain common law patterns in interpreting the <i>Regulation</i> and <i>Convention</i>	667
3.IV.2.	English Law as the leading representative of Common Law traditions [not only] in resolving the question of choice-of-law rules	668
3.IV.3.	Mandatory rules versus Overriding Mandatory Provisions	669
3.IV.4.	Limitations by overriding mandatory provisions in other Common Law countries	669
3.IV.4.1.	(US): The Law of New York and Restatement (second)	669
3.IV.4.2.	Reception of English Law (in a qualified form) in other Common Law jurisdictions	670
3.IV.5.	Importance of good faith standards in choice-of-law rules and restrictions on the freedom of contract at common law	672
3.V.	The Law parties can choose	673
3.V.1.	Unrestricted choice	673
3.V.2.	Prohibition of internationalisation of relations by means of a subjective choice: elimination of autonomous interference with the choice-of-law status in relations with no foreign law element	674
3.VI.	Exclusion of <i>renvoi</i> as a result of Choice of Law	674
3.VII.	The moment of the Choice of Law	674
3.VII.1.	Autonomy of determining the Choice of Law	674
3.VII.2.	Subsequent Choice of Law	675
3.VIII.	Choice of Law as an independent agreement	675
3.IX.	Other than an explicit Choice of Law	675
3.IX.1.	Positive and negative Freedom of Contract	675

3.IX.2.	'Implicit' choice vs. 'explicit absence of choice	676
3.IX.3.	Circumstances inferring the Choice of Law	677
3.IX.3.1.	References to a legal regulation	677
3.IX.3.2.	The Importance of rules of interpretation and rules of <i>quasi</i> -normative character	678
3.IX.3.3.	Importance of contract negotiations	679
3.IX.3.4.	Explicit and implicit choice of law in the <i>Regulation</i> and <i>Convention</i>	679
3.X.	Choice of Law under the <i>Convention</i>	680
3.XI.	The different wording of the requirements for an implicit Choice of Law in the <i>Regulation</i> and <i>Convention</i> (<i>Convention</i>: reasonable certainty vs. <i>Regulation</i>: clearly demonstrated)	681
3.XII.	Prohibition of simplifying approach by the courts and preference for <i>lex fori</i> as a potentially incorrect approach bordering on violation of public policy by the Courts	681
3.XIII.	Examples of an implicit Choice of Law under the <i>Regulation</i> and <i>Convention</i>	682
3.XIII.1.	Examples of an implicit Choice of Law according to the <i>Report</i>	682
3.XIII.2.	Determining the governing law on the basis of the choice of forum	683
3.XIII.2.1.	Relation of governing law and place of proceedings (dispute resolution) in the historical context of choice-of-law approach	683
3.XIII.2.2.	Prorogation versus Choice of Law in the European Private International Law context	686
3.XIII.2.3.	The birth of EC doctrine and drafting the <i>Regulation</i> with prorogation of justice as a possible indicator of Choice of Law	687
3.XIII.2.4.	<i>The Regulation in fine</i> and the significance of prorogation for determining the Choice of Law	688
3.XIII.2.5.	Lasting criticism: the unwillingness (rather than lack of understanding) of some countries to acquiesce to the regime of the <i>Regulation</i>	689
3.XIII.3.	Choice of Law and choice of forum as two aspects of determining contractual status	690
3.XIV.	Law versus Body of Law versus non-state normative systems and the Choice of Law	692
3.XIV.1.	The meaning of the term Law pursuant Article 3 of the <i>Convention</i> and Article 3 of the <i>Regulation</i>	692
3.XIV.2.	Non-State rules and international treaties (conventions)	692
3.XIV.3.	The exclusion of the possibility to choose a non-state body of law (a departure from the concept of the <i>Proposal for a Regulation</i>)	692
3.XIV.3.1.	Choice of non-State rules under the <i>Convention</i>	692
3.XIV.3.2.	The conceptual genesis of the <i>Regulation</i>	693
3.XIV.3.3.	The choice of a non-State body of law under the <i>Regulation</i>	694
3.XV.	Customs regarding the choice-of-law status and their importance from the perspective on Private International Law	697

3.XV.1.	Legal principles and customs pursuant to national legal regulations	697
3.XV.2.	Significance of customs under the <i>Convention</i> and <i>Regulation</i>	700
3.XVI.	<i>Lex mercatoria</i> (and private-law codification)	700
3.XVII.	Hypothetical Choice of Law	700
3.XVII.1.	Presumption of Choice	700
3.XVII.2.	Refusal of the hypothetical choice of law by European (contractual) choice-of-law rules	702
3.XVIII.	Priority of the closest link and the priority of mandatory rules of the European Community	702
3.XIX.	Internationalisation of the contractual status by autonomous determination of dispute resolution	703
3.XX.	Conceptual differences of legal systems as a reason for special legislative techniques prohibiting subjective internationalisation by setting restrictions on its [seeming] permissibility	704
3.XX1.	Practical importance of comprehending the distinct approaches of different schools of thought from the perspective of Article 3(3) of the <i>Regulation</i>	705
3.XXII.	Mandatory versus overriding mandatory/Article 3(3) of the <i>Regulation</i> (<i>Convention</i>) versus Article 9 of the <i>Regulation</i> (Article 7 of the <i>Convention</i>)	706
3.XXIII.	Contractually technical manifestations of doctrinal differences in understanding the Freedom of Contract and the mandatory (overriding-mandatory) nature of Substantive-Law rules from the choice-of-law perspective	706
3.XXIII.1.	Difference between the <i>Regulation</i> and the <i>Convention</i> —removing the requirement of <i>reasonable certainty</i>	706
3.XXIII.2.	The prohibition of circumventing EC mandatory rules—Article 3(4) of the <i>Regulation</i>	707
3.XXIII.3.	The purpose and concept of Article 3(4) of the <i>Regulation</i>	707
3.XXIII.4.	The common purpose of Article 3(3) of the <i>Regulation</i> /Article 3(4) of the <i>Regulation</i>	708
3.XXIII.5.	Territorial scope of Article 3(4) of the <i>Regulation</i> —application to (DK)	709
3.XXIII.6.	Purpose and usefulness of Article 3(4) of the <i>Regulation</i>	709
3.XXIV.	Restriction of the choice to the law with a qualified link to the legal relationship	711
3.XXV.	A comparison of certain Member States' experience with the interpretation and application of restrictions on the choice of law contained in Article 3 of the <i>Convention</i> (selected cases)	713
3.XXV.1.	(D) Germany	713
3.XXV.1.1.	Lasting doctrinal problem of German law: joinder of prorogation and choice of law	713
3.XXV.1.2.	Judgment of the BGH, Case No. VII ZR 19/98 of January 14, 1999	713
3.XXV.1.3.	Judgment of the OLG Diisseldorf, Case No. 13 u 173/92 of June 9, 1994	714
3.XXV.2.	(F) France	714

3.XXV.2.1.	Case <i>SA CIEC v. M. Piriou</i>	714
3.XXV.2.2.	Case <i>Soc. Hick Hargreaves v. Soc. CAC Degremont et al.</i>	715
3.XXV.3.	(I) Italy	715
3.XXV.3.1.	<i>Giannantonio</i> Judgment	715
3.XXV.3.2.	<i>Basciano</i> Judgment	716
3.XXV.3.3.	<i>Augusta</i> Judgment	716
3.XXVI.	A comparison of judicial decisions concerning the restrictions on choice of law in employment relations and consumer contracts	716
3.XXVII.	Choice of law in <i>HCCH Conventions</i>	717
3.XXVII.1.	Choice of law in individual <i>HCCH Conventions</i>	717
3.XXVII.2.	The aim of the <i>HCCH Convention</i> regarding the choice of law governing contracts	721
3.XXVIII.	Mutual Legal Assistance Treaties (CZ)	721
3.XXVIII.1.	The limited importance of Legal Assistance Treaties	721
3.XXVIII.2.	Legal Assistance Treaties encompassing explicit choice-of-law rules for contractual relations	722
3.XXVIII.2.1.	Legal Assistance Treaty with (HU)	722
3.XXVIII.2.2.	Legal Assistance Treaty with (Mongolia)	722
3.XXVIII.2.3.	Legal Assistance Treaty with (PL)	722
3.XXVIII.2.4.	Legal Assistance Treaty with (RO)	723
3.XXVIII.2.5.	Legal Assistance Treaty with (UA)	723
3.XXIX.	Case law	724
3.XXIX.1.	EC —Court of Justice of the European Communities	724
3.XXIX.2.	Case Law of Member States	726
3.XXIX.2.1.	(A) Austria	726
3.XXIX.2.2.	(B) Belgium	737
3.XXIX.2.3.	(CZ) Czech Republic	738
3.XXIX.2.4.	(D) Germany	742
3.XXIX.2.5.	(F) France	742
3.XXIX.2.6.	(I) Italy	744
3.XXIX.2.7.	(SK) Slovakia	746
3.XXIX.2.8.	(UK) The United Kingdom of Great Britain and Northern Ireland—Law: England and Wales (UK/EN)	746
3.XXIX.2.9.	(DK) Denmark	747
3.XXIX.3.	Case Law of Non-Member States	748
3.XXIX.3.1.	(PNG) Papua New Guinea	748
3.XXIX.4.	Arbitration Court Judgments	749
3.XXIX.4.1.	(CZ) Czech Republic	749
	Literature	750
	Article 4 of the <i>Regulation</i>!Article 4 of the <i>Convention</i>	763
A:	Development, Concept and Application of the Choice-of-law Regime Pursuant to the <i>Convention</i> and the <i>Regulation</i>	764
4.1.	Conflict of law Doctrines from the Perspective of Legal Schools of Thought	765
4.11.	Instruments and Methods of Choice-of-law Rules	767
4.III.	Choice-of-Law Rules in the Absence of Choice	768

4.IV.	The Continental and <i>Community</i> Approach	768
4.IV.1.	Objective Identification of Contractual Connections and the Law	768
4.IV.2.	Resulting and Implicit Choice of Law and Absence of Choice of Law	769
4.IV.3.	<i>Characteristic performance</i>	769
4.V.	The <i>Common law</i> Approach	770
4.V.1.	<i>Proper Law</i> versus <i>Applicable Law</i>	770
4.V.2.	The Proper Law Doctrine	770
4.VI.	The <i>Convention</i> and the <i>Regulation</i>: The Principles and the Structure of Article 4 of the <i>Convention</i> and Article 4 of the <i>Regulation</i>	773
4.VI.1.	The Concept and Structure of Article 4 of the Convention	773
4.VI.2.	The General Presumption regarding the Closest Connection: Article 4 (2) of the Convention—Residence of the Party with an Obligation Characteristic for the Contract	774
4.VI.2.1.	Residence of the Person Effecting Characteristic Performance	774
4.VI.2.2.	Persons Effecting Characteristic Performance during Entrepreneurial and Comparable Activities	775
4.VI.3.	Important Linguistic Mistakes in the Czech Version of the Convention	777
4.VI.3.1.	Formulation: Party Who Is to Effect the Performance of the Contract	777
4.VI.3.2.	Formulation: Central Administration	777
4.VI.3.3.	Formulation: Performance Effected Through a Place of Business other than the Principal Place of Business	778
4.VI.4.	Escape clause: Finding the Closest Connection Outside the Scope of the Article 4 (2) Convention Presumption	778
4.VII.	The Concept and Structure of Article 4 of the <i>Regulation</i>	779
4.VIII.	The Genesis of the <i>Convention's</i> Transformation into an Instrument of <i>Community Law (Regulation)</i>, Historical Links and their Usage <i>Pro Futuro</i>	780
4.VIII.1.	Reasons for Review from a General Conflict of Law Perspective	780
4.VIII.2.	Historical Link with the <i>Convention</i>	781
4.VIII.3.	Transition Period and Solutions Adhering to the Compulsory Application of the <i>Convention</i> but Not to the Concept of the <i>Regulation</i>	782
4.IX.	The Concept of General Choice of Law in the <i>Regulation</i> in Comparison to the <i>Convention</i>	783
4.X.	The Procedure When Qualifying Contract Types for Choice-of-law Determination—Differences Between Choice of Law and Substantive Qualifications	784
4.XI.	Emphasis on the Habitual Residence	786
4.XII.	The Closest Connection Concept as a General and Subsidiary Link to Selected Law	787
4.XIII.	The Abolishment of Depe[^]age (The Difference Between the <i>Convention</i> and the <i>Regulation</i>)	787
4.XIV.	The Meaning of <i>Characteristic Performance</i> in the <i>Convention</i> and the <i>Regulation</i>: A Difference in Approaches	787

4.XIV.1.	The Criterion of <i>Characteristic Performance</i> Pursuant to the <i>Regulation</i>	787
4.XIV.2.	Application of the <i>Characteristic Performance</i> Criterion pursuant to the <i>Regulation</i>	788
4.XIV.3.	The Meaning of <i>Characteristic Performance</i>	788
4.XIV.4.	Objective Determination of Applicable Law Pursuant to the <i>Regulation</i>	789
4.XIV.5.	A Firmly Designated Set of Rules for Specific Contract Types	789
4.XIV.6.	The Criterion of <i>Characteristic Performance</i> as the First Subsidiary Rule	790
4.XIV.7.	The Closest Connection Concept as an <i>Escape Clause</i>	790
4.XIV.8.	The General Closest Connection Doctrine as the Second Subsidiary Rule	791
4.XIV.9.	The Definition of <i>Characteristic Performance</i> pursuant to the <i>Regulation</i>	791
4.XIV.10.	The Presumption of Application of <i>Characteristic Performance</i> Pursuant to the <i>Regulation</i> : Absence of Choice of Law	791
4.XIV.10.1.	The Difference Between Resulting Choice of Law and Absence of Choice of Law	791
4.XIV.10.2.	Factors Analysed for the Purposes of Ascertaining the Existence of Resulting Choice of Law or Absence of Law and for Using Normative Choice-of-law Connections	793
4.XIV.10.3.	Choice of Law Deduced from Contract Stipulations	793
4.XIV.10.4.	Choice of Law Inferred from the Circumstances of the Case	794
4.XV.	System of Exceptions with regard to Choice-of-law Rules in Article 4 of the <i>Regulation</i>	796
4.XV.1.	Special Exceptions Pursuant to Articles 5 and 8 of the <i>Regulation</i> within the Framework of the Concept of Weaker Party Protection in Contractual Obligations	796
4.XV.2.	General Exceptions to the General Choice-of-law Rules in Article 4 of the <i>Regulation</i> (in Connection with Public Policy Protection)	799
4.XVI.	The <i>Escape Clause</i> (Article 4 (4) of the <i>Regulation</i> and Article 4 (5) of the <i>Convention</i>)	801
4.XVI.1.	The <i>Escape Clause</i> Regime as a Method of Finding Fair Solutions to Choice-of-law Problems	801
4.XVI.2.	The <i>Escape Clause</i> as a Special Case of the General Clause	801
4.XVI.3.	Examples of Factors Significantly or Subsidiarily Influencing the Application of the <i>Escape Clause</i> in Case Law	802
4.XVI.3.1.	The Place of Performance	802
4.XVI.3.2.	The Link Between the Contractual Status and the <i>Legis Rei Sitae</i> Substantive Status	804
4.XVI.3.3.	<i>Escape Clause</i> pursuant to Article 4 (3) of the <i>Regulation</i> and Article 4 (5) of the <i>Convention</i>	806
4.XVII.	The Subjective Aspect of the Choice-of-law Analysis	807
4LXVII.1.	The Discretion of National Courts When Ascertaining Governing Law of Contractual Obligations Pursuant to the <i>Regulation</i>	807
4.XVII.1.1.	Maintaining a Minimal Level of Subjective Elements in Choice-of-law Analysis	807

4.XVII.1.2.	Judicial Discretion During the Four-Stage Choice-of-law Determination	808
4.XVII.1.3.	Judicial Discretion When judgment on Choice-of-law Issues ..	808
4.XVII.2.	The Difference Between Choice-of-law Provisions Under Article 4 (3) of the <i>Regulation</i> and the <i>Escape Clause</i> under Article 4 (4) of the <i>Regulation</i> as Exemplified by a Subjective Element Case	809
4.XVIII.	General Choice-of-law Provisions in the HCCH Conventions—Overview of Solutions and Principles Pertaining to Private International Law Standards (Choice of Law, Substantive and Procedural)	812
4.XIX.	Mutual Legal Assistance Treaties (CZ)	817
4.XIX.1.	The Limited Importance of Legal Assistance Treaties	817
4.XIX.2.	Legal Assistance Treaties Containing Explicit Choice-of-law Provisions for Contractual Obligations	818
4.XIX.2.1.	Legal assistance Treaty with (HU)	818
4.XIX.2.2.	Legal Assistance Treaty with (Mongolia)	818
4.XIX.2.3.	Legal Assistance Treaty with (PL)	818
4.XIX.2.4.	Legal Assistance Treaty with (RO)	819
4.XIX.2.5.	Legal Assistance Treaty with (UA)	819
4.XX.	Case Law	819
4.XX.1.	ECJ—The Court of Justice of the European Communities	819
4.XX.2.	Case law of Member States	825
4.XX.2.1.	(A) Austria	825
4.XX.2.2.	(B) Belgium	831
4.XX.2.3.	(CZ) Czech Republic	831
4.XX.2.4.	(D) Germany	837
4.XX.2.5.	(F) France	849
4.XX.2.6.	(I) Italy	852
4.XX.2.7.	(UK) The United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	855
4.XX.3.	Case law of Non-Member States	861
4.XX.4.	Arbitration	864
	Literature	865
B:	Special commentary on the unification of conflict of law rules and of substantive law in the field of some types of contracts from the perspective of private international law (the <i>Convention</i> and the <i>Regulation</i>)	879
4.XXI.	Contract for the sale of goods—special conflict of law rules—Article 4(1)(a) of the <i>Regulation 0841</i>	879
4.XXI.1.	The importance of the unification of conflict of law rules and of substantive law with respect to purchase and sale in mutual interactions	879
4.XXI.2.	Development of a uniform Evolution of unified law of applicable to contracts for the international sale of goods	880
4.XXI.3.	<i>Hague</i> unification (HCCH) of law applicable to international sale of goods (1955 and 1986)	880
4.XXI.3.1.	<i>Hague Convention</i> on the Law Applicable to International Sale of Goods (HCCH) of 15 June 1955	880

4.XXI.3.2.	Hague Convention (HCCH) on Law Applicable to Contracts for the International Sale of Goods 22 December 1986	881
4.XXI.3.2.1.	The relationship between the HCCH Convention, the Convention of 1986 on the law applicable to contracts for the international sale of goods, the <i>Convention</i>,² the <i>Regulation</i> and the <i>Vienna Convention</i>	882
4.XXI.3.2.2.	Conflict of contractual obligations of Member States	882
4.XXI.3.2.3.	Continuity with the regulation embodied in the <i>Convention</i> and comparison with the <i>Convention</i> and the <i>Regulation</i>	883
4.XXI.4.	The UN Convention on Contracts for the International Sale of Goods (<i>Vienna Convention</i>)	886
4.XXI.4.1.	The scope of application	886
4.XXI.4.2.	The difference between a contract for the sale of goods and a fixed job contract	887
4.XXI.4.3.	Conflict of law regime of the <i>Vienna Convention</i> in practice	887
4.XXI.4.4.	So-called incompleteness of the regulation and the solution of these in the <i>Vienna Convention</i> and the rules of interpretation	888
4.XXI.4.5.	Usages, international commercial usages and practices of the contracting parties in the <i>Vienna Convention</i>	888
4.XXI.4.6.	International commercial terms, INCOTERMS 2000—the meaning of INCOTERMS	888
4.XXI.5.	Case law	891
4.XXI.5.1.	Case law of Member States	891
4.XXI.5.1.1.	(A) Austria	891
4.XXI.5.1.2.	(CZ) Czech Republic	894
4.XXI.5.1.3.	(D) Germany	896
4.XXI.5.1.4.	(I) Italy	897
4.XXI.5.1.5.	(NL) Netherlands	897
4.XXI.5.2.	Case law of Non-Member States	898
4.XXI.5.2.1.	(CH) Switzerland	898
4.XXI.5.2.2.	(US) United States of America	900
4.XXI.5.3.	Arbitration	900
4.XXI.5.3.1.	ICC	900
	Literature	902
4.XXII.	Franchise contract—special conflict of law rules—Article 4(I)(e) of the <i>Regulation</i>0871	910
4.XXII.1.	Definition of <i>franchise</i> from the commercial and legal perspective (primarily in the international context)	910
4.XXII.1.1.	<i>Franchise</i> as a term created by commercial and legal practice	910
4.XXII.1.2.	Difference between <i>mixed contractual relationships</i> on one hand and <i>new types of contracts</i> based on <i>simple institutes</i> of contractual law on the other	911

² See also, for example *Saf, C, A Study of the Interplay between the Conventions Governing International Contracts of Sale—Analysis of the 1955 Hague Convention on the Law Applicable to Contracts of International Sales of Movable Goods; the 19X0 Rome Convention on the Law Applicable to Contractual Obligations; and the 19H0 United Nations Convention on Contracts for the International Sale of Goods' (Queen Mary and Westfield College 1999)* <http://www.cisg.law.pace.edu/risg/biblio/saf.html>

4.XXII.1.3.	Definition as formulated by the <i>European franchise federation</i> in the international context and regime of national legal systems	912
4.XXII.1.4.	<i>Legal definition</i> versus <i>commercial definition</i>	913
4.XXII.1.5.	<i>Franchise</i> as a particular type of <i>licence</i> to a package of assets	913
4.XXII.1.6.	Financial and legal independence of participants in the <i>franchise</i>	916
4.XXII.1.7.	Relationship between the <i>franchise contract</i> and antitrust regulation	916
4.XXII.2.	Conflict of law rules for a franchise	918
4.XXII.2.1.	Franchise from the international (European) private law (conflict of law rules) perspective	918
4.XXII.2.2.	The <i>Regulation</i> as a revolutionary change in the concept of conflict of law regulation of the <i>franchise</i> and a comparison with applicable law for distribution contracts	919
4.XXII.2.3.	Characteristic performance for the <i>franchise</i>	920
4.XXII.2.4.	Applicable law for the <i>franchise contract</i> in relation to the protection of industrial rights and the licence to use intangible assets from the conflict of law perspective	924
4.XXII.3.	Other parts of <i>Community law</i> relevant to the <i>franchise</i>	926
4.XXII.3.1.	Decision Judgment (ECJ) <i>In re Pronuptis</i>, a definition of franchise, of the distribution of goods and the relationship between the franchise and antitrust regulation	926
4.XXII.3.2.	Commission Regulation (EC) No. 4087/88 of 30 November 1988	928
4.XXII.3.3.	1997 Green Paper (...) and Regulation (EC) No. 2790/1999	932
4.XXII.3.4.	Regulation (EEC) 2790/1999 relating to block exemptions for franchises	932
4.XXII.4.	Substantive law of selected countries, of international and national origin (in an international comparison and an evaluation of relationships with an international element)	934
4.XXII.4.1.	Absence of explicit substantive law on the <i>franchise</i>	934
4.XXII.4.2.	(D) Germany	934
4.XXII.4.2.1.	Concept of <i>franchise</i> in German law	934
4.XXII.4.2.2.	The <i>franchise</i> and [individual] labour contracts	935
4.XXII.4.3.	(E) Spain	936
4.XXII.4.4.	(1) Italy	937
4.XXII.4.5.	(F) France	940
4.XXII.4.6.	(NL) Netherlands	941
4.XXII.4.7.	(PL) Poland	944
4.XXII.4.9.	(UK) United Kingdom of Great Britain and Northern Ireland	946
4.XXII.4.10.	(US) United States of America	948
4.XXII.5.	Difference between <i>franchise</i> and <i>distribution</i> (from the perspective of the <i>franchise</i>)	951
	Literature	951
4.XXIII.	Distribution agreements (distribution contracts)—special conflict of law rules—re: Article 4(1)(f) of the Regulation 0913	955

4.XXIII.1.	Legal and economic definition of <i>distribution agreements</i> (<i>distributor contracts</i>)	955
4.XXIII.1.1.	<i>Distribution agreement</i> as a business and legal model	955
4.XXIII.1.2.	Special separate concept and not only mixed or hybrid agreement	955
4.XXIII.1.3.	Distribution relationship in the broad and narrow sense	956
4.XXIII.1.4.	Difference between a <i>distribution agreement</i> and a <i>franchise</i> <i>agreement</i>	956
4.XXIII.2.	Provisions of Czech law governing <i>distribution agreements</i>	957
4.XXIII.2.1.	Distribution agreement as a contract type not explicitly provided for by law	957
4.XXIII.2.2.	Relation to protection of competition	958
4.XXIII.2.3.	Vertical agreements	958
4.XXIII.2.4.	So-called <i>collective cartels</i>	958
4.XXIII.2.5.	Exemptions from prohibition on agreements	959
4.XXIII.2.6.	General (block) exemptions	959
4.XXIII.3.	<i>Distribution agreements</i> in Polish law	960
4.XXIII.3.1.	Expression of freedom of contract	960
4.XXIII.3.2.	Distribution in the narrow sense	961
4.XXIII.3.3.	Distribution in the broad sense	962
4.XXIII.3.4.	Master contracts	962
4.XXIII.3.5.	Polish competition restrictions	962
4.XXIII.3.6.	<i>Distribution agreements</i> in Polish case law	963
4.XXIII.3.7.	<i>Distribution agreements</i> in <i>Community</i> law	964
4.XXIII.3.7.1.	Primary <i>Community</i> law	964
4.XXIII.3.7.2.	Definition of <i>distribution agreements</i> in secondary <i>Community</i> law	965
4.XXIII.3.7.3.	Acts implementing Article 81(3) of the TEC (exemptions from prohibition)	965
4.XXIII.4.	Regulation No. 2790/1990 on the application of Article 81(3) of the TEC to categories of vertical agreements and concerted practices	966
4.XXIII.4.1.	The principle of block exemptions under Article 81(3) of the TEC and Regulation No. 2790/199	966
4.XXIII.4.2.	Positive definition	966
4.XXIII.4.3.	Negative definition	967
4.XXIII.5.	Non-binding Guidelines on Vertical Restraints	968
4.XXIII.6.	Commercial agency	968
4.XXIII.6.1.	Commercial agency agreements	968
4.XXIII.6.2.	Genuine commercial agency agreements	969
4.XXIII.6.3.	Non-genuine commercial agency agreements	969
4.XXIII.6.4.	Distinction between genuine and non-genuine commercial agreements according to risks borne by the commercial agent ...	969
4.XXIII.7.	Specific rules for individual sectors	970
4.XXIII.8.	Private [substantive] law unification and its importance for autonomous conflict of law qualification of a contract (contractual obligation relationship)— <i>distribution agreement</i> (PECL—the Principles of European Contract Law	970
4.XXIII.8.1.	Definition of <i>distribution agreement</i>	970
4.XXIII.8.2.	Sole and exclusive distribution agreements	970

4.XXIII.8.3.	Selective <i>distribution agreements</i>	971
4.XXIII.8.4.	Exclusive purchasing contracts	971
4.XXIII.8.5.	Mixed contracts	971
4.XXIII.8.6.	<i>De facto distribution agreements</i> and <i>de facto</i> exclusivity	971
4.XXIII.9.	Law governing distribution agreements under the <i>Community</i> legislation ⁰⁹⁷⁸	972
4.XXIII.9.1.	The <i>Convention</i> in comparison to the <i>Regulation</i>	972
4.XXIII.9.2.	Determinants of the conflict of law <i>close connection</i> in <i>distribution and franchise agreements</i> (from the point of view of <i>distribution agreements</i>)	973
4.XXIII.9.3.	Connection of <i>franchise</i> and <i>distribution</i> as one of the reasons for an identical conflict of law solution	974
4.XXIII.9.4.	Protection of the weaker party to a contract versus unrestricted choice of law	974
4.XXIII.10.	Case law	975
4.XXIII.10.1.	ECJ—The Court of Justice of the European Communities	975
4.XXIII.10.2.	Other decision-making practice under <i>Community</i> law and within the jurisdiction of <i>Community</i> authorities	978
4.XXIII.10.3.	Case law of the courts of Member States	978
4.XXIII.10.3.1.	(D) Germany	978
4.XXIII.10.3.2.	(F) France	979
4.XXIII.10.3.3.	(I) Italy	980
4.XXIII.10.3.4.	(PL) Poland	981
4.XXIII.10.3.5.	(UK) United Kingdom of the Great Britain and Northern Ireland—law: England and Wales (UK/EN)	983
	Literature	983
4.XXIV.	Financial markets, financial and investment instruments and some contractual obligation relationships in the area of the capital market—special conflict of law rule—Article 1(4)(h) of the <i>Regulation</i>	984
4.XXIV.1.	Contracts in the area of financial markets and multilateral systems	984
4.XXIV.2.	Financial market and contracts concluded within the multilateral systems (Article 4(1)(h))	985
4.XXIV.2.1.	Material and subjective scope of 4(1)(h) of the <i>Regulation</i>	985
4.XXIV.2.1.1.	Contracts concluded during trading with financial instruments ...	985
4.XXIV.2.1.2.	The term financial instruments	986
4.XXIV.2.1.3.	The term multilateral systems [...] and contracts concluded on the platform of those systems	987
4.XXIV.2.2.	Subjective scope of Article 4(1)(h) of the <i>Regulation</i>	988
4.XXIV.2.2.1.	Closer subjective scope	988
4.XXIV.2.2.2.	Broader subjective scope	988
4.XXIV.3.	Conflict of law rules for contracts within the trade with <i>financial instruments</i>	989
4.XXIV.3.1.	Choice of law and consideration of principles for providing financial services	989
4.XXIV.3.2.	Applicable law in the absence of choice	991
4.XXIV.4.	Payment systems and their finality from a conflict of law perspective	992

4.XXIV.4.1.	Priority of the payment system mode and point (31) of the Preamble to the <i>Regulation</i>	992
4.XXIV.4.2.	Comparison to the Community regulation of insolvency proceedings with an international element	993
4.XXIV.4.3.	The term 'payment system' from the conflict law perspective	995
4.XXIV.5.	Financial market	996
4.XXIV.6.	Subjective scope of regulations of payment systems (the participant)	998
4.XXIV.7.	Securing rights of parties within the payment systems	998
4.XXIV.8.	Security (collateral)	999
4.XXIV.9.	Payment systems in the statutory regulation (CZ)	999
4.XXIV.9.1.	Considering the principle of finality in Czech regulations of national origin	999
4.XXIV.9.2.	List of systems managed by CNB (CZ)	1001
4.XXIV.9.3.	Conflict of law consideration of the <i>Settlement Finality Directive</i> in domestic private international law legislation ...	1001
4.XXIV.10.	Conflict law significance of point (31) of the Preamble to the <i>Regulation</i>	1002
4.XXIV.11.	Consumer protection within the <i>systems</i>	1003
4.XXIV.12.	Custodian contract, contract on administration, contract of bailment and contract on securities control	1004
4.XXV.	Letter of credit	1005
4.XXV.1.	Nature of the letter of credit and its types	1005
4.XXV.2.	Letter of credit from the perspective of private international law	1006
4.XXV.3.	Choice of law	1007
4.XXV.4.	Applicability of the <i>Regulation</i> and characteristic performance .	1007
4.XXV.5.	Relationship between the buyer (payer) and the bank opening the letter of credit	1009
4.XXV.6.	Rights of the beneficiary of the letter of credit in relation to the bank opening the letter of credit	1009
4.XXV.7.	Relationship of the bank issuing the letter of credit and the bank advising/confirming the letter of credit and the beneficiary (the seller)	1010
4.XXV.7.1.	Relationship among the banks and the beneficiary	1010
4.XXV.7.1.1.	Confirmed letter of credit	1010
4.XXV.7.1.2.	Advised letter of credit	1010
4.XXV.7.2.	Relationship between the bank opening the letter of credit and the bank advising/confirming the letter of credit	1011
4.XXV.8.	Directly applicable substantive-law regulations and uniform rules	1012
4.XXV.8.1.	Uniform rules and customs for documentary credit (UCP)	1012
4.XXV.8.2.	Other uniform rules and analogous non-governmental sources	1014
	Literature (Letters of credit)	1015
4.XXVI.	Intangible property rights and licence agreements 0973	1016
4.XXVI.1.	Applicable law for obligation relationships in connection to transfer or application of certain intangible property rights(intellectual and industrial property)	1016

4.XXVI.1.2.	Relationship between the <i>Regulation</i> and obligations in connection to the transfer or application of intangible property rights (concept of the <i>Regulation</i> concerning <i>intangible property rights</i>)	1016
4.XXVI.1.3.	Conflict of law rule of the <i>Regulation [in fine]</i> concerning contractual obligations related to intangible property and maintenance of the concept analogous to the concept of the <i>Convention</i>	1018
4.XXVI.2.	Basic characteristic of certain rights to intangible property in the context of appropriate <i>Community</i> regulation	1018
4.XXVI.2.1.	Patent law of the <i>Community</i>	1019
4.XXVI.2.2.	<i>Community</i> plant variety rights	1019
4.XXVI.2.3.	<i>Community</i> trademark	1020
4.XXVI.2.4.	<i>Community</i> design	1021
4.XXVI.2.5.	Designation of origin and geographic indication	1021
4.XXVI.2.6.	Protected geographical indication	1022
4.XXVI.2.7.	Protected designation of origin	1022
4.XXVI.2.8.	Traditional specialties guaranteed	1022
4.XXVI.3.	Case law	1023
4.XXVI.3.1.	ECJ—The Court of Justice of the European Communities	1023
4.XXVI.3.2.	From arbitration practice	1023
	Literature	1023
Article 5 of the <i>Regulation</i>!Article 4(4) of the <i>Convention</i>		1025
5.1.	The significance of international carriage and the subject matter of contractual relationships	1027
5.11.	Conflict of law provisions of national origin (CZ)	1028
5.11.1.	Act on international private and procedural law (MPSaP)	1028
5.11.2.	Intended changes in the international private law of national origin	1028
5.11.3.	Direct and conflict of law provisions of international origin	1028
5.111.	The conflict of law provisions of the <i>Convention</i> and of the <i>Regulation</i> (a comparison)	1028
5.IV.	Contracts of carriage under the <i>Convention</i>	1029
5.IV.1.	General conflict of law rules	1029
5.IV.2.	Consumer contracts	1029
5.V.	Qualification of the contract for the carriage of goods and differences between the <i>Convention</i> and the <i>Regulation</i>	1029
5.V.1.	Qualification under the <i>Convention</i>	1029
5.V.2.	Qualification under the <i>Regulation</i>	1029
5.V.3.	Principles of autonomous conflict of law qualification under the <i>Regulation</i> and the <i>Convention</i>	1030
5.VI.	Definitions of the contract of carriage, the travel contract and the accommodation contract	1030
5.VI.1.	Travel contract (travel services)	1031
5.VI.1.1.	Qualification of travel service (contract) as a service (contract) which is complex (composite)	1031
5.VI.1.2.	The provision of complementary services as a necessary component or an above standard complement of service (the	

	carrier provides accommodation, or, inversely, accommodation facilities provide transportation)	1031
5.VI.1.3.	Accommodation provided by the carrier	1031
5.VI.1.4.	Conflict of law determination of the applicable law for contracts of carriage	1032
5.VI.2.	Contract of accommodation	1032
5.VII.	Contract of carriage under the <i>Regulation</i>	1033
5.VII.1.	Definition (qualification) and material scope	1033
5.VII.1.2.	Contracts for the carriage of goods	1033
5.VII.1.3.	"Consignor" and "carrier"	1033
5.VII.2.	Contracts for the carriage of goods	1034
5.VII.3.	Contracts for the carriage of persons	1034
5.VII.4.	Restrictions on the choice of law	1035
5.VII.5.	Contract of carriage in the framework of consumer relationships	1036
5.VII.6.	Escape clause (Article 5(3) of the <i>Regulation</i>)	1036
5.VIII.	Further conflict of law and substantive-law provisions of other than national origin	1036
5.VIII.1.	The priority of application of special enactments of the <i>Community</i> and of international treaties	1037
5.VIII.2.	Carriage by rail (COTIF)	1037
5.VIII.2.1.	The importance of transport by rail and basic Acts and institutions	1037
5.VIII.2.2.	The Convention concerning International Carriage by Rail (COTIF)	1038
5.VIII.2.3.	CIV—carriage by rail of persons and their baggage	1038
5.VIII.2.4.	CIM—carriage of goods by rail	1039
5.VIII.3.	Carriage by road	1040
5.VIII.3.1.	The significance of carriage by road	1040
5.VIII.3.2.	Carriage of goods by road under the CMR	1041
5.VIII.4.	Carriage by water	1042
5.VIII.4.1.	Sources of substantive law	1042
5.VIII.4.2.	<i>Hague-Visby rules</i>	1042
5.VIII.4.3.	<i>Hamburg rules</i>	1042
5.VIII.4.4.	Bill of lading	1042
5.VIII.4.5.	The obligations and the liability of the carrier	1043
5.VIII.4.6.	Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI)	1044
5.VIII.5.	Carriage by air	1044
5.VIII.5.1.	The significance of carriage by air	1044
5.VIII.5.2.	The provisions of the <i>Warsaw Convention</i>	1044
5.VIII.5.3.	Liability of the carrier	1045
5.VIII.5.4.	Other law relating to carriage by air	1046
5.VIII.5.5.	The <i>Montreal Convention</i>	1046
5.VIII.5.6.	The practice with regard to the application of the <i>Warsaw Convention</i> and of other enactments of international origin relating to international carriage (case law)	1046
5.IX.	Carriage documents (in the carriage of goods)	1047
5.IX.1.	The function of carriage documents	1047
5.IX.2.	The significance of carriage documents in the perspective of private international law	1048

5.IX.3.	Types of carriage documents	1048
5.IX.3.1.	An overview of especially significant carriage documents	1048
5.IX.3.2.	Bill of lading	1049
5.IX.3.3.	Packing notice	1049
5.IX.3.4.	Carnets (especially ATA carnets)	1049
5.IX.3.5.	Consignment notes	1049
5.IX.3.6.	Postal receipt	1050
5.X.	The Law of the Flag	1050
5.X.1.	The Law of the Flag is one of the possible connecting factors in the domain of international carriage of goods	1050
5.X.2.	The law of the flag and the <i>Convention!Regulation</i>	1052
5.X.3.	The law of the flag in some other obligation relationships regarding vehicles	1052
5.XI.	Case law	1053
5.XI.1.	ECJ—The Court of Justice of the European Communities	1053
5.XI.2.	Case law of Member States	1054
5.XI.2.1.	(A) Austria	1054
5.XI.2.2.	(CZ) Czech Republic	1054
5.XI.2.3.	(D) Germany	1055
5.XI.2.4.	(I) Italy	1062
5.XI.2.5.	(NL) Netherlands	1062
5.XI.2.6.	(UK) United Kingdom of Great Britain and Northern Ireland—the law of: England and Wales (UK/EN)	1063
5.XI.3.	Case law of Non-Member States	1063
5.XI.3.1.	(CH) Switzerland	1063
5.XI.3.2.	(US) The United States of America	1063
5.XI.4.	Arbitration	1064
	Literature	1065
	Annex to the commentary on Article 5 of the <i>Regulation</i>: Conflict of law provisions, liability for damage, application of usages and contractual terms as regulated by certain sources of international law relating to contracts of carriage	1074
	Article 6 of the <i>Regulation</i>!Article 5 of the <i>Convention</i>	1087
6.1.	Concept and purpose of consumer protection, principles underlying substantive law rules as well as conflict rules in consumer protection legislation of the <i>Community</i>	1089
6.11.	<i>Community</i> specifics of consumer protection	1091
6.11.1.	Objectives of the <i>Community</i> legislation in consumer protection	1091
6.11.2.	The basic normative framework of consumer legislation	1092
6.III.	Directive 93/13/EEC on unfair terms in consumer contracts	1093
6.111.1.	The purpose, objective and the concept of Directive 93/13/EEC	1093
6.111.2.	Conflict rules under Directive 93/13/EEC and connection of the Directive to the <i>Regulation (Convention)</i>	1093
6.111.3.	Choice of law and choice of forum (dispute resolution) from the perspective of fairness/unfairness	1094

6.111.3.1.	Significance of the Annex to Directive 93/13/EEC (indicative list of unfair terms) from the perspective of conflict rules	1094
6.111.3.2.	Real opportunity of becoming acquainted with the contract terms (point (i) of the Annex to Directive 93/13/EEC)	1096
6.111.3.3.	Hindering the consumer's right to enforce his or her rights (point (q) of the Annex to Directive 93/13/EEC)/arbitration in consumer disputes and application of the laws and regulations on consumer protection in arbitration proceedings	1097
6.111.3.4.	Prohibition of restricting evidence and impairing the procedural standing of litigants in consumer disputes	1102
6.111.3.5.	Agreements on evidence and procedure and absence of analogy with Article 1(2)(h) of the <i>Convention in the Regulation</i>	1102
6.111.3.6.	The interaction of points (i) and (q) of the Annex to Directive 93/13/EEC in the context of Article 6 of the <i>Regulation</i>	1105
6.111.3.7.	Relative autonomy of the choice-of-law clauses and the dispute resolution clauses with respect to the remaining provisions of consumer contracts (<i>separability</i> principle)	1105
6.111.3.8.	Protection of consumers against unfair terms in contracts (contract terms) from the perspective of certain selected countries, in connection with agreements on the applicable law and on dispute resolution	1106
6.111.3.9.	(A) Austria	1107
6.111.3.10.	(CZ) Czech Republic	1108
6.111.3.11.	(D) Germany	1108
6.111.3.12.	(F) France	1109
6.111.3.13.	(IRL) Ireland	1110
6.111.3.14.	(PL) Poland	1110
6.111.3.15.	(SE) Sweden	1111
6.111.3.16.	(SK) Slovakia	1111
6.111.3.17.	(UK) United Kingdom of Great Britain and Northern Ireland ..	1111
6.111.4.	Procedural issues of consumer protection in contracts with international elements	1112
6.111.4.1.	Significance of combining procedural and substantive-law issues	1112
6.111.4.2.	Judgment of the ECJ in <i>Mostaza-Claro</i> versus <i>Centro Movil</i>	1114
6.111.5.	Other sources of <i>Community</i> law and case law of the ECJ relevant for the resolution of consumer disputes in proceedings other than ordinary court proceedings	1116
6.IV.	<i>Community</i> structures/EU and their tasks in connection with consumer protection	1117
6.V.	Consumer contract as an institution, not as a type of contract	1118
6.V.1.	Consumer contract as a qualifier of a category of contracts according to the subjective element	1118
6.V.2.	Categories of consumer contracts	1119
6.V.3.	Distance contracts	1119
6.V.4.	Types of contractual obligations	1121
6.VI.	Principles of consumer protection under the <i>Convention</i>	1121
6.VII.	Genesis of the <i>Regulation</i> in relation to consumer protection	1122

6.VII.1.	Conceptual intentions	1122
6.VII.2.	Proposal for the Regulation	1122
6.VII.3.	Concept of the conflict rules incorporated in the <i>Regulation</i> (the <i>Convention</i>)	1124
6.VII.4.	Radical nature of the Proposal for a Regulation	1125
6.VIII.	Scope of application	1127
6.VIII.1.	Subjective scope of Article 6 of the <i>Regulation</i>	1127
6.VIII.2.	Definition of <i>consumer</i> and <i>professional</i>	1127
6.VIII.3.	Consumer	1128
6.VIII.3.1.	Meaning and method of qualification (classification) of the consumer	1128
6.VIII.3.2.	Definition of consumer from the perspective of professional	1129
6.VIII.3.3.	Legal personality of consumers	1130
6.VIII.3.4.	Extending the protection to other categories of persons	1133
6.VIII.3.5.	The status of consumer protection interest groups and associations	1134
6.VIII.3.6.	Importance of the purpose of the contract for the qualification of consumer	1134
6.VIII.3.7.	Mixed purpose of the contract	1135
6.VIII.3.8.	Influence of the nature of performance on the qualification of consumer and consumer relationship	1136
6.VIII.3.9.	General and special definition of consumer	1136
6.VIII.3.10.	Differing definitions of consumer under certain sources of <i>Community</i> law	1137
6.VIII.3.11.	Definitions in substantive law rules incorporated in directives ..	1137
6.VIII.3.12.	Definition of consumer under the conflict rules incorporated in the <i>Regulation</i>	1142
6.VIII.3.13.	Professional	1143
6.VIII.3.14.	Material scope of the <i>Regulation</i>	1143
6.IX.	Focus on the country where the consumer has his or her residence (objective territorial condition determining the subjective scope of the <i>Regulation</i>)	1145
6.IX.1.	Activity of the professional must be focused on the country (territory) where the consumer has his or her residence	1145
6.IX.2.	Interconnection of the professional's activities and the acts of actual conclusion of the contract within the scope of these activities	1146
6.IX.3.	Questionable existence of the international element	1146
6.IX.4.	Analogy to the interpretation of <i>Regulation 44/2001</i>	1149
6.IX.5.	The manner of presentation of the professional's activities	1150
6.IX.6.	Local presence of the professional versus local presence of the producer and his or her advertisements	1153
6.X.	The solution of certain borderline cases of consumer protection and connection to the application of overriding mandatory provisions and the exclusive court jurisdiction (international jurisdiction)	1155
6.XI.	Consumer's residence and extra-<i>Community</i> consequences	1156
6.XII.	Form of consumer contracts	1156
6.XII.1.	Special rules stipulating an alternative conflict of law connection applicable to the form of contracts	1156

6.XII.2.	Application of the <i>lex electa</i> more favourable to the consumer ..	1157
6.XIII.	Article 6(2) of the Regulation—Limitation of the choice of law by the priority accorded to the standards of protection stipulated by the laws of the country where the consumer has his or her habitual residence	1158
6.XIII.1.	Permissibility of the choice of law	1158
6.XIII.2.	Materialisation of the conflict rules (limitation of the choice of law by the standard of consumer protection)	1158
6.XIII.3.	Mandatory character of the rules regulating consumers/influence of the directives implemented in the substantive laws of the Member States	1160
6.XIII.4.	The <i>Convention</i> versus the <i>Regulation</i> —comparison	1161
6.XIV.	Article 6(4) of the Regulation (et al.)—Exclusion of the application of the rule (negative definition of the material scope of Article 6 of the Regulation)	1162
6.XV.	Some of the conflict of law issues common to the contractual obligations under Article 6(4) of the Regulation—the application of minimum standards	1164
6.XVI.	Contracts provided exclusively in a country other than that in which the consumer has his or her habitual residence (Article 6(4)(a) of the Regulation)	1166
6.XVII.	Contracts of carriage other than contracts relating to package travel (Article 6(4)(b) of the Regulation)	1167
6.XVII.1.	Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (<i>Directive 90/314/EEC</i>)	1167
6.XVII.2.	Contents of <i>Directive 90/314/EEC</i>	1169
6.XVII.3.	Process of adoption of the Directive	1170
6.XVIII.	Conflict of law issues relating to contracts regulating the creation of rights <i>in rem</i> in immovable properties, tenancy agreements and timeshares (Article 6(4)(c))	1170
6.XVIII.1.	Limitation of material scope of Article 6 of the <i>Regulation</i> in connection with <i>timeshares</i>	1170
6.XVIII.2.	Conflict between the applicable legislation	1171
6.XVIII.3.	Conflict rules applicable to other than <i>timeshare</i> contracts	1172
6.XVIII.4.	Timeshare	1172
6.XVIII.5.	Directive 94/47/EC	1172
6.XVIII.5.1.	Purpose of the Directive	1172
6.XVIII.5.2.	<i>Timeshare</i> contract model	1173
6.XVIII.5.3.	Legal basis for the rules harmonising <i>timeshare</i>	1174
6.XVIII.5.4.	Harmonisation of the conflict rules incorporated in <i>Directive 94/47/EC</i> (Article 9 of <i>Directive 94/47/EC</i>)	1176
6.XVIII.5.5.	Substantive law (harmonisation) rules under <i>Directive 94/47/EC</i>	1177
6.XVIII.5.5.1.	Subject matter of the rules	1177
6.XVIII.5.5.2.	Material scope (Article 2 of <i>Directive 94/47/EC</i>)	1178
6.XVIII.5.5.3.	Obligation to provide information (Articles 3 and 4 of <i>Directive 94/47/EC</i>)	1179
6.XVIII.5.5.4.	Withdrawal from the contract (Article 5 of <i>Directive 94/47/EC</i>).	1179
6.XVIII.5.5.5.	Prohibition of advance payments (Article 6 of <i>Directive 94/47/EC</i>)	1180

6.XVIII.5.5.6.	Credit financing (Article 7 of <i>Directive 94/47/EC</i>)	1180
6.XVIII.5.5.7.	Prohibition of waiver of rights (Article 8 of <i>Directive 94/47/EC</i>)	1180
6.XVIII.5.5.8.	Choice of the applicable law (Article 9 of <i>Directive 94/47/EC</i>)	1180
6.XVIII.5.5.9.	Standard of protection	1181
6.XVIII.5.6.	Procedure of adopting <i>Directive 94/47/EC</i>	1181
6.XVIII.5.7.	Proceedings relating to insufficient implementation and/or breach of the standards under <i>Directive 94/47/EC</i>	1181
6.XVIII.5.8.	Case law concerning the application of <i>Directive 94/47/EC</i>	1182
6.XVIII.5.8.1.	Judgment of the ECJ Case C-73/04 of 13 October 2005 (<i>Brigitte et Marcus Klein ID/ v. Rhodos Management Ltd.</i>)	1182
6.XVIII.5.8.2.	Other relevant case law	1185
6.XVIII.5.9.	Implementation in the (CZ) legal system	1186
6.XVIII.6.	<i>Directive 2008/122/EC</i> of the EP and of the Council	1187
6.XVIII.6.1.	<i>Directive</i> replacing <i>Directive 94/47/EC</i> and the approach adopted by the <i>Directive</i>	1187
6.XVIII.6.2.	Procedure of drafting and adopting <i>Directive 2008/122/EC</i>	1188
6.XVIII.6.3.	Application of <i>Directive 2008/122/EC</i> in relationships with international elements and the conflict rules	1190
6.XVIII.6.4.	Principles of <i>Directive 2008/122/EC</i>	1190
6.XVIII.6.4.1.	Material scope	1190
6.XVIII.6.4.2.	New definitions for certain concepts	1190
6.XVIII.6.4.3.	Specification of the rules of advertising and requirements concerning pre-contractual information and contents of the contract	1191
6.XVIII.6.4.4.	Withdrawal from the contract	1192
6.XVIII.6.4.5.	Ancillary contracts	1192
6.XVIII.6.4.6.	Application in relationships with international elements	1193
6.XIX.	Trading with financial instruments and the capital market (Article 6(4)(d) of the <i>Regulation</i>)	1193
6.XIX.1.	Material scope of Article 6(4)(d) of the <i>Regulation</i>	1193
6.XIX.2.	Capital market versus money market	1194
6.XIX.2.1.	Economic and legal definition of the market	1194
6.XIX.2.2.	Legal framework regulating trading in financial instruments on the money market/capital market/regulated market—secondary EU law	1195
6.XIX.3.	Laws of national origin (CZ—Czech Republic)	1196
6.XIX.4.	Financial instruments	1197
6.XIX.5.	Principles of investing in financial instruments	1199
6.XIX.6.	Grounds for an exclusion from the scope of conflict rules regulating consumer contracts	1199
6.XIX.7.	Takeover bids	1200
6.XIX.8.	Units in collective investment entities (<i>undertakings</i>)	1201
6.XIX.8.1.	Terminological inconsistency of the Czech version (<i>entity</i> versus <i>undertaking</i>)	1201
6.XIX.8.2.	Exclusion of consumer protection by the conflict rules in Article 6 of the <i>Regulation</i>	1202
6.XIX.9.	Transactions within multilateral systems which bring together or facilitate the bringing together of multiple third-party buying and selling interests in financial instruments (Article 6(4)(e) of the <i>Regulation</i>)	1202

6.XIX.10.	Certain aspects common to the conflict of law regulation of contractual obligations under Article 6(4)(d) and (e) of the <i>Regulation</i>	1203
6.XIX.10.1.	Participation of the consumer in the payment systems	1203
6.XIX.10.2.	Consumer obligations arising out of negotiations (pre-contractual consumer obligations)	1203
6.XX.	Assessment of the protection accorded to consumers under the conflict rules incorporated in the <i>Regulation</i>	1204
6.XXI.	Assessment of the protection accorded to consumers under the conflict rules incorporated in the <i>Regulation</i>	1204
6.XXI.1.	Importance of [<i>quasi</i>] conflict rules incorporated in directives and their relationship to the conflict rules under Article 5 of the <i>Convention</i> and Article 6 of the <i>Regulation</i>	1204
6.XXI.2.	Some of the common denominators of conflict rules incorporated in consumer protection directives	1207
6.XXI.3.	Conflict rules incorporated in directives adopt one or the other of two basic approaches	1207
6.XXI.4.	Conflict rules incorporated in selected directives	1208
6.XXI.4.1.	Article 6(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts	1208
6.XXI.4.2.	Article 12(2) of the Directive 97/7/EC of the EP and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts	1210
6.XXI.4.3.	Article 7(2) of Directive 1999/44/EC of the EP and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees	1213
6.XXI.4.4.	Article 12(2) of Directive 2002/65/EC of the EP and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC	1214
6.XXI.4.5.	Article 22(4) of Directive 2008/48/EC of the EP and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC	1214
6.XXI.4.6.	Article 12(2) of Directive 2008/122/EC of the EP and of the Council of 14 January 2009 on the protection of consumers in respect to certain aspects of timeshare, long-term holiday product, resale and exchange contracts	1215
6.XXI.4.7.	Significance of the Annex to Directive 93/13/EEC (indicative list of unfair terms) from the perspective of conflict rules	1216
6.XXII.	Case law	1217
6.XXII.1.	ECJ —The Court of Justice of the European Communities	1217
6.XXII.2.	Case law of Member States	1219
6.XXII.2.1.	(A) Austria	1219
6.XXII.2.2.	(B) Belgium	1231
6.XXII.2.3.	(CZ) Czech Republic	1232
6.XXII.2.4.	(D) Germany	1236
6.XXII.2.5.	(F) France	1237
6.XXII.2.6.	(I) Italy	1239
6.XXII.2.7.	(SK) Slovakia	1241

6.XXII.2.8.	(UK) United Kingdom of Great Britain and Northern Ireland— law: England and Wales (UK/EN)	1241
6.XXII.2.9.	(DK) Denmark	1242
6.XXII.3.	Case law of arbitration tribunals	1243
6.XXII.3.1.	(CZ) Czech Republic	1243
	Literature	1250
Article 7 of the <i>Regulation</i>		1273
7.1.	Significance of insurance from the perspective of private international law	1275
7.11.	The legislative framework prior to the <i>Regulation</i>	1276
7.III.	Conflict of law rules contained in the Directives	1277
7.IV.	Regime of application of the <i>Convention</i>	1278
7.IV.1.	Sources of law and definition	1278
7.IV.2.	Conflict of law rules of the <i>Convention</i> for obligations under insurance contracts	1279
7.IV.3.	Reinsurance contracts	1281
7.IV.4.	Insurance contracts as consumer contracts in the regime of the <i>Convention</i>	1282
7.IV.5.	Qualification of claims from insurance contracts	1282
7.IV.6.	Draft provisions in the Proposal for a <i>Regulation</i>	1282
7.IV.7.	The outcome of negotiations on the framework of conflict of law rules for insurance as embodied in the <i>Regulation [in fine]</i>	1283
7.V.	Experience of Member States and transition to the regime of the <i>Regulation</i>	1284
7.VI.	The regime and application of the <i>Regulation</i>	1285
7.VI.1.	Basic structure of the text	1285
7.VI.2.	Purpose of the <i>Regulation</i>	1285
7.VI.3.	Scope of application	1285
7.VI.3.1.	Scope of application (territorial and material)	1285
7.VI.3.2.	The significance of <i>risk dislocation</i> as the connecting factor	1286
7.VI.4.	The framework of conflict of law rules in the <i>Regulation</i>	1287
7.VI.5.	Determination of applicable law on the basis of risk dislocation	1288
7.VI.6.	Determination of the place where the risk is situated	1289
7.VI.7.	Insurance contracts covering large risk	1290
7.VI.8.	Insurance contracts covering multiple risks	1291
7.VI.9.	Risk situated on the territory of the Member States	1292
7.VI.10.	Extension of the freedom of choice of law within the meaning of the application of laws of national origin	1293
7.VI.11.	Governing law in the absence of choice of law	1293
7.VI.12.	Risks situated outside of the territorial space of the Member States	1294
7.VI.13.	Special case of the mandatory insurance contract	1294
7.VII.	Insurance contracts concluded by consumers (the provisions of the <i>Regulation</i>)	1295
7.VIII.	Reinsurance contracts (the provisions of the <i>Regulation</i>)	1296
7.IX.	Direct insurance other than life assurance [Taking-up and pursuit of the business of direct insurance other than life assurance (Council Directive 73/239/EEC)—especially in	

	relation to conflict of law rules and to other sources of law of the <i>Community</i>]	1296
7.IX.1.	The normative foundations of direct insurance other than life assurance in the law of the Community	1296
7.IX.2.	The purpose of the provision	1296
7.IX.3.	Related provisions of Directive 88/357/EEC and of Directive 92/49/EEC	1297
7.IX.4.	The object, concept and contents of the Directive 73/239/EEC	1298
7.IX.5.	Content—principles of the Directive 73/239/EEC	1300
7.IX.6.	Treatment of governing law—conflict of law rules	1300
7.IX.6.1.	Article 7 of the Second Directive on non-life insurance	1300
7.IX.6.2.	Choice of law	1302
7.IX.6.3.	Governing law for insurance contracts covering large risk and its relation to some regimes of the <i>Convention</i> and of the <i>Regulation</i>	1302
7.IX.6.4.	Restriction of choice of law	1302
7.IX.7.	Jurisdiction (international jurisdiction)	1302
7.IX.8.	Mandatory rules (Article 7(2) of Directive 73/239/EEC)	1303
7.IX.9.	Other conflict of law rules	1303
7.IX.10.	The adoption procedure of the Directive	1304
7.IX.11.	Case law related to the interpretation of Community legislation on insurance other than life assurance	1304
7.IX.11.1.	Case <i>Skandia</i> (ECJ, C-241/97)—admissibility of restrictions on capital participation of insurance companies under Swedish law	1304
7.IX.11.2.	The <i>Epikouriko</i> case (ECJ, C-28/03)—use of reserves created for insurance contract liabilities in order to meet wage contract liabilities	1307
7.IX.11.3.	ECJ Case <i>Association basco-bearnaise des opticiens independants</i> (, C-109/99)—capital participation by an insurance company	1308
7.X.	Life assurance [Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002, concerning life assurance (Directive), as amended by 2008/19/EC]	1309
7.X.I.	General framework and conception of Directive 2002/83/EC ...	1309
7.X.1.1.	The purpose of the Directive	1309
7.X.1.2.	Universal scope of application	1310
7.X.I.3.	Universal authorisation	1310
7.X.2.	Principle of minimum standard pursuant to Directive 2002/83/EC	1311
7.X.3.	Law applicable and choice of law (Chapter 4 of Directive 2002/83/EC)	1312
7.X.3.1.	The law of the Member State of the commitment	1312
7.X.3.2.	Choice of law	1312
7.X.3.3.	Technique and principles of conflict of law rules for the choice of applicable law. Contractual autonomy versus the requirement of protection	1312
7.X.3.4.	General conflict of law rules determining the possibility and limits of choice of law	1313

7.X.3.5.	Materialised conflict of law and connection to citizenship in <i>lex electa</i>	1313
7.X.3.6.	Multi-legal state (a state with a larger number of legal orders/systems)	1313
7.X.3.7.	The priority of mandatory rules of the forum and mandatory rules of law	1314
7.X.4.	Relationship of Directive 2002/83/EC to the <i>Regulation (Convention)</i> and to other enactments of the <i>Community</i>	1315
7.X.4.1.	Relationship to the <i>Convention</i> , the <i>Regulation</i> , eventually to other conflict of law rules applicable in individual Member States	1315
7.X.4.2.	Relation to other enactments of the <i>Community</i>	1315
7.X.5.	Judgment of the ECJ Case C-501/04 of 18 July 2007 (European Commission v. (E))	1316
7.X.6.	Other than conflict of law protection of the policy holder as the weaker party/respecting the role of consumer	1316
7.X.6.1.	Indirect protection of the consumer—policy holder	1316
7.X.6.2.	Forms of indirect consumer protection—policy holder under Directive 2002/83/EC	1317
7.X.6.2.1.	General good (Article 33 of Directive 2002/83/EC)	1317
7.X.6.2.2.	Rules relating to conditions of assurance and scales of premiums (Article 34 of Directive 2002/83/EC)	1317
7.X.6.2.3.	Cancellation periods for individual life assurance (Article 35 of Directive 2002/83/EC)	1317
7.X.6.2.4.	Mandatory information disclosure/information for policy holders (Article 36 of Directive 2002/83/EC)	1318
7.XI.	Case law	1318
7.XI.1.	ECJ—The Court of Justice of the European Communities	1318
7.XI.2.	Case law of Member States	1323
7.XI.2.1.	(A) Austria	1323
7.XI.2.2.	(CZ) Czech Republic	1326
7.XI.2.3.	(D) Germany	1327
	Literature	1331
	Article 8 of the <i>Regulation</i>! Article 6 of the <i>Convention</i>	1339
8.1.	Labour-law relationships with international aspects and regulation of private international law of national origin	1340
8.11.	Czech provisions of private international law of national origin	1341
8.11.1.	Party autonomy (freedom of contract) under the <i>Czech Private International Law Act</i>	1341
8.11.2.	Scope of the application of private international law rules to labour-law relationships with international aspects	1344
8.11.3.	Application of foreign law on labour-law relationships for work performed in the Czech Republic	1345
8.11.3.1.	• The principle of original method of application of foreign law	1345
8.11.3.2.	Restrictions in labour-law relationships imposed under the reservation of public policy	1346
8.11.3.3.	Restrictions under the overriding mandatory provisions (provisions mandatory from the international perspective)	1349

	Conflict of law rules of national origin (CZ) in the <i>Bill on Private International Law</i>	1349
	Bilateral conflict of law rules of international origin regulating labour-law relationships	1350
	Fundamental provisions of the EU and the <i>Community law</i> regulating work and labour-law relationships	1352
	Freedom of employment and freedom to move and settle within the single market (<i>public-law dimension</i>)	1352
	EU citizenship, freedom of movement and freedom of employment as fundamental principles of primary law	1352
	Implementation of the fundamental principles in secondary law	1353
	Equality of men and women in labour-law relationships as the fundamental principle of European (labour-law) policy	1354
	Private law dimension of freedom of movement and freedom of employment	1357
	Place of work and personal status as the private-law antithesis of nationality as a connecting factor under public law	1357
	Universal nature of the <i>Convention!Regulation</i> as the expression of private-law equality independent of nationality	1358
	Application of the <i>lex fori</i> conflict of law rules	1358
	Conflict of law rules under the <i>Regulation</i> and the <i>Convention</i>	1358
	The concept common to the material scope of both the <i>Regulation</i> and the <i>Convention</i>	1359
	Subject matter (material scope)	1359
	The concept of individual employment contract and the interpretation thereof in connection with Regulation 44/2001 ..	1359
	Characteristic features of individual employment contracts (individual labour-law relationships)	1359
	Major importance of the true contents of the contract and the contractual relationship	1360
	Employment contracts and labour-law relationships	1362
	The meaning of the concept of <i>individual</i> employment contracts and individual labour-law relationships	1363
	Individual employment contracts	1363
	Individual labour-law relationships	1363
	De facto labour-law relationships	1363
	The specialities of the conflict labour-law rules compared to the general regulation of the effects of the applicable law on the consequences of nullity under Article 12(1)(e) of the <i>Regulation</i> (Article 10(1)(e) of the <i>Convention</i>)	1364
8.V.2.	Other categories of individual labour-law relationships covered by the scope of Article 8 of the <i>Regulation!Article 6 of the <i>Convention</i></i>	1364
8.V.2.1.	The so-called <i>family</i> labour-law relationships, both between spouses and between parents and children	1365
8.V.2.2.	Apprenticeship	1365
8.V.2.3.	Trainees, volunteers	1366
8.V.2.4.	Public sector workers	1367

8.V.2.4.1.	Private law employment relationships and the exercise of power by public authorities from the conflict of law perspective	1367
8.V.2.4.2.	Workers employed by diplomatic and consular missions, international organizations and other international (<i>public</i>) law entities	1369
8.VI.	Differences compared to the <i>Convention</i>	1370
8.VI.1.	Formal terminological clarification of the material scope	1370
8.VI.2.	Specific features of distribution and franchise agreements and the qualitative difference between the wording of the <i>Regulation</i> and the wording of the <i>Convention</i> in connection with the amended wording of Article 4 of the <i>Convention</i> versus Article 4 of the <i>Regulation</i>	1370
8.VII.	Conflict of law rules incorporated in the <i>Regulation</i> and the <i>Convention</i>	1371
8.VII.1.	Party autonomy	1371
8.VII.1.1.	Choice of law	1371
8.VII.1.2.	Restrictions of party autonomy in the interest of the protection of employees	1372
8.VII.2.	Agreements on the validity of law outside of the sovereign territory of a particular state	1373
8.VII.2.1.	Effects of the internal market clause	1373
8.VII.2.1.1.	Law applicable in the absence of choice of law	1373
8.VII.2.1.2.	Determination of the place where the employee habitually carries out his or her work	1374
8.VII.2.1.2.1.	A more precise definition of the place of work in the <i>Regulation</i> as opposed to the <i>Convention</i>	1374
8.VII.2.1.2.2.	The influence of the ECJ judgment in <i>Mulox</i> and <i>Rutten</i> to Regulation 44/2001	1374
8.VII.2.2.	Flight crews	1374
8.VII.2.2.1.	Flight attendants (stewards and stewardesses)	1374
8.VII.2.2.2.	Pilots	1375
8.VII.2.3.	Distance work	1376
8.VII.2.4.	Temporary work in a different Member State	1377
8.VII.2.4.1.	Posting of employees	1377
8.VII.2.4.2.	Posting within the same [holding-type] group of companies	1379
8.VII.2.4.3.	Connection to the Directive concerning the posting of workers	1380
8.VII.2.4.4.	Contents of the governing law/law applicable in the framework of the posting of employees	1382
8.VII.3.	Work performed outside the sovereign territory of a state	1383
8.VII.3.1.	Unsuccessful proposal for special provisions along the lines of the <i>Proposal for the Regulation</i>	1383
8.VII.3.2.	Labour-law relationships of employees on sea vessels	1383
8.VII.4.	Escape clause	1384
8.VII.5.	Further space for case law	1385
8.VIII.	Employees as consumers—the individual doctrine of German labour and consumer law	1385
8.VIII.1.	Special manifestation of the protection accorded to the weaker party as a reason for this treatise on the German doctrine	1385

8.VII1.2.	Labour-law relationships with international aspects from the perspective of German conflict of law rules	1385
8.VIII.3.	Application of consumer protection to labour-law relationships	1387
8.IX.	Social security regulations and their application to (labour-law) contractual obligations (obligation relationships) with international aspects	1388
8.X.	Case law	1389
8.X.1.	EC—The Court of Justice of the European Communities	1389
8.X.2.	Case law of the courts of Member States	1403
8.X.2.1.	(A) Austria	1403
8.X.2.2.	(CZ) Czech Republic	1410
8.X.2.3.	(D) Germany	1415
8.X.2.4.	(F) France	1432
8.X.2.5.	(I) Italy	1436
8.X.2.6.	(NL) The Netherlands	1436
8.X.2.7.	(SK) Slovakia	1438
8.X.2.8.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	1441
8.X.2.9.	(DK) Denmark	1442
	Literature	1445
	Article 9 of the Regulation/Article 7 of the Convention	1463
09.1.	The Purpose of the Stipulation	1464
09.11.	Terminology of Article 9 of the Regulation (Article 7 of the Convention) in reference to Article 3(3) of the Regulation (Article 3(3) of the Convention)—A problem of more than just language	1464
09.11.1.	Mandatory Rules versus Overriding Mandatory Provisions	1464
09.11.2.	Terminological ambiguity of the <i>Convention</i>	1466
09.111.	Mandatory rule as a directly applicable norm	1469
09.IV.	Classification, identification and definitions of mandatory rules	1474
09.IV.1.	Defining mandatory norms as a basic judicial function	1474
09.IV.2.	The definitions of mandatory rules in reference to the content of mandatory rules and to the jurisprudence of the ECJ	1478
09.IV.2.1.	Perspective: content	1478
09.IV.2.2.	Perspective: terminology in connection with the character and content of mandatory rules (definition)	1478
09.IV.2.3.	Definitions of mandatory norms according to the decision of the ECJ in the case of <i>Arblade</i>	1479
09.IV.2.4.	A compromise solution	1480
09.V.	Restrictions on freedom of contract and the relationship of Article 3(4) to mandatory norms [overriding mandatory provisions] of Art 9 of the Regulation	1480
09.VI.	Distinguishing between mandatory norms (in Czech: <i>imperativni normy</i> and <i>kogentni normy</i>)	1481
09.VI.1.	Mandatory rules—Article 7 of the <i>Convention</i> and Article 9 of the <i>Regulation</i>	1481

09.VI.2.	The character of mandatory rules	1482
09.VI.2.1.	Legal construction	1482
09.VI.2.2.	The function of mandatory provisions	1482
09.VI.3.	The relationship between forms of mandatory rules	1484
09.VII.	Comparison of mandatory rules with public policy	1487
09.VIII.	Types of mandatory rules	1492
09.IX.	Examples of mandatory provisions (and rules) (versus public policy)	1493
09.IX.1.	Example of provisions identified as mandatory or which may be considered mandatory in terms of practice	1493
09.IX.1.1.	(A) Austria	1493
09.IX.1.2.	(CZ) Czech Republic	1493
09.IX.1.3.	(D) Germany	1495
09.IX.1.4.	(F) France	1495
09.IX.1.5.	(NL) Netherlands	1496
09.IX.1.6.	(EU) Rules of Community origin	1496
09.IX.2.	Examples of provisions which do not have mandatory character or are not expressly identified as mandatory	1496
09.IX.2.1.	(CZ) Czech Republic	1496
09.IX.2.2.	(D) Germany	1497
09.IX.3.	Examples of provisions identified as mandatory but excluded from the scope of the 'public policy' exception	1497
09.IX.3.1.	(A) Austria	1497
09.IX.3.2.	(NL) The Netherlands	1497
09.IX.4.	Examples of breach of public policy with potential application of the public policy exception	1498
09.IX.4.1.	(D) Germany	1498
09.IX.4.2.	(F) France	1498
09.IX.4.3.	(SK) Slovakia	1499
09.X.	The character of mandatory provisions—public law versus private law	1499
09.XI.	Mandatory provisions and the requirement of guaranteeing the fundamental freedoms of the <i>Community</i>/admissible exceptions from the perspective of the decisions of the EC) in the cases <i>Arblade</i> and <i>Ingmar</i>	1500
09.XII.	Authority of the ECJ to interpret	1502
09.XIII.	Judicial discretion	1503
09.XIII.1.	Classification of norms as mandatory and the means of their application	1503
09.XIII.2.	Consideration in the case of a conflict between mandatory provisions of <i>lex causae</i> and those of <i>lex loci solutionis</i>	1504
09.XIII.3.	Requirements concerning the exercise of judicial discretion	1504
09.XIV.	Application of mandatory rules under the <i>Convention</i> and under the <i>Regulation</i>	1505
09.XIV.1.	Mandatory rules of <i>lex fori</i>	1505
09.XIV.2.	Mandatory rules of a third state (foreign mandatory rules)	1506
09.XIV.2.1.	Restriction of mandatory rules of countries other than <i>lex fori</i>	1506
09.XIV.2.2.	Difference in application	1506

09.XIV.2.3.	<i>The Convention</i>	1509
09.XIV.2.4.	Genesis of the <i>Regulation</i> and its relation to the <i>Convention</i>	1511
09.XIV.2.5.	The <i>Regulation</i>	1513
09.XIV.2.5.1.	Concept of the <i>Regulation</i> [<i>in fine</i>]	1513
09.XIV.2.5.2.	Restrictions in the form of conditions for the determination and application of mandatory rules	1513
09.XIV.2.5.3.	Cases of uncertain place of performance	1513
09.XIV.2.5.4.	Mandatory rules of the <i>lex loci solutionis</i>	1514
09.XV.	Application of foreign mandatory rules in reference to English law (UK)	1515
09.XV.1.	Criticism of legal uncertainty and the threat to uniform application of the law	1515
09.XV.2.	The English decision in the case of <i>Ralli Bros v. Compani Naviera Sota y Aznar</i> as one of the historical foundations for the application of mandatory rules	1516
09.XVI.	Experience of Member States with interpretation and application of stipulations concerning mandatory rules, and the theoretical and practical approach of selected countries	1518
09.XVI.1.	(D) Germany	1518
09.XVI.1.1.	German Legal Theory	1518
09.XVI.1.2.	Germany Case law	1519
09.XVI.2.	(F) France	1520
09.XVI.2.1.	Decision in the case of <i>Epoux Rousseau (F)</i> versus <i>Commerzbank (D)</i>	1520
09.XVI.2.2.	Decision in the case of <i>Mme Moquin (F)</i> versus <i>Deutsche Bank (D)</i>	1521
09.XVI.3.	(NL) The Netherlands	1522
09.XVI.4.	(UK) The United Kingdom of Great Britain and Northern Ireland (in this instance, the law of England and Wales)	1522
09.XVII.	Case law	1523
09.XVII.1.	ECJ—The Court of Justice of the European Communities	1523
09.XVII.2.	Case law of Member States	1536
09.XVII.2.1.	(A) Austria	1536
09.XVII.2.2.	(CZ) Czech Republic	1540
09.XVII.2.3.	(D) Germany	1545
09.XVII.2.4.	(F) France	1563
09.XVII.2.5.	(NL) The Netherlands	1567
09.XVII.2.6.	(SE) Sweden	1568
09.XVII.2.7.	(SK) Slovakia	1569
09.XVII.2.8.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	1569
09.XVII.2.9.	(DK) Denmark	1573
09.XVII.3.	Case law of Non-Member States	1574
09.XVII.3.1.	(CH) Switzerland	1574
09.XVII.4.	Arbitration	1578
09.XVII.4.1.	ICC (International Chamber of Commerce)	1578
	Literature	1578

Article 10 of the <i>Regulation!</i> Article 8 of the <i>Convention</i>	1603
10.1.	Material scope of the regulation 1644
10.11.	Existence and validity of a contract—Article 10(1) of the Regulation 1605
10.11.1.	Comparison of language versions
10.11.2.	Conception and purpose of the regulation
10.111.	Absence of consensus—Article 10(2) of the Regulation 1606
10.111.1.	Comparison of the frequented language versions
10.111.2.	Non-existence of consensus and existence of validity
10.111.3.	Silence of the participant
10.IV.	Conditions of application of Article 10(2) of the Regulation/ Article 8(2) of the Convention 1607
10.IV.1.	Subjective scope
10.IV.2.	Possibility of application [of protection] of Article 10(2) of the <i>Regulation!</i> Article 8(2) of the <i>Convention</i>
10.V.	Law of the country in which the habitual residence is located 1608
10.VI.	Habitual residence 1608
10.VII.	Purpose of finding out the absence of consent 1608
10.VIII.	Circumstances establishing inadequacy 1609
10.VIII.1.	Circumstances of inadequacy
10.VIII.2.	Adequacy (inadequacy)
10.VIU.3.	Determination of effects of the conduct of the contractual party 1610
10.VIII.4.	Inadequacy of law under Article 10(1) of the <i>Regulation</i> (Article 8(1) of the <i>Convention</i>)
10.VIII.5.	Inadequacy in the sense of public policy 1611
10.VIII.6.	Freedom of will and its manifestation
10.VIII.6.1.	Constitutional and international context of freedom of will and its manifestation
10.VIII.6.2.	Connection to the constitutional right to appeal to the court ...
10.IX.	Selection from case law of the Member States 1613
10.IX.1.	(B) Belgium
10.IX.2.	(CZ) Czech Republic
10.IX.3.	(F) France
10.IX.4.	(NL) The Netherlands
	Literature 1617
Article 11 of the <i>Regulation!</i> Article 9 of the <i>Convention</i>	1621
11.1.	Purpose and subject matter of the rules 1622
11.11.	Comparison between the <i>Regulation</i> and the <i>Convention</i> 1623
11.111.	Scope of Article 11 of the <i>Regulation!</i> Article 9 of the <i>Convention</i> 1623
11.111.1.	Exclusion of acts before public authorities
11.111.2.	The concept of formal validity
11.111.3.	The difference between material validity and formal requirements imposed on the external manifestation of an expression of will
	1625

11.111.4.	Formal and material validity	1626
11.111.5.	Historical roots of the origin of the rules incorporated in the <i>Convention</i> and the material scope of Article 11 of the <i>Regulation</i> (Article 9 of the <i>Convention</i>) and the genesis of Article 11 of the <i>Regulation</i>	1626
11.111.6.	Unsuccessful attempt of the EC at the broadening of the alternative connecting factor so as to include the place of <i>habitual residence</i> and distance contracts	1628
11.111.7.	Experience of the Member States with the interpretation and application of the conflict rules regulating formal validity of contracts	1628
11.111.8.	A compromise between <i>favor negotii</i> and the due observance of the requirements of form	1629
11.111.9.	Overriding mandatory provisions	1630
II.IV.	Contracts concluded between the parties or their agents [physically] present in the same country: <i>lex contractus</i> or <i>lex loci actum</i> (Article 11(1) of the <i>Regulation</i>)	1631
II.IV.1.	Comparison of the wording employed by the most important language versions and the fundamental concept of the connecting factor under Article 11(1) of the <i>Regulation</i>	1631
11.IV.2.	The law applicable to the formal conditions of validity and splitting of the applicable law	1631
II.IV.2.1.	<i>Lex contractus</i>	1631
II.IV.2.2.	Depe[^]age	1631
11.IV.2.3.	The answer provided by Article 11 of the <i>Regulation</i> and the <i>Report</i>	1632
II.IV.2.4.	Depe[^]age for the assessment of the formal requirements as the possible solution	1632
11.IV.2.5.	The absence of a solution solely on the basis of Article 11 of the <i>Regulation</i>	1632
11.IV.2.6.	<i>Locus regit actum</i>	1633
II.V.	Contract concluded between persons who, or whose agents, are in different countries at the time when the contract is concluded (Article 11(2) of the <i>Regulation</i>)	1633
II.V.1.	The importance of updating the conflict rules incorporated in the <i>Regulation</i> compared to the <i>Convention</i>	1633
11.V.2.	Contracts concluded through the medium of agents	1634
II.V.2.1.	Agents in the same country/in different countries	1634
II.V.2.2.	The time perspective	1635
II.V.2.3.	A contract concluded through the medium of agents	1636
II.VI.	Unilateral act intending to have legal effect relating to an existing or contemplated contract (Article 11(3) of the <i>Regulation</i>)	1637
11.VI.1.	Comparison of certain selected language versions	1637
11.VI.2.	Material scope—unilateral acts intended to have legal effects on existing or contemplated contracts	1637
11.VI.3.	Habitual residence	1637
II.VII.	An exception concerning consumer contracts (Article 11(4) of the <i>Regulation</i>, Article 9(5) of the <i>Convention</i>)	1637

11.VIII.	Rights in rem in immovable property or tenancy of immovable property (Article 11(5) of the <i>Regulation</i>/Article 9(6) of the <i>Convention</i>)	1638
II.VIII.1.	Comparison of certain selected language versions	1638
11.VIII.2.	The law governing the determination of the formal requirements for validity of contracts	1638
11.VIII.3.	Application of overriding mandatory provisions	1639
11.VIII.4.	Material scope	1640
II.VIII.4.1.	Acquisition of (ownership) title and tenancy rights	1640
II.VIII.4.2.	Relationship to consumer contracts regulating rights in immovable properties	1640
II.VIII.4.3.	Immovable properties from the perspective of Community law	1641
II.VIII.4.3.1.	Immovable properties as the subject matter of <i>Community</i> law	1641
II.VIII.4.3.2.	The TEC in connection with rights in immovable properties ...	1642
11.VIII.5.	Observance of the form as a condition and prerequisite for the purpose of the contract and for protecting property rights	1643
11.VIII.6.	The use of electronic media in concluding contracts and contracts relating to immovable properties	1643
11.IX.	Case Law of Member States	1645
II.IX.1.	(A) Austria	1645
11.IX.2.	(B) Belgium	1647
11.IX.3.	(CZ) Czech Republic	1648
11.IX.4.	(D) Germany	1654
11.IX.5.	(F) France	1657
11.IX.6.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	1658
II.X.	Case Law of Non-Member States	1658
11.X.1.	(CND) Canada	1658
	Literature	1658
Article 12 of the <i>Regulation</i>/Article 10 of the <i>Convention</i>		1663
12.1.	The importance, material scope and the place of the conflict rules in Article 12 of the <i>Regulation</i>/Article 10 of the <i>Convention</i> in their respective regimes	1664
12.1.1.	Conceptual definition of the rules vis-a-vis other conflict rules incorporated in the Regulation/Convention	1664
12.1.2.	Adoption of the Convention standard	1665
12.11.	Scope of the law (Article 12(1) of the Regulation/Article 10(1) of the Convention)—material scope	1665
12.11.1.	Comparison of the language versions	1665
12.11.2.	The concept of the rules—examples of the effects of the law applicable to a contract (contractual obligation—relationship) ..	1665
12.11.3.	Material scope	1665
12.11.4.	Limitation of the effects of the applicable law	1666
12.11.4.1.	The difference between the Convention (Article 10(1)) and the Regulation (Article 12(1))—Limitation of the material scope of Article 12(1) of the <i>Convention</i> to the law chosen by the parties and the law applicable to [individual] employment contracts	1666

Exclusion of pre-contractual obligations from the material scope of the [entire] <i>Regulation</i>	1666
Limitation of the effects of the law in terms of Article 12(1) of the <i>Regulation</i> as well as Article 10(1) of the <i>Convention</i>	1666
Interpretation [of a contract, a contractual obligation, an (obligation) relationship] Article 12(a) of the <i>Regulation</i> / Article 10(1)(a) of the <i>Convention</i>	1666
Performance (Article 12(1)(b) of the <i>Regulation</i> /Article 10(1)(b) of the <i>Convention</i>)	1668
Positive definition of the scope	1668
Negative definition of the scope	1671
Importance of the influence of certain legal cultures and the multifaceted scope of <i>performance</i> —the example of habitual diligence	1671
Powers granted to the court by the applicable procedural law (Article 12(1)(c) of the <i>Regulation</i> /Article 10(1)(c) of the <i>Convention</i>)	1672
Consequences of a total or partial breach (Article 12(1)(c) of the <i>Regulation</i> /Article 10(1)(c) of the <i>Convention</i>)	1672
Damage (Article 12(1)(c) of the <i>Regulation</i> /Article 10(1)(c) of the <i>Convention</i>): question of fact v. question of law	1673
Scope	1673
Damage under the substantive law	1674
Other claims arising from a breach of contract and their qualification (classification)/ <i>res iiiiui in integrum</i>	1675
Ways of extinguishing obligations (Article 12(1)(d) of the <i>Regulation</i> /Article 10(1)(d) of the <i>Convention</i>)	1675
Nullity (Article 12(1)(e) of the <i>Regulation</i> /Article 10(1)(e) of the <i>Convention</i>)	1676
Broad scope of the consequences of nullity	1676
Reservation of the (UK) to Article 10 of the <i>Convention</i> (Article 22(2)(b) of the <i>Convention</i>)	1676
Parallel to Regulation 864/2007	1677
Manner of performance and defective performance (Article 12(2) of the <i>Regulation</i>! Article 10(2) of the <i>Convention</i>)	1677
Comparison of the language versions	1677
The concept of the rules	1677
Regard shall be had	1678
The state (country) in which performance takes place/place of performance as a requirement for the determination of the state in which performance takes place	1679
Scope of the words <i>country in which performance takes place</i> ..	1679
Case law of the EC J (<i>Tessili</i> case)	1679
Manner of performance	1679
Autonomous interpretation	1679
The difference between the <i>manner of performance</i> and <i>performance</i> illustrated on the example of the currency in which payment is made versus the currency in which the account is denominated	1680
Special methods of performance	1680

12.III.4.3.4.	Other special cases	1681
12.111.4.4.	Set-off (connection to Article 17 of the <i>Regulation</i>)	1681
12.111.4.5.	Right of retention	1681
12.IV.	Modification of the contents of obligations as a result of the introduction (change) of a new currency unit in the country	1682
12.IV.1.	Change of the currency unit as a technical change	1682
12.IV.2.	Adoption of EUR in the individual Member States	1682
12.V.	Case law	1687
12.V.1.	ECJ—The Court of Justice of the European Communities	1687
12.V.2.	Case law of Member States	1688
12.V.2.1.	(A) Austria	1688
12.V.2.2.	(CZ) Czech Republic	1691
12.V.2.3.	(D) Germany	1698
12.V.2.4.	(F) France	1698
12.V.2.5.	(I) Italy	1699
12.V.2.6.	(NL) The Netherlands	1701
12.V.2.7.	(SK) Slovakia	1701
12.V.2.9.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	1704
12.V.3.	Case law of Non-Member states	1705
12.V.3.1.	(CH) Switzerland	1705
12.V.4.	Arbitration	1706
12.V.4.1.	(CZ) Czech Republic	1706
12.V.4.2.	(ICC)	1706
	Literature	1707
Article 13 of the Regulation/Article 11 of the Convention		1711
13.1.	Comparison between the <i>Regulation</i> and the <i>Convention</i>	1712
13.11.	Comparison of language versions and the contentual qualification of the term capacity/incapacity	1712
13.111.	The material scope of capacity as defined by the Regulation	1712
13.1V.	The conception of the conflict of law	1712
13.V.	Conditions for the application of Art. 13 of the Regulation	1713
13.V.1.	Accumulative conditions	1713
13.V.2.	Physical presence of parties when concluding a contract	1714
13.V.3.	Good faith	1714
13.V1.	The restricted extent of Art. 13 of the <i>Regulation</i> /Art. 11 of the <i>Convention</i>	1714
13.V11.	Relation to similar concepts of the regulation of international private law of national origin	1715
13.VIII.	Case law	1715
13.VIII.1.	(CZ) Czech Republic	1715
13.VIII.2.	(UK) The United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	1716
	Literature	1716

Article 14 of the <i>Regulation!</i> Articles 12 and 13 of the <i>Convention</i>	1719
14.1. Purpose of the provisions 1753	1721
14.11. Relationship between assignor and assignee: law governing contract of assignment—under Article 14(1) of the Regulation	1722
14.11.1. Comparison of different language versions	1722
14.11.2. Assignability and the relationship between the assignor and the debtor: the law applicable to assigned or subrogated claim—under Article 14(2) of the Regulation	1722
14.11.2.1. Assignability and opposability, material scope	1722
14.11.2.2. Law applicable to the relationship to third parties	1723
14.111. Assignment pursuant to UNCITRAL—United Nations Convention of 12 December 2001 on the Assignment of Receivables in International Trade and its connection to the conflict of law rules of the Community (<i>Convention on assignment</i>)	1726
14.111.1. <i>Convention on assignment</i> , its purpose and object	1726
14.111.2. Object and purpose of the Convention on Assignment	1727
14.111.3. International element under the Convention on Assignment (the international character of the receivable and the international character of the assignment)	1728
14.111.4. Comparison with the concept of the Convention, the Regulation and the UNIDROIT contractual arrangements	1729
14.111.5. Assignment under UNIDROIT	1730
14.111.5.1. Binding and non-binding provisions contained in UNIDROIT	1730
14.111.5.2. <i>Convention on Factoring</i>	1730
14.111.6. UNIDROIT Principles	1731
14.IV. International factoring	1731
14.IV.1. Factoring as a business model and as a legal institute	1731
14.IV.2. Qualification of factoring under private international law	1732
14.IV.3. UNIDROIT Convention on International Factoring (<i>Convention on Factoring</i>)	1734
14.IV.4. Elements of substantive definition of factoring under the Convention on factoring (obligations of the parties)	1735
14.IV.5. Financing in the field of services	1735
14.IV.6. Conditions and scope of application of the <i>Convention on Factoring</i>	1736
14.IV.7. Other important legal aspects of the <i>Convention on factoring</i> ...	1736
14.V. Case law of Member States	1737
14.V.1. (A) Austria	1737
14.V.2. (B) Belgium	1738
14.V.3. (CZ) Czech Republic	1738
14.V.4. (D) Germany	1739
14.V.5. (F) France	1740
14.V.6. (NL) The Netherlands	1741
14.V.7. (UK) United Kingdom of Great Britain and Northern Ireland—law of England and Wales (UK/EN)	1741
Literature	1742

Article 15 of the <i>Regulation!</i> Article 13 (1) of the <i>Convention</i>	1751
15.1. Relations between the <i>Convention</i> and the <i>Regulation</i> 1781	1752
15.11. Comparison of language versions	1752
15.111. Applicability of Article 15 of the <i>Regulation</i>	1752
15.IV. <i>Applicable law</i>	1754
15.V. Case law	1755
15.V.1. EC —The Court of Justice of the European Communities	1755
15.V.2. Case law of Member States	1756
15.V.2.1. (CZ) Czech Republic	1756
Literature	1756
Article 16 of the <i>Regulation!</i> Article 13 (2) of the <i>Convention</i>	1757
16.1. Subjective scope 1787	1758
16.11. Material scope	1758
16.111. The language issue of the Czech version	1758
16.IV. Unity or plurality of the status of a fulfilled obligation	1759
16.V. The concept of the provisions of Article 16 of the <i>Regulation</i> and Article 13(2) of the <i>Convention</i>	1759
Literature	1760
Article 17 of the <i>Regulation!</i> Article 10(1) b) and Article 10(2) of the <i>Convention</i>	1761
17.1. Material scope of the conflict of law status of the <i>set-off</i>: qualification 1562	1762
17.11. Pre-requisites for the solution of the <i>set-off</i> conflict status	1763
17.111. Determination of the international element in relation to the <i>set-off</i>	1764
17.IV. Concept of determination of the conflict of law status for the <i>set-off</i>	1765
17.V. Conflict of law solution under the <i>Convention</i>	1766
17.V.1. Absence of special regulations	1766
17.V.2. The ECJ approach to the <i>set-off</i>	1767
17.VI. Genesis of Article 17 of the <i>Regulation</i>	1768
17.VII. Applicable law under the <i>Regulation</i>	1769
17.VIII. Material scope of Article 17 of the <i>Regulation</i>	1770
17.VIII.1. Scope of applicability	1770
17.VIII.2. <i>Set-off</i> and booking	1773
17.VIII.3. <i>Set-off</i> of contractual and non-contractual obligations	1775
17.VIII.4. Effect of the law applicable to the <i>set-off</i> under Article 17 of the <i>Regulation</i>	1778
17.VIII.5. Exclusive conflict effect of Article 17 of the <i>Regulation</i>	1778
17.IX. Novation and <i>set-off</i> through settlement	1779
17.X. Law applicable for certain <i>recourse claims</i>	1783
17.XI. Monetary expression of financial obligations/diversity of currencies as a possible obstacle to the <i>set-off</i>	1783

Monetary expression as a qualitative determinant of the claim	1783
Approach of some countries to the solution of the monetary compatibility of offset claims	1785
(A) Austria	1785
(CH) Switzerland	1785
(CZ) Czech Republic	1785
(D) Germany	1787
(PL) Poland	1788
Set-off according to certain legal systems	1789
(A) Austria	1789
(D) Germany	1791
(CH) Switzerland	1796
Set-off concept under Swiss law	1796
Set-off according to certain legal systems	1797
Reciprocity	1797
Type compatibility of claims	1797
Maturity	1798
Enforceability	1798
Exclusion of eligibility	1799
Conflict of law rules regulating the set-off under Swiss private international law	1800
Unilateral set-off	1800
Consensual set-off (agreement on the set-off)	1800
(CZ) Czech Republic	1801
(PL) Poland	1802
Effects of the set-off	1802
Conditions for the set-off on the basis of unilateral declaration	1803
Consequences of the set-off	1806
Limitation of the set-off (exclusion of eligibility)	1807
Claim secured by a lien	1807
Exclusion of some other categories of claims	1807
Conflict of law rules for set-off in Polish private international law	1808
Set-off from the viewpoint of the <i>Roman Law</i> legal systems	1809
Concept of the set-off	1809
Conditions of eligibility	1810
Set-off from the <i>Common Law</i> perspective	1811
(UK/EN)—United Kingdom of Great Britain and Northern Ireland/law of England and Wales	1811
Concept in English law	1811
Types of set-off in English law	1812
Legal set-off	1812
Equitable Set-off	1813
Set-off in the case of insolvency	1813
Contractual set-off	1813
Law applicable to the set-off under English law	1814
(US) United States of America/legal systems (US)	1816

17.XIII.	Set-off under the <i>Vienna Convention</i>	1818
17.XIV.	Procedural context of the substantive set-off from a conflict of law perspective	1821
17.XV.	Case law	1825
17.XV.1.	ECJ—The Court of Justice of the European Communities	1825
17.XV.2.	Case law of Member States	1826
17.XV.2.1.	(A) Austria	1826
17.XV.2.2.	(CZ) Czech Republic	1826
17.XV.2.3.	(D) Germany	1827
17.XV.3.	From arbitration	1828
17.XV.3.1.	(CZ) Czech Republic	1828
	Literature	1828
Article 18 of the <i>Regulation</i>		1831
18.1.	Genesis of the regulatory framework and comparison with Article 18 of the <i>Regulation</i> and Article 14 of the <i>Convention</i>: identity of content 1857	1832
18.11.	Material scope	1832
18.111.	Conflict of law rule	1832
18.IV.	In regard to Article 18(1) of the <i>Regulation</i>/Article 14 of the <i>Convention</i>	1832
18.V.	The conflict between substantive and procedural status	1833
18.VI.	In regard to Article 18(2) of the <i>Regulation</i>/Article 14 of the <i>Convention</i>	1836
18.VII.	Establishment of the content of applicable law	1837
18.VII.1.	Establishment of the applicable law as a prerequisite of its application	1837
18.VII.2.	Court procedure in <i>conflict of law</i> situations	1837
18.VII.3.	A comparison to determine and establish the applicable law in overseas forms of the <i>common law</i> (comparison with the (US))	1838
18.VIII.	Case law of the courts of Member States (including judgments related to the establishment of applicable law)	1839
18.VIII.1.	(A) Austria	1839
18.VIII.2.	(CZ) Czech Republic	1843
18.VIII.3.	(F) France	1845
18.VIII.4.	(I) Italy	1845
18.VIII.5.	(SK) Slovakia	1846
18.VIII.6.	(UK) United Kingdom of Great Britain and Northern Ireland/law of England and Wales (UK/EN)	1846
	Literature	1847
Article 19 of the <i>Regulation</i>		1849
19.1.	Scope and comparison to the <i>Convention</i>	1850
19.II.	Definition of the term <i>habitual residence</i>	1850
19.II.1.	Residence and similar qualification (connection) factors in other conflict of law rules	1850

19.11.2.	Residence, stay (permanent and habitual) under the HCCH conventions	1851
19.11.3.	Czech concept of <i>habitual residence</i> as an example of the prevailing state and absent legal tradition concerning <i>habitual residence</i> ...	1854
19.111.	Instructions of the European Council	1855
19.111.1.	Resolution of the Committee of Ministers 72(1) of 19 January 1972	1855
19.111.2.	Residence	1855
19.111.3.	Domicile	1855
19.IV.	Term <i>habitual residence</i> in English law	1855
19.V.	Conflict of law regulations of the <i>Community</i> secondary law	1857
19.VI.	Other ECJ case law	1857
19.VII.	The term <i>habitual residence</i> in the <i>Regulation</i>	1858
19.VII.1.	Autonomous interpretation	1858
19.VII.2.	Habitual residence in the ECJ case law	1859
19.VIII.	Habitual residence of a legal entity: Status of legal entities from the private international law perspective (<i>incorporation theory</i> versus <i>real seat theory</i>)	1860
19.VIII.1.	Significance of the status of legal entities within legal relationships with an international element	1860
19.VIII.2.	Citizenship of legal entities	1861
19.VIII.3.	Statutory theory versus the purpose of the Community conflict of law regimes including the Regulation and the Convention	1862
19.VIII.4.	Determination of the seat of the legal entity	1863
19.VIII.4.1.	Methods for the qualified determination of the seat of the legal entity	1863
19.VIII.4.2.	Incorporation principle	1864
19.VIII.4.3.	Statutory theory of the real seat theory and link-up to real residence	1865
19.VIII.4.3.1.	Principle of the seat	1865
19.VIII.4.3.2.	Relationship of the real seat theory to habitual residence and other conflict of law criteria in European private international law	1866
19.VIII.4.4.	Combined systems	1866
19.VIII.4.5.	Approach of some Member States when determining the seat	1867
19.IX.	Establishment of legal entities and entrepreneurs in contractual obligation relationships with an international element	1873
19.IX.1.	Meaning of the term establishment for contractual obligation relationships	1873
19.IX.2.	Types of establishment	1875
19.IX.2.1.	Establishment, principal establishment and other establishment	1875
19.IX.2.2.	Branch, agency and other establishment	1876
19.IX.2.3.	Central administration and main establishment	1877
19.IX.3.	Establishment in the mode of <i>the Regulation 1346/2000 v. establishment</i> in other legislation of European private international law	1877

19.X.	Habitual residence of companies and other bodies, corporate or unincorporated in the regime of Article 19(1) and (2) of the Regulation	1878
19.XI.	Habitual residence of natural persons acting in the course of the business activities (Article 19(1) of the Regulation)	1879
19.XII.	Time perspective under Article 19(3) of the Regulation and relation to the mode of application of the Convention	1879
19.XIII.	Member States' experiences with interpretation and application of the provision	1880
19.XIV.	Some conflict (unclear) situations concerning ascertainment of habitual residence	1880
19.XIV.1.	Habitual residence of the consumer and the entrepreneur	1880
19.XIV.2.	Several residences or seasonal/alternating residence	1881
19.XIV.3.	Ambiguity of habitual residence for business in the consumer's relationships	1881
19.XIV.4.	Case law	1883
19.XIV.4.1.	ECJ—Court of Justice of the European Communities	1883
19.XIV.4.2.	Member States courts case law	1886
19.XIV.4.2.1.	(CZ) Czech Republic	1886
19.XIV.4.2.2.	(D) Germany	1887
19.XIV.4.2.3.	(UK) United Kingdom of Great Britain and Northern Ireland—law: England and Wales (UK/EN)	1888
	Literature	1888
	Article 20 of the Regulation/Article 15 of the Convention	1895
20.1.	Definition of Renvoi 1901	18%
20.11.	Doctrinal solution of renvoi in selected legal systems and jurisdictions	1899
20.11.1.	Continental approaches to <i>renvoi</i>	1899
20.11.1.1.	Diversity of solutions and the fundamental admissibility of renvoi	1899
20.11.1.2.	The approach of some [continental] legal systems to renvoi.	1900
20.11.1.2.1.	(A) Austria	1901
20.11.1.2.2.	(CZ) Czech Republic	1901
20.11.1.2.2.1.	Admissibility of renvoi under section 35 MPSaP (CZ)	1901
20.11.1.2.2.2.	Evaluation of reasonable and equitable arrangements of a legal relationship	1901
20.11.1.2.2.3.	Forum shopping <i>versus</i> misuse of law (<i>fraus legis</i>)	1901
20.11.1.2.2.4.	Close relationship with the procedural rules of private international law	1902
20.11.1.2.2.5.	Renvoi under the government draft for a new Act on private international law (CZ)	1903
20.11.1.2.3.	(D) Germany	1905
20.11.1.2.4.	(E) Spain	1905
20.11.1.2.5.	(PL) Poland	1906
20.II.2.	The approach under <i>Common Law</i> (especially from the perspective of English law)	1906

20.11.2.1.	Domicile under <i>Common Law</i> as the basis for competency (jurisdiction), determination of the so-called <i>proper law</i> and the importance of renvoi	1906
20.11.2.2.	Dependence of the possible use of renvoi on the analysis and evaluation of the facts of the case and the legal situation	1908
20.11.2.3.	Doctrinal approach of the <i>Common Law</i> (English law) to <i>renvoi</i>	1909
20.11.2.4.	Hidden renvoi in <i>Common Law</i>	1910
20.11.2.4.1.	Hidden renvoi in English law	1910
20.11.2.4.2.	Comparison with the hidden conflict of conflict of law rules	1911
20.111.	Renvoi to the law of a state with multiple national legal systems (conditional upon territory or person)	1912
20.111.1.	Renvoi to the law of a state with multiple national legal systems but with universal private international law	1912
20.111.2.	Renvoi to a legal system without uniform private international law conflict of law rules	1912
20.IV.	Genesis of the <i>Regulation</i>	1913
20.V.	Exclusion of <i>renvoi</i> under the <i>Regulation</i> and under the <i>Convention</i>	1914
20.VI.	Exception to the exclusion of renvoi and differences between the <i>Regulation</i> and the <i>Convention</i>	1914
20.VII.	<i>Renvoi</i> to the law of a Member State as opposed to <i>renvoi</i> to the law of a non-Member State	1915
20.VIII.	The influence of the choice of applicable law on the exclusion of renvoi	1915
20.VIII.1.	The choice of the law of a Member State/Contracting State	1915
20.VIII.2.	Choice of the law of a non-Member (Contracting) State	1917
20.IX.	Renvoi in sources of international origin	1917
20.IX.1.	The importance of sources of international origin for conflict of law rules, in light of some particular issues	1917
20.IX.2.	The necessity to examine the impact of conflict of law rules of private international law on the conflict of law (scope, construction and methods of application) rules of the state to which renvoi is made	1918
20.IX.3.	The special status of the Conventions of the Hague Conference on Private International Law (HCCH)	1918
20.IX3.1.	Conflict of law rules as the main subject of the normative outcomes of the HCCH	1918
20.IX.3.2.	Regulation of <i>renvoi</i> in the HCCH Conventions	1919
2Q.IX.4.	Bilateral conventions on legal cooperation (CZ)	1921
20.X.	Case law	1922
2Q.X.1.	Case law of Member States	1922
20.X.1.1.	(A) Austria	1922
20X1.2.	(CZ) Czech Republic	1922
20X1.3.	(D) Germany	1923
20.X.1.4.	(F) France	1925
20.X.1.5.	(UK) United Kingdom of Great Britain and Northern Ireland—the law of England and Wales (UK/EN)	1926
20X2.	Case law of Non-Member States	1929

20.X.2.1.	(AUS) Australia	1929
20.X.2.2.	(CH) Switzerland	1930
20.X.3.	Case law of the ECtHR	1930
	Literature	1931
Article 21 of the Regulation! Article 16 of the Convention		1935
21.1.	Public policy as a universal instrument of private international law 1939	1935
21.11.	Sources of law	1936
21.11.1.	Sources of domestic origin (CZ)	1936
21.11.1.1.	Expression of the general security situation and foundations of the state system	1936
21.11.1.2.	A collection of special relationships which are subject to intensive protection	1937
21.11.1.3.	Conflict of law public policy	1937
21.11.2.	Sources of international origin	1938
21.11.2.1.	Hague Conference on Private International Law	1938
21.II.2.1.1.	Public policy clauses in HCCH Conventions	1938
21.11.2.2.	Sources of interpretation	1943
21.11.2.2.1.	Case law of the courts	1943
21.11.2.2.2.	Case law of the ECtHR	1943
21.111.	Concept and purpose of a substantive (conflict of law) <i>public policy</i>	1944
21.IV.	Public policy, constitutional [fundamental] rights and constitutional order	1945
21.V.	Public policy and application of/regard for domestic and foreign overriding mandatory provisions	1946
21.VI.	Public policy [substantive] from the perspective of certain national legal systems	1947
21.VI.1.	EU Member States	1947
21.VI.2.	Selected Non-Member States of the EU	1954
21.VII.	Differentiation between substantive and procedural public policy	1954
21.VIII.	Public policy and nullity of legal acts	1955
21.IX.	Negative and positive public policy versus the effect of domestic overriding mandatory provisions	1958
21.IX.1.	Qualified interest in the negative effect of rules	1958
21.IX.2.	The French doctrine of <i>l'ordre public v lois de police et de surete</i>	1959
21.IX.3.	The German doctrine of special connection	1960
21.IX.4.	The common basis of a public interest with a different intensity and mechanism of effects	1960
21.IX.5.	The Anglo-Saxon doctrine of <i>public policy</i>	1961
21.X.	Application of public policy	1963
21.X.1.	Method of application of public policy	1963
21.X.2.	Substitute applicable law (handling the <i>inapplicability</i> of the applicable law as a consequence of the application of public policy) under the <i>Convention</i> and the <i>Regulation</i>	1963

21.X.3.	Application of public policy in connection with the determination of the applicable law	1967
21.X.4.	The conflict of law regime under the <i>Convention</i> and the <i>Regulation</i>	1967
21.X.4.1.	The concept of the <i>Convention</i>	1967
21.X.4.2.	The concept of the <i>Regulation</i>	1968
21.X.4.3.	<i>Community</i> and international public policy according to the concept of the <i>Convention!Regulation</i>	1969
21.X.4.3.1.	<i>Community</i> public policy (conflict of law)	1969
21.X.4.3.2.	International public policy (conflict of law)	1970
21.X.4.4.	Assessment of the potential impossibility of future enforcement due to a hypothetical incompatibility of a judgment with public policy, executed already under way in trial proceedings	1971
21.XI.	From case law	1972
21.XI.1.	ECJ—Court of Justice of the European Communities	1972
21.XI.2.	Case law of Member States	1977
21.XI.2.1.	(A) Austria	1977
21.XI.2.2.	(B) Belgium	1978
21.XI.2.3.	(CZ) Czech Republic	1979
21.XI.2.4.	(D) Germany	1988
21.XI.2.5.	(F) France	2002
21.XI.2.6.	(I) Italy	2002
21.XI.2.7.	(SE) Sweden	2003
21.XI.2.8.	(SK)—Slovakia	2003
21.XI.2.9.	(UK) United Kingdom of Great Britain and Northern Ireland— law: England and Wales (UK/EN)	2005
21.XI.3.	Case law of the courts of non-member states:	2007
21.XI.3.1.	(CH) Switzerland	2007
21.XI.4.	From arbitration practice	2009
21.XI.4.1.	(CZ) Czech Republic	2009
21.XI.4.2.	ICC	2009
21.XI.5.	Case law of the ECtHR	2010
	Literature	2012
	Article 22 of the <i>Regulation!</i>Article 19 of the <i>Convention</i>	2031
22.1.	A comparison between the <i>Regulation</i> and the <i>Convention</i> 2028	2032
22.11.	The genesis of Art. 22 of the <i>Regulation</i>	2032
22.111.	The conception of the conflict solution	2032
22.IV.	Material and territorial scope	2033
22.IV.1.	Territorial units with their own system of sources of law	2033
22.IV.1.1.	A legal system from a formal perspective	2033
22.IV.1.2.	The ambivalence of territorially disparate interpretation and legal practice	2033
22-IV.2.	Merging of the territorial and material scope in the example of the (UK)	2034
22-IV.3.	The significance for countries with a federal system using the example of (D)	2034

22.IV.4.	Special autonomous territories	2035
22.IV.5.	The regulation for the conflict resolution of a relation to a state with more than one territorial units with their own legal regime pursuant to HCCH conventions	2035
	Literature	2040
Article 23 of the Regulation/Article 20 of the Convention		2043
23.1.	Systematics of sources of conflict of law rules of private international law from the perspective of Article 23 of the Regulation (Article 20 of the Convention) 2039	2044
23.1.1.	Sources	2044
23.1.2.	Significance of the characterisation of a source of conflict of law rules on the interpretation of a relation to other (or other Community) sources of private international law and the essential qualitative difference between Article 23 of the Regulation and Article 20 of the Convention	2047
23.1.3.	Competition between provisions from a Community perspective	2048
23.1.3.1.	Direct effect of Regulations as a basic starting point	2048
23.1.3.2.	Principles of precedence of a directly applicable Community measure (Regulations) in relation to rules of national origin	2048
23.11.	Difference between the rules laid down in the Convention (Article 20) and the Regulation (Article 23)	2050
23.11.1.	Principal difference between the purposes of Article 20 of the Convention and Article 23 of the Regulation	2050
23.11.2.	Difference in terms of concept and principle of the Regulation	2051
23.11.3.	Relation to Community legislation of various types	2051
23.11.4.	A language comparison between the Convention and the Regulation	2052
23.111.	The Regulation	2052
23.111.1.	Comparison between each language version of the Regulation	2052
23.111.2.	Scope of Article 23 of the Regulation	2052
23.111.2.1.	Material scope of Article 23 of the Regulation	2052
23.111.2.2.	Application in time of Article 23 of the Regulation	2054
23.111.3.	Concept of Article 23 of the Regulation	2054
23.IV.	The genesis of Article 23 of the Regulation (Article 22 of the Proposal for a Regulation)	2055
23.IV.1.	Concept of the Proposal for a Regulation	2055
23.IV.2.	Proposals to extend the Regulation through establishing a provision derogating conflict-of-law rules in other sources of Community law	2057
23.V.	Relationship between Regulations and Directives as sources of Community law	2058
23.V.1.	Influence of effects of individual sources of secondary law on possible competition	2058

23.V.2.	Hierarchy between sources of secondary law and the assertion of the <i>lex specialis derogat generali</i> and <i>lex posterior derogat legi priori</i> principles	2059
23.V.2.1.	Factual hierarchy dependent on the purpose of a rule in relation to primary <i>Community</i> law	2059
23.V.2.2.	Application of basic principles	2060
23.V.2.3.	Application of the <i>lex specialis derogat legi generali</i> principle	2060
23.V.2.4.	Application of the <i>lex posterior derogat legi priori</i> principle	2063
23.V.3.	Qualification of a conflict of provisions found within various sources and the solution	2063
23.V.3.1.	Qualification of a possible conflict	2063
23.V.3.2.	Priority of other conflict of law rules before the <i>Regulation</i> as a <i>solution</i> for cases of <i>competition</i> of fully equal rules	2064
23.VI.	Provisions of Article 20 of the <i>Convention</i>	2066
23.VI.1.	The scope of Article 20 of the <i>Convention</i>	2066
23.VI.1.1.	Material scope	2066
23.VI.1.2.	Time applicability of the <i>Convention</i>	2066
23.VI.2.	Significance of Article 20 of the <i>Convention</i> in relation to non- <i>Community</i> sources and Article 21 of the <i>Convention</i>	2066
23.VI.3.	Relationship of the <i>Convention</i> with other <i>Community</i> provisions	2067
23.VI.4.	Difference in wording of the <i>Convention</i> and the <i>Regulation</i> (from the view of the <i>Convention</i>)	2067
23.VI.5.	Declaratory significance of Article 20 of the <i>Convention</i>	2068
23.VI.6.	Conflict of the <i>Convention</i> and <i>Community</i> law	2068
23.VI.6.1.	Precedence of <i>Community</i> law	2068
23.VI.6.2.	Conflict with national law with only partial support in <i>Community</i> law	2068
23.VI.6.3.	A conflict with other than <i>Community</i> law versus the universal effect of the <i>Convention</i>	2071
23.VI.6.3.1.	A conflict and the universal effect of the <i>Convention</i>	2071
23.VI.6.3.2.	Other cases of conflicts with the <i>Convention</i>	2071
23.VI.6.3.3.	Conflict of conflict of law provisions from the viewpoint of international, constitutional and primary European law	2071
23.VII.	Case law	2072
23.VII.1.	ECJ —The Court of Justice of the European Communities	2072
23.VII.2.	Case law of Member States	2074
23.VII.2.1.	(A) Austria	2074
23.VII.2.2.	(B) Belgium	2075
23.VII.2.3.	(CZ) Czech Republic	2075
23.VII.2.4.	(D) Germany	2076
23.VII.2.5.	(F) France	2077
23.VII.2.6.	(SK) Slovakia	2078
	Literature	2078
Article 24 of the <i>Regulation</i>		2083
24.1.	Replacing the <i>Convention</i> by the <i>Regulation</i>—ad Art. 24 (1) of the <i>Regulation</i>	2083

24.11.	The continuity of the Regulation—ad Article 24(2) of the Regulation	2086
24.11.1.	Continuity as a rule	2086
24.11.2.	References to the <i>Convention</i>	2086
24.11.2.1.	Adoption of the references as an expression of the evolution of European international private law	2086
24.11.2.2.	Adopting normative references	2086
24.11.2.3.	Doctrinal and adjudicated opinions	2087
24.11.2.4.	Conditions for the transfer of references	2087
24.11.2.5.	The actual utilisation of the new solution pursuant to the <i>Regulation</i> in cases of the application of the <i>Convention</i>	2088
24.111.	ECJ Case law—The Court of Justice of the European Communities Literature	2090 2093

Article 25 of the Regulation/Article 21 and Article 23 of the Convention 2095

A: Convention and Regulation: the regime which is in conformity with the conception of European Private International Law .. 2096

25.1.	The purpose of the regulation (the same purpose with Article 25 of the Regulation and Article 21 of the Convention)	1848	2096
25.11.	International treaties (convention)		2096
25.11.1.	Solution of the choice-of-law problem of international treaties according to the principles of international (public) law		2096
25.11.2.	The concept of successively agreed conventions		2098
25.11.2.1.	Ratione temporis as a qualifier		2098
25.11.2.2.	Identity of the convention subject matter as an act of public international law		2100
25.11.2.3.	The presumptions included in Article 30 VCLT		2100
25.11.2.4.	Conclusion on [international] treaties and potential choice-of-law problem		2102
25.11.3.	International treaties concluded by the Communities		2102
25.11.3.1.	International conventions concluded by the Communities without Member States		2102
25.11.3.2.	International treaties concluded by the Communities and member states		2102
25.111.	Conception and interpretation of Article 21 of the Convention		2105
25.111.1.	Scope and purpose		2105
25.111.2.	Material scope of Art. 21 of the <i>Convention</i>		2106
25.111.3.	Time, territorial and subjective scope of Art. 21 of the <i>Convention</i>		2107
25.111.3.1.	Overlaps of all the conditions of application (effects)		2107
25.111.3.2.	Special meaning of time scope of Art. 21 of the <i>Convention</i> and their connection with Art. 23 through Art. 25 of the <i>Convention</i>		2107
25.111.4.	Relationship between the <i>Convention</i> and directly applicable substantive law regulation of international origin		2108

25.IV.	Genesis of art. 25 of the Regulation on the background of history of the Convention	2110
25.V.	Conception and interpretation of Art. 25 of the Regulation (projected on the historical background of the Convention platform)	2111
25.V.1.	The basic differences from the Regulation perspective	2111
25.V.2.	Scope of applicability	2111
25.V.2.1.	Subject-matter scope of Art. 25 of the Regulation compared to Art. 21 of the Convention	2111
25.V.2.2.	Time applicability	2112
25.V.2.2.1.	International obligations of the Member States prior to an adoption of the Regulation	2112
25.V.2.2.2.	Future (prospective) international obligations	2112
25.V.2.2.2.1.	Areas falling within the subject-matter scope of the Regulation	2112
25.V.2.2.2.2.	Areas which are not regulated by the subject-matter scope of the Regulation	2112
25.V.3.	Concept and principles of the relations of the choice-of-law regulation according to art. 25 of the Regulation: priority of other obligations of the member states in relation to third countries	2113
25.V.4.	International conventions where at least one party is an EU non-member state (art. 25 section 1 of the Regulation)	2113
25.V.5.	International conventions of which only member state are parties	2115
25.V.6.	The meaning of definition of member state according to Art. 1 section 4 of the Regulation	2116
25.V.7.	Experiences of contracting states of the Convention and member states of EU and prospective expectations regarding application of international obligations of member (contracting) states in the regime of the Regulation	2116
25.V.7.1.	Areas of possibly concurring jurisdictions	2116
25.V.7.2.	Attempts on termination of other (concurring) obligations in relation to a Non-Member state	2117
25.VI.	Articles 23 through 25 of the Convention	2117
B:	Relationships to other regulations: some important international treaties and groups of international treaties which bound the member states within the scope of Art. 25 of the Regulation	2118
25.VII.	The Conventions adopted during the Hague Conferences on international private law (HCCH) and their relation to the EC	2118
25.VII.1.	Character and description of HCCH	2118
25.VII.2.	Structure of HCCH	2119
25.VII.3.	Activity of HCCH	2119
25.VII.4.	HCCH pro futuro and accession of the Communities to HCCH	2120
25.VII.5.	Membership of the EC in HCCH	2124

25.VII.6.	Correction of restriction arising for the Member States—the EC Regulation no. 664/2009 (the steps to be taken when the agreements on family and matrimonial matters are concluded)	2127
25.VII.7.	The overview of HCCH treaties and their [prospective] relationship with Regulation and Convention	2129
a.	substantive-law area	2129
b.	procedural law area	2136
25.VIII.	International Commission on Civil Status	2142
25.VIII.1.	Establishment and subject matter of ICCS	2142
25.VIII.2.	Activity of ICCS	2143
25.VIII.3.	Relation to HCCH Conventions	2143
25.VIII.4.	Cooperation with other international organisations	2143
25.VIII.5.	Relation to the mission and powers of the <i>Communities</i> and agreement on cooperation with EC	2144
25.VIII.6.	Conventions concluded within the framework of ICCS activities and related to the problems of law of contractual obligations (choice-of-law regulation)	2144
25.VIII.7.	Relations to <i>Regulation/Convention</i> and to HCCH conventions	2145
25.VIII.8.	Bibliography of ICCS	2146
25.IX.	Vienna Convention and its direct relation to the choice-of-law regulation of <i>Convention</i> and <i>Regulation</i>	2146
25.IX.1.	Part of community, pan-European and international system of important normatives for contractual obligations	2146
25.IX.2.	Nature of Regulation	2148
25.IX.3.	Scope of application	2149
25.IX.4.	Limitation of subject matter scope of Vienna Convention	2152
25.IX.4.1.	Matters excluded from subject matter scope of Vienna Convention (art. 2)	2152
25.IX.4.2.	Matters which are not expressly regulated by Vienna Convention	2152
25.IX.5.	Interpretation of Vienna Convention (art. 7) and questions not expressly regulated	2153
25.IX.5.1.	General principles of application	2153
25.IX.5.2.	Unity and principle of good will	2153
25.IX.5.3.	Unity and international nature of Vienna Convention	2154
25.IX.5.4.	Complying with good faith in international business contact....	2154
25.IX.6.	Customs	2156
25.IX.7.	Place of business (Vienna Convention) versus ordinary residence (Convention/Regulation)	2156
25.X.	Conflicting regulation in Czech law and its relationship to international and Community obligations	2158
25.X.1.	Czech regulation of private international law and its relationship to obligations arising from international contracts	2158
25.X.2.	Choice of law regulation in bilateral treaties on legal aid	2159
25.X.2.1.	Significance of bilateral contractual regulation for determination of choice of law status	2159
25.X.2.2.	The relationship of bilateral treaties on legal aid and any other commitments relating to Community contracting states and Community regime of choice of law regulation	2161

25.X.2.3.	The regime to determine applicable law under some bilateral international treaties on legal aid	2162
25.X.2.4.	Treaty on legal aid with (HU)	2163
25.X.2.5.	The Treaty on legal aid with (Mongolia)	2164
25.X.2.6.	The Treaty on legal aid with (PL)	2165
25.X.2.7.	The Treaty on legal aid with (RO)	2166
25.X.2.8.	Treaty on legal aid with (UA)	2167
25.XI.	Analogous legislation in Regulation 864/2007	2168
25.XII.	Case Law	2169
25.XII.1.	ECJ—The Court of Justice of the European Communities	2169
25.XII.2.	Case law of Member States	2182
25.XII.2.1.	(A) Austria	2182
25.XII.2.2.	(B) Belgium	2183
25.XII.2.3.	(CZ) Czech Republic	2184
25.XII.2.4.	(D) Germany	2187
25.XII.2.5.	(F) France	2187
25.XII.2.6.	(I) Italy	2188
25.XII.2.7.	(NL) Netherlands	2189
25.XII.2.8.	(SK) Slovakia	2189
25.XII.3.	Case law of ECHR	2189
	Literature	2196
Article 26 of the Regulation/Articles 23—25 of the Convention		2207
26.1.	Rules regulating horizontal duties between the EC and the Member States regarding their existing obligations vis-a-vis non-member states and their obligations <i>pro futuro</i>. 2189 ...	2208
26.1.1.	The importance of Article 26 of the <i>Regulation</i>	2208
26.1.2.	Existing obligations of Member States vis-a-vis non-member states and their obligations <i>pro futuro</i> —regarding Article 26(1) of the <i>Regulation</i>	2209
26.1.3.	Obligations of Member States (and the EC) <i>pro futuro</i> —regarding Article 26(2) of the <i>Regulation</i>	2209
26.11.	Unclear extent of the obligation to notify	2209
26.11.1.	Types of rules subject to notification	2209
26.11.2.	The importance of qualification (classification) of conflict rules as a condition for notification under Article 26 of the <i>Regulation</i>	2210
26.111.	Definition of conflict rules from the general perspective and for the purposes of Article 26 of the <i>Regulation</i>	2210
26.111.1.	Classification of private international law rules	2210
26.111.2.	Rules different from conflict rules of private international law	2210
26.111.2.1.	Direct substantive law rules	2210
26.111.2.2.	Rules of international civil procedural law	2211
26.111.3.	Combination of conflict rules and rules of international civil procedure	2212
26.111.3.1.	Combination of conflict rules and procedural rules in a single regulation and manifestation of modern tendencies	2212
26.111.3.2.	Combination of conflict and procedural rules at the national level	2212

26.111.3.3.	The approach adopted under Community law (Article 65(b) of the TEC)	2213
26.111.3.4.	The importance of the MPSaP (CZ) as a progressive norm of international private law and the combination of conflict and substantive law rules in the MPSaP (CZ)	2213
26.111.4.	Conflict rules	2214
26.111.4.1.	Purpose and effects of conflict rules	2214
26.111.4.1.1.	Determination of the applicable substantive law as the primary purpose of a conflict rule	2214
26.111.4.1.2.	Public law effects of conflict rules and of their purpose	2215
26.III.4.1.4.	Practical importance of the public-law assessment of the effects of conflict rules incorporated in <i>Community</i> law on the autonomous qualification (classification) of contractual obligations under the <i>Regulation</i>	2215
26.111.4.2.	Identification of conflict rules and definition of conflict rules vis-a-vis other rules	2216
26.111.4.2.1.	Classification of private international law rules and conflict rules	2216
26.111.4.2.2.	Factual situation as the scope of the conflict rule according to a narrower and a broader definition	2216
26.111.4.3.	A correct conflict of law solution as the purpose and the identifier of a conflict of law regulation	2217
26.111.5.	Purpose of conflict rules and definition of the difference between a conflict rule and a substantive law rule	2218
26.111.6.	Function of conflict rules	2219
26.111.7.	Designation of conflict rules	2220
26.111.8.	Conflict rules as rules of behaviour	2221
26.111.8.1.	Conflict rules of national origin and fulfilment of their purpose together with substantive law rules	2221
26.111.8.2.	Conflict rules of international origin	2221
26.111.8.3.	Conflict rules of Community origin	2221
26.111.9.	Structure of conflict rules and their legislative formulation	2222
26.111.9.1.	Recipients of conflict rules	2222
26.111.9.2.	Legislative technical structure of a conflict rule	2222
26.111.10.	Classification of conflict rules	2223
26.111.10.1.	Uniformity and diversity of the types of conflict rules	2223
26.111.10.2.	Bilateral and unilateral conflict rules	2223
26.111.10.2.1.	Bilateral conflict rules	2223
26.111.10.2.2.	Unilateral conflict rules	2223
26.111.10.3.	Influence of the statutory theory on the wording of conflict rules	2225
26.111.10.3.1.	Conflict rules with a modern wording	2225
26.111.10.3.2.	Conflict rules formulated under the influence of the statutory theory	2225
26.111.10.3.3.	Independent and dependent conflict rules	2226
26.111.10.4.	Non-mandatory and mandatory conflict rules	2226
26.111.10.5.	Other types of conflict rules	2226
26.111.10.5.1.	Extending (excluding, exclusionary) conflict rules and subsidiary conflict rules	2226
26.111.10.5.2.	Conflict rules connected with substantive law rules	2228

Conflict rules for the determination of the subsidiary law	2228
Conflict rules of national origin and internationally unified conflict rules	2228
Rules connecting delimitation of the jurisdiction (competence) of domestic authorities with application of the domestic law	2229
The <i>common law</i> doctrine (from the perspective of the /UK/)	2229
Notification under Regulation 864/2007 (common issues) ...	2229
The approach of certain countries to the performance of their obligations of notification and opinions presented by law schools in certain selected Member States	2230
Amendments and termination of international treaties from the EC perspective and from the perspective of international (public) law	2232
The 1969 Vienna Convention on the Law of Treaties	2232
Amendment of international treaties	2232
Fundamental prerequisites for amendments of bilateral international treaties	2232
Fundamental prerequisites for amendments of multilateral international treaties	2232
The principle of sovereign equality	2232
The cascading system as an expression of the identity of the contracting parties	2233
The general mechanism of concurrence between the membership of an individual contracting state and the membership of supranational regional associations as <i>collective</i> high contracting parties to international treaties and organisations	2233
Partial amendments (modifications) of multilateral treaties— <i>inter partes</i> modifications	2233
Termination of international treaties	2234
Agreement of the parties	2234
Contractus posterior (replacement by a later treaty)	2234
Material breach of a treaty	2235
Supervening impossibility of performance	2236
<i>Clausula rebus sic stantibus</i> : fundamental change of circumstances	2237
<i>v. pacta sunt servanda</i>	2238
Other grounds for terminating a treaty under the VCLT	2238
Status of the <i>Community</i> from the perspective of the international law of contracts	2238
Regime of the international (<i>public</i>) law	2240
The approach of the EC (internal regulation)	2240
Agreements concluded by the <i>Community</i>	2241
Mixed agreements the contracting parties to which include both states and the <i>Community</i>	2241
International agreements concluded by Member States	2243
International agreements concluded after the TEC entered into force	2243
International agreements concluded before the TEC entered into force	2243

26.VI.10.	Conflicting obligations	2244
26.VI.11.	The concept of negotiating future obligations in the field of private international law	2245
26.VI.12.	Council Regulation (EC) No 664/2009	2247
26.VI.13.	Proposal for a Regulation establishing a procedure for the negotiation and conclusion of bilateral agreements covering applicable law in contractual and non-contractual obligations	2248
26.VII.	Case law	2250
26.VII.1.	ECJ—The Court of Justice of the European Communities	2250
	Literature	2253
Article 27 of the Regulation		2257
	Literature	2258
Article 28 of the Regulation! Article 28 of the Convention		2259
28.1.	Purpose and subject matter of the rules	2238
28.11.	Genesis of the Regulation according to the Proposal for the Regulation	2259
28.111.	Determination of the moment of conclusion of the contract	2261
28.IV.	Application in time of the Convention vis-a-vis the individual countries	2261
28.IV.1.	Genesis of the Convention	2261
28.IV.2.	The regime of the Convention—entry into force, applicability	2262
28.IV.3.	Information about the entry into force in connection with the Convention regarding the individual countries	2263
28.V.	The regime of the Regulation	2264
28.VI.	Case law	2265
28.VI.1.	ECJ—The Court of Justice of the European Communities	2265
28.VI.2.	Case law of Member States	2265
28.VI.2.1.	(CZ) Czech Republic	2265
28.VI.2.2.	(D) Germany	2266
28.VI.2.3.	(SK) Slovakia	2266
	Literature	2267
Article 29 of the Regulation! Article 28 and 30 of the Convention		2269
29.1.	The concept of entry into force and effect	2251
29.11.	The regime of the Convention	2270
29.111.	Case law	2271
29.111.1.	ECJ—The Court of Justice of the European Communities	2271
29.111.2.	Case law of Member States	2271
29.111.2.1.	(CZ) Czech Republic	2271
29.111.2.2.	(D) Germany	2271
29.111.2.3.	(SK) Slovakia	2272
	Literature	2272

D:	Protocols on the interpretation of the Convention on the law applicable to contractual obligations of 19 June 1980	2275
D.01.	First Protocol on the interpretation of the 1980 Convention by the Court of Justice (consolidated version)	2276
D.02.	Second Protocol conferring on the Court of Justice , powers to interpret the 1980 Convention (consolidated version)	2284
E:	Report on the <i>Convention</i> (Giuliano—Lagarde)	2289
E.01.	Table of assignment of the scope of the Report to each provision of the Convention and analogously to the provisions of the Regulation	2290
E.02.	<i>Text of the Report</i>	2292
F:	Selected conventions concluded within the activity of the Hague Conference on Private International Law (HCCH)	2345
F.01.	Convention on the Law Applicable to International Sale of Goods	2346
F.02.	Convention on the Law Applicable to Contracts for the International Sale of Goods	2349
F.03.	Convention on the law applicable to agency	2356
F.04.	Convention on the law applicable to trusts and on their recognition	2362
G:	Selected conventions concluded within the activity of UNIDROIT	2369
G.01.	UNIDROIT Convention on International Factoring	2370
G.02.	UNIDROIT Convention on International Financial Leasing	2377
H:	Translation of the Selected Provisions for Private International Law selected European countries—conflict of laws rules for contractual obligations	2385
H.02.	(B) Belgium	2387
H.02.01.	Act on Private International Law of 16 July 2006 (selected provisions)	2387
H.02.02.	Civil Code (selected provisions)	2400
H.03.	(BG) Bulgaria	2401
H.03.01.	Act on Private International Law of 17 May 2005 (selected provisions)	2401
H.03.02.	Commercial Code (selected provisions)	2415
H.04.	Czech Republic (CZ) and Slovak Republic (SK)	2417
	Act on Private International and Procedural Law a cross-comparison between the regulations (Selected provisions)	2417
H.05.	(D) Germany	2440
	Introductory Act to the Civil Code (selected provisions)	2440
H.06.	(GR) Greece	2449
	Act on Private International Law (Selected provisions)	2449
H.07.	(HU) Hungary	2452

	Statutory Decree No. 13. of 1979	2452
	Providing for Private International Law (Selected Provisions) ...	2452
H.08.	(I) Italy	2460
	The reform of the Italian system of Private International Law (Selected provisions)	2460
H.09.	(N) Norway	2466
	Private International Law Act	2466
	Movable Property Acquisition Regulations of 3 April 1964, No. 01	2466
H.10.	(NL) Netherlands	2468
	Act Regulating Conflict Rules Applicable to Property Relationships	2468
H.11.	(P) Portugal	2475
	Statutory Rule No. 47344/66, of 25 November 1966	2475
	Civil Code (Selected provisions)	2475
H.12.	(PL) Poland	2484
H.12.01.	Private International Law of 12 November 1965	2484
H.12.02.	The proposal of the new Private International Law Act	2488
H.13.	(RO) Romania	2504
	Law No. 105 of 22 September 1992 on the Regulation of Private International Law (Selected provisions)	2504
H.14.	Selected Provisions for Private International Law	2525
	The United Kingdom of Great Britain and Northern Ireland: England and Wales (effective for Northern Ireland)	
	(UK/EN)	2525
H.14.01.	Contracts (Applicable Law) Act 1990 (chapter 36)	2525
H.14.02.	2004 No. 3448 (Chapter 160)—CONTRACTS The Contracts (Applicable Law) Act 1990 (Commencement No.2) Order 2004	2528
H.14.03.	Private International Law (Miscellaneous Provisions) Act 1995 (final provisions)—1995 CHAPTER 42 [selected provisions]	2529
I:	Overview of Literature	2533
I.I.	Monographs	2533
I.II.	Contributions to periodicals and collections	2608
I.III.	Literature available as electronic sources	2694
J:	INDEX	2705
J.I.	Introductory notes	2705
J.II.	Keyword index	2705
J.III.	Index of references to certain significant decisions issued in arbitration and general court proceedings	2877
J.III.1.	Sorted by states and then by individual general or arbitration courts	2877
J.III.2.	List according to indication of participants	2889
J.IV.	References to sources of law—legal regulations (of national/ domestic, Community, international and other origin) and other rules and sources	2898

J.IV.1.	Regulations of national origin (sorted by the country of origin)	2898
J.IV.2.	Community Legislation	2903
J.IV.3.	Regulations of international origin	2906