



News on the law applicable to contractual obligations: more certainty and attention to the weaker party

The contracts executed after the 17th December 2009 are now subject to the provisions introduced by the Regulation (EC) no. 593/2008 “Rome I” (the “Regulation”) on the law applicable to contractual obligations.

In the EU Member States, with the exception of Denmark, the Regulation substitutes the 1980 Rome Convention (the “Convention”), with the aim of foreseeing the conflict-of-law and expanding the “Europeization” process with regard to the civil law and the judicial cooperation, as previously done by the Regulation (EC) no. 864/2007 “Rome 2” (on the law applicable to non-contractual obligations) and 44/2001 “Bruxelles I” (on jurisdiction, recognition and enforcement of judgments in civil and commercial matters).

Confirmed the principle of the freedom of choice – with the unique limit of the public policy and overriding mandatory provisions, as well as of provisions which cannot be derogated from by agreement – the Regulation provides, similarly to the Convention, the rules to determine the law applicable to the contract in absence of choice made, both expressly or implicitly, by the parties. Nevertheless, whilst the Convention firstly refers to the law of the Country with which the contract “*is most closely connected*”, which usually corresponds to the place of residence of the party who has to carry out the “*characteristic performance*”, the Regulation definitely provides the law applicable to certain kinds of contracts, just residually making reference to the “*characteristic performance*” and “*the most closely connection*” criteria, for instance with regard to the contract not included in the Regulation, or in case of contracts manifestly more closely connected to a different country.

Therefore, as an example, in case of **sales of goods contracts**, if the parties have not otherwise chosen, the applicable law is the one of the country where the seller has his habitual residence; in case of **provision of services** (including agency) the habitual residence of the service provider; in case of distribution contracts the habitual residence of the distributor, and so on.

More articulated rules are provided for those contracts concluded with parties regarded as being weaker, because those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.

For example, with regard to **consumer contracts**, saved the preference – under certain conditions - for the law of the country of residence of the consumer, the parties can always choose a different law but within the limit of those provisions which cannot be derogated from by agreement (in the Country of residence of the consumer). With regard to the **employment contracts**, on the contrary, in case the parties have not made any choice, the law of the country in which or, failing that, from which the employee habitually carries out his activity, shall apply; and, just after, the law of the Country where the place of business through which the employee was engaged is situated.

With regard to the **insurance contracts**, the Regulation limits the parties in the freedom of choice, providing that the choice can be made within certain laws only, such as the one of the EU Member State where the risk is situated, or the law of the Country where the insured has his habitual residence or, in case of life insurance, the nationality; on the other hand, in case of an insurance contract covering a large risk, there is a full freedom of choice (saved the already mentioned mandatory limits) and, in absence of choice, the law of the Country where the insurer has his habitual residence or the one of the Country with which the contract is most closely connected, shall apply.

Similarly to the insurance contracts, also for **contracts for the carriage of passengers**, the parties can choose among determined laws only, such as the law of the Country where the passenger or the carrier have their habitual residence, or where the place of departure or destination is situated: differently, in case of carriage of goods, the law applicable shall be the one of the country of habitual residence of the carrier or of delivery.

The law applicable to the contract, as defined by the Regulation, generally disciplines the interpretation of the contract, the fulfilment of the resulting obligations, the consequences of eventual non-fulfilments, the extinction of the obligations, the prescriptions and limitation of actions, as well as the consequences of nullity of the contract: the obligations resulting from the pre-contractual negotiations, fall within the provisions of “Rome II”.

For more information on the matter and on the other issues covered by the Regulation, please write to: [**g.nunziante@nmlex.it**](mailto:g.nunziante@nmlex.it).

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