

Assessing the Impact of the Rome II Regulation's General Rule on Cross-Border Road Traffic Accidents: A Critique of Recent Case Law

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Abstract : The Rome II Regulation has established a uniform regime of conflict of law rules across the European Union (except for Denmark) which determines the law applicable in non-contractual obligations disputes. It marks a significant development towards the Europeanization of private international law and aims to provide the most appropriate connecting factors to achieve both legal certainty and justice in individual cases. Many non-contractual obligations are recognised to present such distinct factors that, to achieve these aims, a special rule is provided for determining the applicable law in cases in respect of product liability and environmental torts, for example. Throughout the legislative process, the European Parliament sought to establish a separate rule for road traffic accidents, recognising that these cases too present such novel situations that a blanket application of a *lex loci damni* approach would not provide an appropriate answer. Such attempts were rejected and, as a result, cases arising out of road traffic accidents are subject to the Regulation's general *lex loci damni* rule along with its escape clause and limited exception. This paper offers a critique of the Regulation's response to cross-border road traffic accident cases. In England and Wales, there have been few cases that have applied the Regulation's provisions to date, but significantly the majority of such cases are in respect of road traffic accidents. This paper examines the decisions in those cases and challenges the legislators' decision not to provide a special rule for such incidences. Owing to the diversity in compensation systems globally, applying the Regulation's general rule to cases of road traffic accidents - given the breadth of matters that are to be subject to the *lex cause* - cannot ensure an outcome that provides 'justice in individual cases' as is assured by the Regulation's recitals. Not only does this paper suggest that the absence of a special rule for road traffic accidents means that the Regulation fails to achieve one of its principal aims, but it further makes out a compelling case for the legislative body of the European Union to implement a corrective instrument.

Keywords : accidents abroad, applicable law, cross-border torts, non-contractual obligations, road traffic accidents

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