

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

From 17 December 2009 the courts of all EU Member States other than Denmark are obliged to determine the applicable law for contracts with an international element entered into on or after this date on the basis of a Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (the Regulation). The Regulation applies to most commercial and civil law contracts. These rules are not a radical departure from the rules previously applicable in the Czech Republic, i.e. the Rome Convention on the law applicable to contractual obligations from 1980 (the Convention). The Convention was published in the Collection of the International Treaties as notification No 64/2006 Coll. and it applies to contracts concluded after 1 July 2006. Where neither the Convention nor the Regulation applies, the Czech courts will generally look to the relevant national law, Act No 97/1963 Coll. on Private International and Procedural Law as amended.

The purpose of this thesis was to provide an overview of some of the most important provisions of the Regulation in comparison to the Convention, to highlight the areas of change in this new instrument. The first part of the thesis deals with the genesis of the Convention and the Regulation, with the characterisation of both the instruments and also their legislative history and scope.

This is followed by a part which focuses on the freedom of choice under these instruments. They both introduce the party autonomy as the cornerstone. The party autonomy allows the parties to choose the law that will govern their contract. As the next step, the thesis deals the change in the issue of the applicable law in the absence of choice and also discusses the issue of the Article 3(3) of both the instruments and provides arguments as to whether a choice of law made by the parties is possible in the so called purely domestic contracts, i.e. contracts where the choice of law is the only foreign element in such contract. Also the change in the Regulation when compared to the Convention is notable in some other provisions, however those are not the main focus of the thesis. The thesis refers to and brings a brief overview of for example certain special categories of contractual obligation such as consumer contracts,

contracts of insurance or individual employment contracts or mentions the Article 9(2) of the Regulation which deals with overriding mandatory provisions.