

NEW SOLUTIONS OF THE EUROPEAN PRIVATE INTERNATIONAL LAW IN THE FIELD OF INSURANCE CONTRACTS

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ABSTRACT

Determining the law applicable to contracts, particularly to international contracts, conventions and treaties, has always caused problems to both legal theoreticians and legal practitioners. The prevailing reason for the issue lies in the fact that a certain type of contract used to be interpreted in various ways. The choice of the applicable law depended on the choice of the link with the contract content. Due to the possibility of using different links, insurance contracts arose frequent legal debates and ambiguities, which was additionally complicated by the lack of harmonization and systematization of legal regulations and solutions. It was the European Union that tried to find an adequate solution for this complex issue of which one could hardly make any use in practice. The attempt referred to the adoption of the Rome I Regulation but the whole thing turned out to be only partially successful.

JEL classification: K12, K33

Key words: applicable law, insurance contracts, European Union, Rome I Regulation

1 INTRODUCTION

Insurance business is one of the most important branches of economy. It is the business that strongly influences economic development and in the last decade it has been featured by constant growth and complete internationalisation. These are the main reasons for the European Union to seek new legal solutions in order to make this complex area more transparent and its instruments more harmonized, to bring legal safety and predictability to a higher level and to make the end user

(particularly when it comes to natural persons) more protected. In terms of internationalisation, collision rules are of the greatest importance for achieving the above goals. It is inevitable to develop a new, more efficient legal framework which will be based on harmonized rules since the current one is complicated, non-transparent, inefficient and hardly applicable in practice¹. The clearest picture of the current condition in the area of insurance law can be found in the fact that at the moment it includes about 40 directives, regulations, conventions and treaties². This legal area is, among experts, famous for its complexity while applying a collision rule in case of dispute may sometimes be an insurmountable obstacle for the parties.

Amendments of the current regulations in the field of insurance law have been being prepared for years. The European Commission has pointed at all the prominent legal experts and institutions to take part in the discussions on the amendments. The task is to revise, refresh and, what is the most important of all, simplify the legal regime of insurance contracts. The new instrument aimed at accomplishing this task is Regulation of the European Parliament and Council no. 593/2008 on the Law Applicable to Contractual Obligations (hereinafter: Rome I Regulation)³. Therefore, this paper is focused on giving a brief overview of the previous instruments, the most relevant directives, conventions and regulations as well as the difficulties arising in practice caused by the scatter and numerousness of the former. However, the main emphasis is put on the Rome I Regulation, its emergence and comprehensive analysis of Article 7 of the Regulation which represents a new, special rule for insurance contracts. In the end, the paper will indicate the flaws that still exist since, despite detailed preparations and contemplations, they have not been eliminated by the new regime.

2. SYSTEM OF THE COLLISION RULES APPLICABLE TO INSURANCE CONTRACTS PRIOR TO THE ADOPTION OF THE ROME I REGULATION

Insurance contracts made after 17 December 2009 are subject to the Rome I Regulation. It is interesting to monitor its effects in practice, whether or not it is meeting the expectations of employers and, particularly, of professionals who have no choice but to apply it in their work. Among the former, the spotlight is directed to those who anyhow deal with insurance contracts.

Until the adoption of the Regulation, the collision rules and the selection of instruments applicable to a particular insurance contract had depended on the place of insured risk: if insured risk came from the territory of the EU and was covered

by an insurer established within the territory of the same organization, then the directives were the decisive factor. There are three generations of directives governing the area of life insurance⁵ and three regulating other types of insurance⁶. The regulations were amended in a way that nobody took care of the entire regulated area nor did anyone think of implications of their application. A hardly applicable system of rules with no internal logic was created.

If insured risk did not come from EU Member States, the Rome Convention was the governing document.

All the above facts indicate two problems. The first one is related to bare application of rules. The entire system was complicated and non-transparent and the rules were not harmonized, which all caused major difficulties when it came to application and, therefore, the system was often exposed to criticism. The second one is contained in the fact that such a concept of rules did not regulate some situations common for insurance business. What if an American purchases a life insurance policy in a Vienna branch office of an American insurance company? The risk refers to the European Union while the insurer's seat is beyond the borders of the EU. This context was not regulated by any of the above instruments. Moreover, what if an Austrian, by means of one policy, insures their property, a flat in Vienna and a country house in Croatia? This means that the insured risk is situated partly inside the territory of the EU and partly outside its territory. By virtue of Articles 1 and 3 of the Convention, such examples are excluded from the scope of application of the Rome Convention: "The rules of the Convention do not apply to insurance contracts covering risks situated on the territory of the EU. For the purpose of determining the place of risk (whether it is situated on the territory of a Member State or beyond), the court applies its internal rules." In such cases, the court used to deal with a situation by introducing a directive. However, Article 2 item d of the Second Directive of the Council on Direct Insurance prescribes that, in case of insurance of buildings, the place of risk shall be that of the Member State where the building is located. This implies that the Directive was useless if property was located outside the territory of the EU. Thus, neither the Rome Convention nor the Directive was to be applied, so the resolution of this situation was a real issue and not just a hypothesis of leisurely professors.

Still, various solutions were possible, depending on the creativity of the person dealing with the issue. Louise Merrett proposed the following solutions:⁸ regarding the part of the insurance contract relating to the property situated within the EU –

to apply the Directive, while concerning the part of the contract in connection with the property outside the EU – to apply the Rome Convention. That way the above case could have been solved, but what if the risk is indivisible? On particular occasions, depending on where the predominant part of the risk is situated, to implement either the Rome Convention or the directives. Furthermore, she suggested implementation of the Directive every time when the majority of risk was situated inside the territory of the EU.

Reinsurance contracts, as a special category, were regulated by the Rome Convention.

Beside the directives and the Rome Convention, particular contracts were stipulated by national collision rules of Member States.

This short overview of the sources of collision rules covering the field of insurance is given just to point out the complexity of the entire system whereas the examples can witness its numerous flaws and people's dissatisfaction with it. Having realized the issue, the European legislation accompanied with distinguished experts had been preparing the answer for long, but is the result satisfying?

3. FROM THE ROME CONVENTION TO THE ROME I REGULATION

The final text of the Rome I Regulation was adopted by the European Parliament and Council on 17 June 2008. The Regulation came into force on 17 December 2009 and completely pushed out the Rome Convention which was the last source of the European Private International Law in the form of international contracts (treaties and conventions)⁹. The Convention was not transformed into the Regulation only since it was obsolete and inadequate for a number of contractual obligations but also since the transformation was necessary for harmonization of the Convention provisions and the provisions of the Treaty of Amsterdam of 2 October 1997, particularly with Articles 61 to 65 of the latter which built a legal framework for development of unique legislation within the EU.

4. INSURANCE CONTRACTS AND THE ROME CONVENTION

Article 1 items 3 and 4 of the Convention determined the scope of its application to insurance contracts. The Convention was implemented if insured risk was found its place outside the EU area and if it came to reinsurance contracts. The Convention does include an autonomous definition of the place where insured risk

is situated but its Article 1 item 3 prescribes that, in order to establish whether the place of risk is situated on the territory of a member state or not, the court uses its own internal rules. Since the directives on insurance belong to internal affairs of Member States, the principle of *lex fori* should be applied indirectly.

The Convention does not involve a special rule for insurance contracts, so the general rules for choice-of-applicable law were implemented¹² – applicable law is the law selected by the parties¹³. The will of parties can be explicit and implicit but implicit choice has to, either due to contractual provisions or due to circumstances, include the formulation "with reasonable certainty", which used to cause trouble for its ambiguity. Then, the Convention allowed the selected law to be applied to both the entire contract or to only one of its parts (Article 3 item 1). Item 2 of the same Article defines that the parties may additionally select applicable law, which implies the possibility of modification of existing choice. Such a modification must not have a negative influence on third parties' rights. The Convention also restrains the freedom of choice-of-law ordering that if all the other segments of the current circumstances were linked only with one state at the moment of selection, regardless of possible selection of applicable law by the parties with or without jurisdiction of a foreign court, then the choice-of-law by the parties shall not affect the application of the law of the above state based on mandatory rules that cannot be excluded by the contract. The next restriction relates to the Convention provision that the mandatory rules of other states which are in close connection with the current circumstances may have effect on the interpretation of insurance contracts if the provisions of those states shall be applied regardless of the law applicable to the contract (Article 7 item 1). This provision has not been adopted by Portugal, Ireland, Luxembourg, Germany and Great Britain by virtue of veto foreseen by Article 22 para 1.a.¹⁴. There is also the restriction of autonomy of parties which is defined by the provision that conventional solutions do not limit the application of mandatory rules of the state where the competent court is situated (Article 7 para 2). Finally, Article 16 imposes another restriction on the parties: the application of the selected law may be denied if it is in contradiction with the constitutional system of the state where the competent court is situated.

If the parties do not choose an applicable law, the institute of the characteristic performer shall be implemented:

"If the parties do not choose an applicable law in accordance with Article 3, a contract will be subject to the law of the state which is in the closest connection

with the contract...a state shall be considered to be in the closest connection with the contract if there the respective party performs an activity characteristic for that contract and if there the same party, at the moment of contract conclusion, has their habitual residence, or in case of legal entities, has the main seat or headquarters”¹⁵ In terms of insurance contracts, an insurer is thought to be the characteristic performer and hence the applicable law would be the law of the state where the insurer has their seat. However, the Directive specifies that the applicable law shall be the law of the place where the insurant has their habitual residence or the place where the insured risk is situated.¹⁶ One can notice that the same circumstances from the point of view of both the Convention and the directives do not always derive the same links, so the choice-of-applicable law can vary since it is interpreted according to the links.

Under certain conditions (Article 5 para 2), the Convention can qualify insurance contracts as consumer contracts, so it, in order to protect the consumer (insurant if they are natural persons and the policy does not refer to their job), prescribes that the choice-of.-applicable law cannot deprive the consumer of the protection provided by the mandatory rules of the state of their habitual residence.¹⁷ The directives do not include such differentiation among insurance contracts, but there is a significant difference between the perception of risks in insurance contracts, i.e. large and mass (medium and small).

4. 2 Green Paper and Proposal

There are two important instruments regarding the transformation of the Convention into the Regulation – the 2003 Green Paper (on transformation of the 1980 Rome Convention on the Law Applicable (Choice-of-Law) to Contractual Obligations into an Instrument of the Community and Its Modernization) and the Proposal of the Regulation of the European Parliament and Council on the Law Applicable to Contractual Obligations which was brought before the European Commission in 2005.

The European Commission had been preparing the amendments of the Rome Convention for long. For that purpose and in order to ”initiate consultations of a large scale among interested parties on numerous legal issues with respect to Rome Convention actualization and its transformation into an instrument of the Community”²⁰, it published the Green Paper in January 2003. All the interested parties were invited to send back their answers to the questions raised by the Com-

mission. Pursuant to the answers, the Proposal (Draft) of the Rome I Regulation was to be drawn up later.

As far as insurance contracts were concerned, the Commission ascertained that experts for private law often criticised the system of collision rules due to its lack of transparency - "experts for insurance law are able to find an appropriate law but others, with less competence, aren't"²¹ The question whether the rules for insurance contracts were satisfying or not was mostly answered negatively. A few Member States and most businessmen and representatives of consumer associations, respected institutions (International Chamber of Commerce, European Economic and Social Council), jurists, legal theoreticians and institutes (Max Planck Institute for Comparative and Private International Law), they all emphasized the need for a clearer and more harmonized regulation of the issue. Therefore, the Commission proposed three possible solutions: to supplement the Regulation with a special rule for insurance contracts which would determine the law applicable to insured risks situated outside the EU and, for the purpose of improvement of the legislation transparency, to incorporate the directives into the Regulation. The third offered solution was to improve transparency by enlisting regular amendments into the Annex to the Regulation on Sector Instruments²². The next step towards homogenous codification of mandatory private international law of the Community was the Proposal drawn up based on the conducted discussion, but the adoption of the third solution was a huge disappointment for all the participants. "We regret that the Proposal repeats the overcomplicated collision rules containing the directives of the second generation...once again we point out the need to consolidate the existing collision rules into a unique simplified rule without causing great substantial changes."²³

Then it again came to intensive negotiations at the Parliament and Council, which resulted in new draft solutions for insurance contracts. The rule on Insurance had been amended several times until 2007. The Commission's final draft of the Rule was presented on 19 November 2007 and it became Article 7 of the Rome I Regulation which was finally adopted on 17 June 2008.

5. NEW REGIME OF INSURANCE CONTRACTS UNDER THE ROME I REGULATION

National collision rules on insurance contracts and the rules from the directives and Rome Convention were replaced by a unique, special rule for insurance con-

tracts integrated into Article 7 of the Rome I Regulation. The replacement really represented a step forward in relation to the previous status.

Prior to detailed analysis of Article 7, it is important to state that the Regulation in its Article 1, unlike the Rome Convention, does not exclude insurance contracts covering risks inside the EU²⁴ from the field of application of *ratione materiae*. Nevertheless, the Regulation in its Article 1 para 2 item h does exclude a certain type of life insurance contracts from the conventional field of application. These life insurance contracts refer only to particular companies.²⁵ One should not also forget Article 2 which is aimed at conducting application of every right indicated by the Regulation, irrespective of the fact if it is a law of a Member State or not.

5. 1 Article 7

The first paragraph of Article 1 of the Regulation state: "This Article shall be applied to contracts mentioned in Article 2 (insurance contracts covering large risks) regardless of the fact whether the risk is situated on the territory of a Member State or not. It is not to be applied to reinsurance contract." Pursuant to this Article, insurance contracts are divided into those which cover large risks and those covering non-large risks (the so-called mass risks comprising medium and small risks). The large risks are stipulated by Article 7 regardless of their place (on the territory of the EU or beyond), but other risks are only governed by Article 7 if they are situated on the territory of a Member State. The application of this Article does not also involve reinsurance contracts, so these two types of contracts are subject to the general rules of the Regulation.²⁶ Nobody has ever offered a single reasonable argument why reinsurance contracts should be governed in a manner different from regulating large risks. All insurance contracts should be incorporated into Article 7 since this kind of solutions does not contribute to uniformity and simplification of solutions.²⁷

Article 2 defines the following: "in terms of insurance contracts covering large risks defined by Article 5 (d) of the First Directive of the Council 73/239/EEC of 24 July 1973 on Harmonization of Laws, Regulations and Administrative Provisions Relating to Conducting Direct Insurance Business, except for life insurance, the applicable law shall be the law of the state where the insurer has their habitual residence. If all the circumstances in a case indicate a more closely connection with another state, the law of the other state shall be applied." Insurance contracts covering large risks do not depend any more on the place where the insured risk is situated. As this area was regulated by the directives, the place of insured risk was

the link to the choice-of-law, which resulted in major problems in determination of applicable law if the risk was partly inside and partly outside the EU²⁹. These problems do not appear any more, so the situation considering insurance of large risks has been improved to a great extent.

Large risks are defined in Article 5 (d) of the First Directive of the Council on Direct Insurance and in the Annex to the same Directive which was amended by the Second Directive (for the sake of preciseness this should have been stated in paragraph 2). Large risks include railway, aircrafts, ships, good in transit etc. What is also comprised by large risks are credit risks related to insurant business. Fires and damage on things also belong to large risks if they are connected with a size of insurant business (criteria can be e.g. number of employees – min 250 employees, total turnover 12,500,000 EUR).

With large risks, the situation is clear – we have got a new rule which will certainly simplify determination of the applicable law which will then increase legal safety and make the work of courts and other interested parties easier, but concerning insurance contracts covering other risks certain problems remain since there is still a link with the place where insured risk is situated. Paragraph 3 of Article 7 of the Regulation refers to the insurance contracts covering other risks - "insurance contracts not connected with para 2". Para 1 is aimed at governing other risks situated on the territory of a Member State. When it comes to such contracts, the parties are free to choose a law themselves, but only in accordance with this paragraph. The following choice is permitted: (a) the law of any Member State in the area where the insured risk was situated at the moment of contract conclusion; (b) the law of the state of the insurant's habitual residence; (c) with life insurance, the law of the state of the insurant's citizenship; (d) in terms of insurance contracts covering the risks limited to events which can arise in a Member State other than the Member State where the risk is situated, the parties can choose the law of the former; (e) if a holder of an insurance policy governed by this paragraph performs an activity or works as freelancer and the respective insurance contract covers two or more risks related to those activities or professions and the risks are situated in different Member States, the parties may choose the law of either of the states or the law of the state where the holder has their habitual residence. The limitation of the autonomy of choice is, however, mitigated by the following provision: "When, in the cases described under points a, b, or e, the said Member State allows more freedom of choice for an insurance contract, the parties may take advantage of that freedom." We are of the opinion that this paragraph, though at first it does seem

so, does not unnecessarily limit the freedom of choice-of-law as many experts believe³⁰, but that it is a welcome compromise between the principle of protecting the weaker party (this paragraph undoubtedly provides a greater degree of protection to policy holders)³¹ and the freedom to choose a law. However, we must admit that the last provision of this paragraph brings a certain dose of legal uncertainty and unpredictability and that it “seriously compromises the equality and legal certainty which the Rome I Regulation should establish”.³²

A very interesting point of view is that of Urs Peter Gruber who holds this rule to be quite justified, understandable and “just”³³. Namely, he considers this division into contracts insuring large risks (and reinsurance contracts) and as insuring other risks just according to the criteria of need for protection. In contracts on insuring large risks (and reinsuring), the insurer and the other contractual party are equal partners in negotiation, therefore these contracts are subject to the rule on the choice-of-law which is essentially identical to the rule insuring other contracts (general rule for the choice-of-law from Article 3 of the Regulation and the rule from Article 4 of the Regulation regulating cases when parties do not choose the law themselves. This is so because the policy holder is “strong” enough to protect his interests on his own when negotiating. On the other hand, other risks are, simply put, those occurring in insurances in small and medium-sized enterprises (other than transport and loan risks) and, accordingly, the other contractual party cannot negotiate on equal footing, but has to accept typified contracts or pre-imposed insurers conditions, therefore, such a rule should provide special protection for them even though they are not consumers in the true sense of the word.

It needs to be mentioned that contracts insuring other risks are under certain conditions placed in the category of consumer contracts.³⁴ In that case, the policy holder (consumer) is provided with additional protection – the prevailing governing law is that of his habitual residence. Article 6 para 2 of the Regulation (regulating consumer contracts) allows indirectly the parties to choose the governing law themselves, but this governing law cannot diminish the protection provided for the consumer by the enforcing rules of the state of his habitual residence.

If the parties do not utilise the choice-of-law right, in accordance with para 3, the governing law for such a contract shall be that of the Member State where the risk was situated at the time when the contract was concluded. This provision should be brought into connection with para 6 which stipulates the method of determining the state where the risk is situated: for the purposes of this Article,

the state where the risk is situated is determined in compliance with Article 2 (d) of the Second Directive of the Council 88/357/EEC of 22 July 1988 Harmonization of Laws, Regulations and Administrative Provisions Relating to Conducting Direct Insurance Business Other Than Life Insurance and laying down provisions to facilitate the effective exercise of freedom to provide services, and in cases of life insurance the state where risk is situated shall be the state of commitment within the meaning of Article 1 (1) (g) of the Directive 2002/83/EC. In case of non-life insurances place of risk means Member State when the policy holder has habitual residence, or in case of legal entities, the Member State where they have been incorporated. There are three exceptions to this basic rule; for contracts on insurance of building, the place of risk is the state where the building is located, for vehicle insurance contracts, the place of risk is where the vehicle is registered, and for travel insurances and holiday insurances, the place of risk is the Member State where the policy holder has habitual residence.

This was a brief analysis of the third paragraph of the Regulation covering other risks if the risk is situated on the territory of a Member State, however, how can one determine the governing law if a risk is outside the EU? What about reinsurance contracts which were previously regulated by the Rome Convention? Experts think that such cases should be subject to the general rule for the choice-of-law (Article 3) or Article 4, regulating situations when parties themselves fail to select the law.³⁵

In spite of extensive preparations, there are still situations that are common in insurance activity, which have not been resolved by the Regulation. It is still questionable as to how to resolve a situation where an insured risk is partially in the EU and partially outside of it. The preamble under point 33 gives an instruction: “if an insurance contract which does not cover large risks insures more than one risk, at least one of which is situated on the territory of a Member State, and at least one on the territory of a third state, the special rule of this Regulation shall be applied only on risk or risks situated on the territory of the Member State.” The solution is to divide the policy on several separate insurance contracts. This solution can be immediately objected in the sense that it completely opposes business practice since insurers encourage such policies by numerous benefits for insurers, and collision rules, instead of providing protection to such practice bring uncertainty and insecurity – one state’s law is applied on one insured risk, and another state’s law on another risk, insured by the same policy. This can cause serious problems in practice. Louise Merret asks what about a situation where risk is in two places which is possible in case of a life insurance policy in a person with a habitual residence both

in England and New York³⁶. Ms Merret herself has no answer to this question, and practice has not resolved it in a satisfying way.

6. CONCLUSION

Until 17 December 2009, insurance contracts with international features had been governed in the EU by various regulations, three generations of regulations on life insurance, three generations of regulations on the broad area of other types of insurance, the Rome Convention on the Law Applicable to Contractual Obligations and by national collision rules of the Member States. This complicated, non-transparent and almost incomprehensible system for the majority of users was replaced by the Rome I Regulation on the above day. If nothing else, the fact that one instrument replaced all the previous ones means improvement.

The Rome I Regulation had been being prepared for long. The European Commission organized a comprehensive discussion and invited all the interested parties, practitioners, scientists, institutions and all the participants to give their contribution to the meeting in order to improve the situation which had been characterized as intolerable by all. Many of them attended the conference, e.g. respected scientific institutions, governments and parliaments, prominent legal theoreticians, non-governmental organizations etc. Among the interested parties there were some who were on opposite sides, e.g. Federation of German Consumer Associations vs. German Insurance Association, so the proposals were totally different in content. Such a situation could not bring to anything else but to a compromise, although it was rather difficult to find a solution that would satisfy most participants.

To what extent the new solution satisfies those who apply it is still uncertain while the theoreticians are unanimous in disappointment. H. Heiss, one of the leading experts for insurance contracts within private international law, describes the changes as "the latest failure of the European legislation"³⁷. Others are not so radical in their assessments but they mostly depict it negatively. Their reactions are understandable. It took a long time to prepare the Regulation, the expectations were great and that is probably why the disappointment is so great, too.

In our opinion, one should see search, collection and organization of scattered rules and instruments as a step forward towards legal safety, certainty and transparency. As far as the content of the Regulation is concerned, there are some flaws. Before all, every type of insurance contract should have been incorporated into the Regulation and governed by a special rule, similarly to insurance contracts covering

large risks. Risks situated outside the EU and reinsurance contracts are avoided in the Regulation and they are, like all other contracts, still subject to the general rules while the combination of Article 3 (choice-of-applicable law), Article 4 (determining the applicable law by an entity other than the parties) and Article 6 (consumer contracts) is pretty complicated and does not facilitate the application.

In terms of insurance contracts covering mass risks with the risk situated inside the EU, the freedom of choice-of-law is restrained but such an intervention is, in our opinion, reasonable and necessary due to the protection of the weaker party.

To conclude with, the solutions of the Rome I Regulations represent, despite all the remarks, a significant step forward in determining the complex area of international insurance contracts. Article 27 of the Regulation foresees for the year 2013 submission of a report on the application. The report shall include, if necessary, amendments of the Regulation. One of the areas which will be subject to evaluations and possible amendments is the area of insurance contracts. That can be another chance to improve the collision rules for insurance contracts.

Konvencija o mjerodavnom pravu za ugovorne obveze, Convention on the law applicable to contractual obligation, 1980, OJ L 266/1

Merret, L., Choice of law in insurance contracts under the Rome I Regulation, quote, page 51 and 52

Bonomi, A., The Rome I Regulation on the law applicable to contractual obligations, Yearbook of the private international law, vol 10, 2008, page 166.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October 1997, OJ C 340 of 10 November 1997

Seatzu, F., Insurance in Private International Law: A European perspective, Oxford-Portland Oregon: Hart Publishing, 2003, page 92. – 93.

Kramer, X., The new European Conflict of Law Rules on Insurance Contract in Rome I: A complex compromise, quote, page 29.

Da je ta sloboda kamen temeljac ugovornog statuta određuje i Uredba Rim I u preambuli u točki 11 (The Rome I Regulation in the preamble in item 11 determines that this freedom is the foundations stone of the contractual statute)

Sajko, K., *Međunarodno privatno pravo* (Private International Law), Narodne novine d. d., Zagreb, 2005, page 385.

On the institute of the characteristic performer and issues of determining the characteristic performer regarding complex contracts see more at: Župan, M., *The Closest Connection Doctrine in the Croatian European Private International Contractual Law*, Faculty of Law of Rijeka, 2006, page 118 and more; *Izvješće o konvenciji o pravu mjerodavnom za ugovorne obveze*, Giuliano i Lagarde. Report on the Convention on the Law applicable to contractual obligation (1) by Mario Giuliano Professor, University of Milan and Paul Lagarde, Professor, University of Paris I, OJ C 282 31. 10. 1980

Kramer, X., *The new European Conflict of Law Rules on Insurance Contracts in Rome I: A complex compromise*, quote, page 30

Ibid., page 30

Green paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernization. Commission for the European Communities, Brussels 2003, COM (2002), 654 final

Proposal for a Regulation of the European Parliament and Council on the law applicable to contractual obligations (Rome I) Brussels, 15 December 2005 COM (2005) 650 final

Green Paper, page 5.

Ibid., page 21

Ibid., page 22

Max Planck Institute for Comparative and International Private Law, Comments on the European Commission's Proposal for a Regulation of the European Parliament and the Council on the Law Applicable to Contractual obligations (Rome I), page 47, available at <http://www.mpipriv.de>

Article 1 para 1 states: "This Regulation is to be applied to contractual obligations if those obligations are related to the rights of different states, concerning civil and commercial affairs."

Those not mentioned in Article 2 of the Directive no. 2002/83/EC

Kramer, X., The new European Conflict of Law Rules on Insurance Contracts in Rome I: A complex compromise, quote, page 36.

See more at: Heiss, H., Insurance Contracts in Rome I: Another recent failure of European legislature, Yearbook of the Private International Law, vol. 10, 2008, page 261.

Article 3 includes the rules on the choice-of-law by the parties. The freedom of choice is a foundation stone

See chapter 2

Merrett, L., Choice of law in insurance contracts under the Rome I Regulation, op. cit., str. 60.; Kramer, X., The new European Conflict of Law Rules on Insurance Contract of Rome I: A complex compromise, quote, page 14

Gruber, U. P., Insurance Contracts, u Ferrari, F., Leible, S., Rome I Regulation: The Law Applicable to Contractual obligation in Europe, page 109-129. Sellier, 2009

Kramer, X., The new European Conflict of Law Rules on Insurance Contracts in Rome I: A complex compromise, quote, page 39.

Gruber, U. P., Insurance Contracts, quote, page 112-117

If an insurance contract is made between an insurer and a natural person (consumer).

Merrett, L., Choice of Law in Insurance Contracts under the Rome I Regulation, quote, page 59

Ibid, str. 54

Heiss, H., Insurance Contract in Rome I: Another Recent Failure of the European Legislature, quote, page 261

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8. Merrett, L., Choice of law in insurance contracts under the Rome I Regulation, Journal of the Private International Law, 5/2009, page 49