

# Article Interpretation Commentary

## Rome II Regulation

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## Article 4

### General rule

### Judicial Interpretations

1

overriding mandatory provisions

Rome II Regulation

non-material damage

public interest

conflict of laws

A national rule allowing courts to award compensation for non-material damage to close relatives of a deceased person based on fairness cannot be treated as an 'overriding mandatory provision' under Article 16 of Rome II, unless the case is closely linked to the forum state and the court finds, after detailed analysis, that following this rule is crucial to protect an essential public interest that cannot be protected by applying the law chosen under Article 4 of Rome II.

Source: **Case C-86/23** • *E.N.I. and Y.K.I. v HUK-COBURG-Allgemeine Versicherung AG* • CJEU, 5 September 2024

2

subrogation

limitation period

non-contractual obligations

Rome II Regulation

applicable law

When a third party takes over the rights of an injured party to claim against the person who caused the damage, the law that applies—including limitation rules—is, in principle, the law of the country where the damage happened.

Source: **Case C-264/22** • *Fonds de Garantie des Victimes des Actes de Terrorisme et d'Autres Infractions (FGTI) v Victoria Seguros SA* • CJEU, 17 May 2023

3

Rome II

applicable law

duty of care

manifestly closer connection

non-contractual obligations

The law of the country where the bankrupt company is established generally applies to compensation claims for breach of duty of care by the grandparent company, unless a prior contract shows a much closer connection to another country.

Source: **Case C-498/20** • *ZK v BMA Braunschweigische Maschinenbauanstalt AG* • CJEU, 10 March 2022

4

overriding mandatory provisions

limitation period

conflict of laws

Rome II Regulation

effective remedy

A national law that sets a three-year limitation period for accident compensation claims cannot be treated as an overriding mandatory rule under Article 16 of the Rome II Regulation, unless the court finds, after detailed analysis, that the rule is so important in the national legal system that it justifies not applying the law otherwise designated by Article 4.

Source: **Case C-149/18** • *Agostinho da Silva Martins v Dekra Claims Services Portugal SA* • CJEU, 31 January 2019

5

data protection

Directive 95/46

applicable law

establishment

cross-border processing

If an online business processes personal data in the context of activities of an establishment in a Member State, the data protection law of that Member State applies. The national court must decide if such an establishment exists.

Source: **Case C-191/15** • *Verein für Konsumenteninformation v Amazon EU Sàrl* • CJEU, 28 July 2016

6

conflict-of-law

motor vehicle insurance

indemnity between insurers

Directive 2009/103

territorial scope

Article 14(b) of Directive 2009/103/EC does not provide a conflict-of-law rule for deciding which law applies to indemnity actions between insurers in cases like this.

Source: **Joined Cases C-359/14 and C-475/14** • *"ERGO Insurance" SE v "If P&C Insurance" AS and "Gjensidige Baltic" AAS v "PZU Lietuva" UAB DK* • CJEU, 21 January 2016

