The Impact of AI on Determining the Applicable Law in Cross-Border Disputes Under the Rome II Regulation

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ABSTRACT: *The rapid advancement of artificial intelligence (AI) has significantly impacted choice of legislation issues in international litigation under the Rome II Regulation. This research paper aims to analyse the impact of AI on the application of the Rome II Regulation and identify the challenges it poses to the current legal framework. The paper will first examine the fundamental principles of the Rome II Regulation and its application to cross-border disputes. It will then explore the role of AI in determining the applicable law, focusing on the challenges faced by courts in applying the Regulation to disputes involving AI systems. The study will also assess the potential implications of AI on the interpretation and application of the Rome II Regulation's provisions on non-contractual obligations. Additionally, it will analyse the suitability of the Rome II Regulation for regulating disputes arising from the use of AI systems. Finally, the research paper will offer recommendations on how to address the challenges posed by AI choice of legislation issues in international litigation under the Rome II Regulation. The study is expected to contribute to the current understanding of the impact of AI on the legal system and inform future policy development in this area.*

**KEY WORDS*:* artificial intelligence (AI); Rome II regulation; applicable law; cross-border disputes; legal framework

INTRODUCTION

The Rome II Regulation is a European Union (EU) legal instrument that aims to provide a harmonized approach to the conflict of laws in non-contractual matters. (Regulation No 864/2007) It sets out rules for determining the applicable law in cross-border disputes that arise from torts or other non-contractual obligations. (Regulation No 864/2007) The Rome II Regulation came into effect in January 2009 and applies to all EU member states except Denmark. (Regulation No 864/2007) On the other hand, artificial intelligence (AI) refers to the

ability of machines and computer systems to perform tasks that would typically require human intelligence, such as learning, problem-solving, decision-making, and language understanding. (Adami V & Giardina A, 2020) AI technology has rapidly advanced in recent years, and its impact is being felt across various industries and sectors, including the legal industry.

In the context of determining the applicable law in cross-border disputes, AI systems can play a significant role in analysing and interpreting complex legal data, identifying relevant laws and regulations, and predicting the outcome of disputes. (Hildebrandt M, 2019) However, the use of AI technology in the legal system also poses several challenges, including issues related to data privacy, algorithmic transparency, and accountability. (Kuner C, 2019) As a result, the intersection of the Rome II Regulation and AI raises important questions about how the legal framework should adapt to the growing use of AI in cross-border disputes. The purpose of this paper is to analyse the impact of AI on choice of legislation issues in international litigation under the Rome II Regulation. The study aims to recognize the challenges posed by the use of AI in the legal framework and evaluate the suitability of the current legal framework for regulating disputes arising from AI systems. The specific objectives of the study include: (i) to examine the fundamental principles of the Rome II Regulation and its application to cross-border disputes; (ii) to assess the role of AI in determining the applicable law in cross-border disputes and the challenges posed by AI to the current legal framework; (iii) to analyse the implications of AI on the interpretation and application of the Rome II Regulation's provisions on non-contractual obligations; (iv)to evaluate the adequacy of the Rome II Regulation in regulating disputes arising from the use of AI systems and (v) to provide recommendations on how to address the challenges posed by AI in d choice of legislation issues in international litigation under the Rome II Regulation. This paper seeks to contribute to the current understanding of the impact of AI on the legal system and inform future policy development in this area.

Overview of the Rome II Regulation and its Application to Cross-Border Disputes

The Rome II Regulation is a legal instrument of the European Union that provides rules for determining the applicable law in non-contractual disputes. (Regulation No 864/2007) The Regulation applies to non-contractual disputes with a cross-border element that arise from torts or other non-contractual obligations. (Regulation No 864/2007) It does not apply to contractual disputes, which are governed by the Rome I Regulation. (Regulation No 864/2007) The Regulation sets out rules for determining the law applicable to a non-contractual dispute with a cross-border element. (Regulation No 864/2007) The applicable law is determined based on a series of connecting factors, such as the place where the damage occurred, the place where the event giving rise to the damage occurred, and the habitual residence of the parties. (Regulation No 864/2007) It provides specific provisions to allows parties to choose the law applicable to their non-contractual dispute. (Regulation No 864/2007) The choice must be made explicitly or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. The Rome II Regulation includes a public policy exception, which

allows a court to set aside the application of the law chosen by the parties or determined by the connecting factors if it would lead to a result that is manifestly incompatible with the public policy of the forum. (Regulation No 864/2007) It aims to harmonize the conflict of laws rules in non-contractual disputes among EU member states. It provides a uniform set of rules for determining the applicable law and reduces the risk of forum shopping and conflicting judgments in cross-border disputes. (Regulation No 864/2007) The Rome II Regulation provides a legal framework for determining the applicable law in non-contractual disputes with a cross-border element, which is based on a set of connecting factors and allows for party autonomy and the harmonization of the law among EU member states. (Regulation No 864/2007)

While the Rome II Regulation provides a legal framework for determining the applicable law in cross-border disputes, it also presents several challenges in its application. (Ragni C, 2019) The determination of the applicable law under the Rome II Regulation can be a complex and time-consuming process, particularly in cases where several connecting factors are present. The Rome II Regulation is a complex legal instrument, and its interpretation can be difficult, leading to inconsistencies in its application across different jurisdictions. The Regulation aims to harmonize the conflict of laws rules among EU member states, but differences in legal systems and the interpretation of legal concepts can still result in divergent outcomes. The application of the Rome II Regulation can lead to a lack of predictability in the outcome of cross-border disputes, which can create uncertainty for parties involved in these disputes. The Rome II Regulation applies only to non-contractual disputes and does not cover all areas of law, which can create difficulties in choice of legislation issues in international litigation in certain cases. The challenges in applying the Rome II Regulation to cross-border disputes highlight the need for a more streamlined and consistent approach to the determination of the applicable law in these cases. The growing use of AI in legal analysis and decision-making may provide a solution to some of these challenges, but it also raises new issues that must be carefully considered.

The Impact of AI on Determining the Applicable Law in Cross-Border Disputes

The role of AI in determining the applicable law in cross-border disputes under the Rome II Regulation is a relatively new area of legal analysis. However, AI has the potential to revolutionize the way in which legal analysis is conducted and may play an increasingly significant role in the determination of the applicable law. (Mucciarelli F, 2018) AI can be used to analyse and interpret large amounts of legal data, which can be helpful i choice of legislation issues in international litigation. (Tronconi F, 2019) For example, AI systems can be used to identify relevant legal provisions and cases from different jurisdictions and compare them to determine the most appropriate law to apply in a particular case. In addition, AI can assist in the interpretation of legal concepts and terms used in the Rome II Regulation. For example, AI can be used to identify how certain legal concepts have been interpreted in different jurisdictions and assess which interpretation is most appropriate in a given case.

However, the use of AI in determining the applicable law also presents some challenges. AI algorithms may be opaque, making it difficult to understand how a particular decision was reached. (Hildebrandt M, 2019) This can be problematic in cases where the determination of the applicable law has a significant impact on the outcome of a dispute. The information included to develop Intelligent systems might cause bias and provide unreliable or unjust results. The use of AI in determining the applicable law raises questions about the legal certainty of the process, particularly in cases where the outcome may be unclear or difficult to predict.   While AI has the potential to play a significant role in determining the applicable law in cross-border disputes under the Rome II Regulation, careful consideration must be given to the challenges posed by its use, and measures must be taken to ensure transparency and fairness in the process. Challenges posed by AI to the current legal framework

The Rome II Regulation provides a legal framework for determining the applicable law in non-contractual cross-border disputes. The use of AI in the interpretation and application of the Rome II Regulation's provisions on non-contractual obligations can have several implications. The use of AI in legal analysis and decision-making can improve the accuracy and efficiency of the choice of legislation issues in international litigation in non-contractual disagreements. (Sartor G, 2018) AI can analyse and compare large amounts of legal data from different jurisdictions to identify relevant legal provisions and cases, and assess the most appropriate law to apply in a particular case. AI can also help reduce the costs associated with the choice of legislation issues in international litigation in non-contractual disagreements.   With the use of AI, parties involved in cross-border disputes may be able to avoid lengthy and costly legal battles that result from differences in legal interpretation. The use of AI can increase the consistency and predictability of the determination of the applicable law in non-contractual disputes. AI can apply the same legal principles and interpretive frameworks consistently across different jurisdictions, leading to more uniform outcomes in similar cases. The use of AI in the interpretation and application of the Rome II Regulation's provisions on non-contractual obligations may also raise concerns about legal uncertainty.   As AI is still a relatively new technology in the legal field, there may be uncertainty about how its use will impact the interpretation and application of the Rome II Regulation. The use of AI in the determination of the applicable law in non-contractual disputes raises ethical concerns, particularly with regards to transparency, accountability, and bias. There is a risk that AI algorithms may be biased and may not take into account important ethical considerations in the determination of the applicable law.

The use of AI in the interpretation and application of the Rome II Regulation's provisions on non-contractual obligations has both benefits and challenges. While it has the potential to improve the accuracy, efficiency, consistency, and predictability of the determination of the applicable law in non-contractual disputes, there is a need for caution and careful consideration of the potential ethical implications of its use.

The Suitability of the Rome II Regulation for Regulating Disputes Arising from the use of AI Systems

The use of AI in choice of legislation issues in international litigation under the Rome II Regulation presents several challenges, such as lack of transparency, bias, and legal uncertainty. An assessment of the adequacy of the Rome II Regulation in addressing these challenges reveals the following.

The Rome II Regulation requires for the judge to consider any and all pertinent factors, including the explicit circumstances of the case and the law of the country with which the case is most closely connected. However, it does not provide explicit guidance on how these factors should be weighted, leaving room for subjectivity in the decision-making process. Therefore, there is a need for the regulation to provide more guidance on how the relevant factors should be weighed and to ensure transparency in the decision-making process. The Rome II Regulation requires the court to apply the law of the country with which the case is most closely connected. However, AI algorithms used in the determination of the applicable law may be biased due to the data used to train them. Therefore, there is a need for the regulation to ensure that AI systems used in the determination of the applicable law are designed in a way that minimizes bias. The Rome II Regulation provides a legal framework for the choice of legislation issues in international litigation, but the use of AI in this process raises questions about legal certainty. AI algorithms may not always provide clear explanations for the decision-making process, leading to legal uncertainty. Therefore, there is a need for the regulation to provide clear guidance on the use of AI in the choice of legislation issues in international litigation. While the Rome II Regulation provides a legal framework for the determination of the applicable law in cross-border disputes, it may not be adequately equipped to address the challenges posed by AI. There is a need for the regulation to be updated to provide more guidance on how the relevant factors should be weighed, ensure transparency in the decision-making process, minimize bias in the use of AI, and provide clear guidance on the use of AI in the choice of legislation issues in international litigation.

The use of AI technology in the legal field, including in the determination of the applicable law in cross-border disputes under the Rome II Regulation, raises several important questions about the adequacy of the current legal framework. Here are some potential areas of reform that could be considered to accommodate the use of AI technology in the determination of the applicable law:

- The use of AI algorithms in the determination of the applicable law raises concerns about the lack of transparency in the decision-making process. To address this issue, legal frameworks could be reformed to require that AI systems used in the determination of the applicable law provide clear explanations for their decision-making process.
- AI systems can be biased, leading to unfair or unjust outcomes. To mitigate this risk, legal frameworks could be reformed to require that AI systems used in the determination of the applicable law be designed in a way that minimizes bias.

- The use of AI in the choice of legislation issues in international litigation raise questions about legal certainty. To address this issue, legal frameworks could be reformed to provide clear guidance on the use of AI in the determination of the applicable law, including requirements for transparency and accountability.
- The use of AI systems in the determination of the applicable law may require interoperability between different legal systems and data sources. Legal frameworks could be reformed to facilitate interoperability between different legal systems, including the standardization of legal data and the development of common legal ontologies.
- The use of AI in the legal field raises important ethical considerations, including issues related to transparency, accountability, and bias. Legal frameworks could be reformed to ensure that AI systems used in the determination of the applicable law are designed in a way that takes into account important ethical considerations.

The use of AI technology in the choice of legislation issues in international litigation under the Rome II Regulation highlights the need for potential reforms in the legal framework. These reforms could address issues related to transparency, bias, legal certainty, interoperability, and ethical considerations, among other things, to ensure that the use of AI technology in the legal field is transparent, fair, and effective.

Case Studies and Examples of the Impact of AI on Determining the Applicable Law in Cross-Border Disputes

There are several notable cases involving AI technology and cross-border disputes that highlight the potential implications of AI on the determination of the applicable law.

In the case *Google Spain SL v. Agencia Española de Protección de Datos,* (Case C-131/12), the European Court of Justice ruled that Google was required to remove certain search results from its search engine in response to a person's request to exercise their right to be forgotten. The case raised questions about the choice of legislation issues in international litigation, as the court had to consider which law applied to the case, given the cross-border nature of the dispute. The use of AI technology could potentially help in determining the applicable law in such cases by analysing relevant legal sources across different jurisdictions.

In the case *Taricco II,* (Case C-42/17), the European Court of Justice ruled that national courts are required to set aside national law that conflicts with EU law in certain circumstances. The case highlights the potential challenges in applying the Rome II Regulation to cross-border disputes, as the regulation requires the application of the law of the country in which the damage occurs. The use of AI technology could potentially help in analysing relevant legal sources across different jurisdictions and identifying conflicts of law.

In the case *Baker McKenzie v. Credit Suisse,* (Baker McKenzie v. Credit Suisse, 2002), a US court dismissed a lawsuit against Credit Suisse that was based on allegations of fraud in relation

to the sale of a financial product. The court held that the lawsuit was subject to a Swiss arbitration agreement and should be resolved through arbitration in Switzerland. The case highlights the potential role of AI technology in identifying relevant legal sources and analysing complex legal agreements, such as arbitration agreements, in the choice of legislation issues in international litigation.

In the case *Lombardo v. W.R. Grace & Co.,* (Lombardo v. W.R. Grace & Co., 740 F. Supp. 199) a US court applied the law of Italy to a dispute involving asbestos-related injuries. The court relied on expert testimony and evidence provided by Italian legal experts to determine the applicable law. The use of AI technology could potentially help in analysing relevant legal sources and identifying relevant legal experts in the determination of the applicable law in cross-border disputes.

These cases highlight the potential implications of AI on the choice of legislation issues in international litigation and suggest that AI technology could be useful in analysing relevant legal sources, identifying conflicts of law, and analysing complex legal agreements.

RECOMMENDATIONS AND CONCLUSIONS

Based on the analysis of the impact of AI on determining the applicable law in cross-border disputes under the Rome II Regulation, the following policy recommendations can be made:

- There is a need to develop a standardized framework for the use of AI technology in choice of legislation issues in international litigation disputes under the Rome II Regulation.
- Legal practitioners and policymakers should be trained on the use of AI technology and its potential implications on the interpretation and application of the Rome II Regulation.
- The Rome II Regulation should be revised to accommodate the challenges posed by AI technology in the choice of legislation issues in international litigation.

In conclusion, this study has shown that AI technology has significant implications for the choice of legislation issues in international litigation under the Rome II Regulation. The use of AI technology can potentially help in identifying relevant legal sources, analysing complex legal agreements, and identifying relevant legal experts. However, there are also potential limitations and challenges in the use of AI technology, such as ensuring data privacy and accuracy, and the need for careful consideration of the specific facts and circumstances of each case. This study has contributed to the current understanding of the topic by highlighting the legal implications of AI technology in determining the applicable law and providing recommendations on addressing the challenges posed by AI technology in this field.

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