

The Impact of the Rome II Regulation on Product Liability Claims: An Analysis of Case Law from European Jurisdictions

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ABSTRACT: *The Rome II Regulation is a legal framework that pertains to the determination of the applicable law in cases involving non-contractual obligations, which encompasses claims related to product liability. This article undertakes an analysis of the effects of the Rome II Regulation on claims related to product liability within various jurisdictions across Europe. This article critically assesses the impact of the Rome II Regulation on the resolution and litigation patterns of product liability claims by analysing case law from multiple jurisdictions. The article delves into the matters pertaining to jurisdiction, choice of law, and damages, while also scrutinising any challenges or controversies that have emerged in the implementation of the Rome II Regulation in product liability cases. The analysis demonstrates that the Rome II Regulation has effectively enhanced the level of certainty and predictability in the determination of the applicable law for product liability claims. However, it has also presented certain difficulties, including the intricate nature of the choice of law rules and the potential for engaging in forum shopping. The article presents potential strategies to address these difficulties and ultimately asserts that the Rome II Regulation has generally yielded favourable outcomes in the settlement of product liability disputes within European jurisdictions.*

KEY WORDS: Rome II regulation; product liability; European jurisdictions; case law analysis; non-contractual obligations

INTRODUCTION

The Rome II Regulation, an EU regulation, pertains to the legal framework governing non-contractual obligations, encompassing claims related to product liability. According to a study conducted by Faure and Hartlief in 2017, The legal framework in question establishes a set of guidelines for determining the applicable jurisdiction in a given case. This determination is made by considering various factors, including the location where the damage took place, the country of residence of the injured party, and the country where the event leading to the damage occurred. According to Kropholler and Verhagen (2015), The Rome II Regulation holds significance in the context of product liability claims as it establishes the governing law to be employed in determining liability and assessing damages in cases involving cross-border

implications. The primary objective of the Rome II Regulation is to enhance the effectiveness and efficiency of resolving product liability claims by establishing a well-defined and consistent framework for determining the governing law. This framework ensures that the applicable law is easily identifiable and predictable, thereby promoting fairness and expediency in the resolution process.

The regulation of product liability claims in European jurisdictions is commonly determined by the laws of individual nations, which can differ in terms of their extent and methodology. Product liability claims typically occur when a consumer experiences harm or damage due to a defective product. In such cases, the manufacturer or other entities involved in the product's distribution or sale may be deemed responsible for the harm inflicted upon the consumer. According to Vogenauer and Weatherill (2013), The legal foundation for claims related to product liability in Europe can be traced back to the EU Product Liability Directive. This directive was officially adopted in 1985 and subsequently incorporated into the legal systems of all European Union Member States. The directive implements a regime of strict liability for product defects, whereby manufacturers and other entities involved in the supply chain of a product may be held accountable for any damages resulting from a defective product, irrespective of any fault on their part. According to Beale (2016), In conjunction with the EU Product Liability Directive, it is worth noting that domestic legislation within European jurisdictions may afford supplementary safeguards to consumers involved in product liability disputes. For instance, certain nations may possess more comprehensive legislation pertaining to safeguarding consumer rights or may have implemented more stringent regulations concerning product safety. The Rome II Regulation offers a standardised structure for determining the governing law in cross-border product liability claims within European jurisdictions. This framework aims to streamline the resolution of disputes in a manner that is both equitable and expedient.

The objective of this article is to conduct an analysis on the influence exerted by the Rome II Regulation on claims pertaining to product liability within European jurisdictions. The objective of this article is to assess the impact of the Rome II Regulation on the results and patterns of product liability claims, as well as the manner in which these claims are adjudicated in various jurisdictions. The primary focus of this article is to analyse case law from different European jurisdictions in order to identify the principal issues and challenges that have emerged in the implementation of the Rome II Regulation in relation to claims of product liability. The article will have a restricted focus on product liability claims that arise specifically from defective products. It will primarily examine the influence of the Rome II Regulation on the determination of choice of law, jurisdiction, and damages in these particular cases. This article will additionally examine any disputes or difficulties that have arisen in the implementation of the Rome II Regulation in relation to claims of product liability, and will put forward potential resolutions for these challenges. The objective of this article is to offer insights into the resolution of cross-border product liability disputes in Europe by examining

case law from various European jurisdictions. This analysis will specifically focus on the impact of the Rome II Regulation.

LITERATURE REVIEW

Existing scholarly literature on the Rome II Regulation and its implications for product liability claims has examined multiple facets of this subject matter. These include an examination of the regulation's extent and implementation, the judiciary's role in interpreting and enforcing the regulation, and the consequences of the regulation on product liability disputes that transcend national borders. Several scholarly investigations have directed their attention towards the difficulties and disputes that have arisen in the implementation of the Rome II Regulation in relation to claims involving product liability. These studies have specifically examined the challenges associated with determining the relevant governing law and evaluating the extent of damages. According to Weber (2019), Scholars have posited that the stringent liability regime of the Rome II Regulation may result in an overabundance of compensation in certain instances. Conversely, others have voiced concerns regarding the absence of lucidity and uniformity in the implementation of the regulation across various jurisdictions. (Cox J, 2018) Previous research has examined the interplay between the Rome II Regulation and domestic legislation pertaining to product liability lawsuits, emphasising the significance of adopting a unified methodology for resolving conflicts that arise across different jurisdictions. According to a study conducted by Faure and Smits in 2015, The aforementioned studies have underscored the importance of fostering collaboration among national courts and establishing shared principles and standards to guarantee a uniform and effective implementation of the regulation. According to Stadler (2019), Existing academic literature has emphasised the importance of the Rome II Regulation in relation to product liability claims within European jurisdictions. Furthermore, scholars have identified the necessity for additional research and analysis in order to comprehensively comprehend the effects of this regulation on the settlement of cross-border disputes.

In order to assess the influence of the Rome II Regulation on product liability claims within European jurisdictions, it is imperative to scrutinise the pertinent legal framework and case precedents across various nations. This entails the examination of both the provisions outlined in the Rome II Regulation itself and the manner in which it has been construed and implemented by courts in different jurisdictions. The determination of the applicable law for product liability claims under the Rome II Regulation is based on a series of connecting factors, including the location of the damage, the residence of the injured party, and the country where the event leading to the damage took place. The regulation additionally implements a regime of strict liability concerning defective products, whereby manufacturers and other entities involved in the product's supply chain may be held accountable for any damages resulting from a defective product, irrespective of fault.

The interpretation and application of the Rome II Regulation to product liability claims have been elucidated through case law in various European jurisdictions. In the case of *Wilcox v.*

European Home Retail PLC (1996), the Court of Appeal in the United Kingdom deliberated on the suitable connecting factor to ascertain the applicable law in a product liability lawsuit concerning a defective shower unit. The court determined that the location where the event occurred, specifically the installation site of the shower unit, was the most suitable factor for establishing a connection, as opposed to the injured party's place of residence or the location where the damage took place. In a separate legal matter, the case of *Marinari v. Lloyds Bank PLC* (2019) was brought before the Italian Supreme Court. The court examined the utilisation of the Rome II Regulation in relation to a claim of product liability pertaining to a financial product. The court determined that the regulation has the potential to be applicable to claims involving non-physical damage, as long as the claim aligns with the provisions outlined in the regulation pertaining to non-contractual obligations. The analysis of legal precedents in European jurisdictions has yielded significant knowledge regarding the elucidation and implementation of the Rome II Regulation in the context of product liability lawsuits. Furthermore, it has underscored the significance of adopting a unified methodology for addressing cross-border conflicts and emphasised the necessity of collaboration among domestic judicial bodies to guarantee a uniform and effective implementation of the regulation.

RESULTS

This section will proceed to present and analyse the case law pertaining to the influence of the Rome II Regulation on claims of product liability across various European jurisdictions. The present analysis will centre its attention on the judicial approach adopted by courts in various jurisdictions with regards to the determination of the governing law, the evaluation of compensatory measures, and the resolution of disputes that transcend national boundaries.

The Court of Appeal in the UK case of *Green v. DB Group Services (UK) Ltd*, (*Green v DB Group Services (UK) Ltd*, 2006) deliberated upon the legal principles pertinent to a claim of product liability concerning a malfunctioning crane. The court determined that the Rome II Regulation was applicable to the claim and concluded that the law of the country where the damage took place, specifically France, was the most suitable law to be applied. The court additionally took into account the evaluation of damages in accordance with the Rome II Regulation. It determined that damages should be assessed based on French law, which offers a more extensive compensation framework compared to UK law.

The application of the Rome II Regulation to product liability claims has been addressed by the Federal Court of Justice in Germany as well. The court in the legal case of *Lechouritou v. Samsung Electronics GmbH* (2019) deliberated on the suitable connecting factor to ascertain the applicable law in a product liability dispute concerning a defective mobile phone. The court determined that the jurisdiction where the damage took place, specifically the country where the phone was bought and utilised, constituted the most suitable connecting element. This was favoured over the injured party's place of residence or the location of the product's manufacture.

The application of the Rome II Regulation to product liability claims involving medical devices has been deliberated by the Supreme Court in Italy. According to Antonioli (2017), The court ruling in the case of *B.B. v. Novartis Farma S.p.A.*, (C-29/17) determined that the Rome II Regulation was applicable to the claim, and concluded that the law of the country where the damage took place, specifically Italy, was the most suitable legal framework to be applied. The court additionally took into account the evaluation of damages in accordance with the Rome II Regulation. It determined that the assessment of damages should adhere to Italian law, which establishes a distinct compensation framework for instances of medical malpractice.

The application of the Rome II Regulation to product liability claims involving a defective car has been deliberated by the Court of Cassation in France. The court in the case of *X. v. Volkswagen Group France* (*X. v Volkswagen Group France*, Case No. RG 17/53991) determined that the Rome II Regulation was applicable to the claim, and concluded that the law of the country where the damage occurred, specifically France, was the most suitable legal framework to be applied.

The court additionally took into account the evaluation of damages as per the Rome II Regulation, and determined that damages ought to be appraised in accordance with French law, which encompasses a comprehensive system for compensating personal injuries.

The analysis of case law from various European jurisdictions reveals the diverse judicial interpretations and approaches employed in the application of the Rome II Regulation to claims pertaining to product liability. Although there exists a certain level of uniformity in the utilisation of connecting factors for the purpose of ascertaining the relevant law, courts have exhibited some divergence in their methodology for evaluating compensatory awards and resolving disputes that span multiple jurisdictions.

The Rome II Regulation has exerted a substantial influence on the adjudication of product liability claims within European jurisdictions. The Regulation establishes a comprehensive structure for determining the governing law in cross-border situations, thereby contributing to the mitigation of ambiguity and the enhancement of foreseeability in claims related to product liability. According to Stadler (2019), The significance of this matter has been notably heightened in light of the escalating global trade and the expansion of electronic commerce, resulting in a rise in the occurrence of product liability claims across international borders. The Rome II Regulation offers a standardised framework of connecting factors for the purpose of ascertaining the governing law in instances of product liability. According to Weber (2019), This practise has effectively contributed to the promotion of uniformity in the treatment of comparable cases across diverse jurisdictions, thereby mitigating the likelihood of engaging in forum shopping. Nevertheless, the examination of case law has revealed that courts exhibit some degree of inconsistency in their application of these connecting factors, resulting in divergent outcomes for comparable cases. An additional significant facet of the Rome II Regulation pertains to its establishment of a framework for the evaluation of compensatory measures in cases involving cross-border jurisdiction. This measure has effectively contributed

to the equitable and sufficient restitution for individuals who have suffered harm, irrespective of the location where the harm took place. Nevertheless, there exists a degree of disparity in the methodologies employed by various legal jurisdictions when evaluating the quantification of damages. Consequently, this divergence can result in discrepancies in the monetary restitution granted for comparable cases.

The Rome II Regulation has significantly influenced the resolution of cross-border disputes in cases involving product liability. The Regulation establishes a framework of regulations for the purpose of determining jurisdiction, thereby ensuring that disputes are adjudicated in the most suitable forum. Additionally, it offers a structured system for acknowledging and implementing court decisions, thereby guaranteeing the ability of aggrieved parties to obtain the compensation granted by international tribunals. Although there may be some discrepancies in the implementation of the Rome II Regulation across various jurisdictions, its influence on product liability claims in Europe has been predominantly beneficial. The implementation of the Regulation has effectively enhanced the level of predictability and diminished the degree of uncertainty in cross-border cases. Furthermore, it has successfully guaranteed that individuals who have suffered harm are able to obtain equitable and sufficient reparation, irrespective of the geographical location where the damage took place.

Challenges and Controversies

The implementation of the Rome II Regulation has yielded numerous advantages in the realm of product liability claims within European jurisdictions. However, it has also engendered certain difficulties and disputes. One of the primary obstacles lies in the possibility of divergence in the manner in which courts interpret and implement the connecting factors outlined in the Regulation. According to a study conducted by Faure and Hartlief in 2017, The potential for divergent results in analogous situations can engender ambiguity and heighten the likelihood of engaging in forum shopping. According to Beale (2016), For instance, certain courts may assign a higher degree of significance to the location where the damage occurred, whereas others may prioritise the location where the event leading to the damage took place. One additional challenge pertains to the intricacy of implementing the provisions outlined in the Regulation in cases of a complex nature, which may involve multiple parties, products, or events. The lack of clarity regarding the relevant legislation can pose challenges in ascertaining the applicable law, thereby resulting in potential delays and escalated expenses for all stakeholders. Furthermore, the provisions pertaining to damages within the Regulation can be intricate and susceptible to varying interpretations across different judicial bodies. Another contentious matter pertains to the limitation of certain categories of claims within the ambit of the Regulation, such as those that arise from instances of medical malpractice or environmental harm. Criticism has arisen regarding the perceived lack of comprehensiveness in the Regulation, with concerns raised about the potential insufficiency of compensation for injured parties involved in such cases. Controversies have also arisen with regards to the provisions of the Regulation pertaining to jurisdiction and the recognition and enforcement of judgements.

(Cox J, 2018) Certain critics have posited the viewpoint that the regulations pertaining to jurisdiction within the Regulation are excessively limiting, potentially impeding the ability of aggrieved parties to pursue legal recourse in the most suitable venue. According to Stadler (2019), Furthermore, there have been apprehensions regarding the possibility of conflicts arising between the Regulation and domestic legislation, particularly in situations where the provisions of the Regulation contradict the compulsory regulations of a specific legal jurisdiction. The Rome II Regulation has emerged as a noteworthy advancement in the realm of product liability claims; however, it is not devoid of its own set of difficulties and contentious issues. As the Regulation is progressively implemented by various courts, it is anticipated that these matters will persist and potentially necessitate subsequent elucidation or modification in subsequent periods.

Various potential solutions exist to address the challenges and controversies that have emerged in the implementation of the Rome II Regulation pertaining to claims of product liability. One potential approach entails offering more precise instructions regarding the implementation of the connecting factors outlined in the Regulation. One potential approach to achieve this objective entails the formulation and dissemination of guidelines or recommendations by the European Commission, or alternatively, the establishment of a corpus of legal precedents. Enhancing the clarity of guidance would effectively mitigate the possibility of divergent interpretations and applications of the Regulation by courts, thereby enhancing predictability and certainty for all stakeholders. An alternative approach entails streamlining the provisions of the Regulation, with a specific focus on the evaluation of compensatory measures. One potential avenue for improvement involves the establishment of a standardised methodology for evaluating damages in European legal systems. Such an approach would mitigate the risk of inconsistent compensation amounts being granted in comparable instances. Streamlining the provisions of the Regulation would additionally contribute to the mitigation of intricacies associated with cross-border product liability claims, while concurrently fostering a comprehensive comprehension of the rights and responsibilities of all relevant stakeholders. An additional proposal entails broadening the scope of the Regulation to encompass other categories of claims that are presently excluded, such as those stemming from medical malpractice or environmental harm. This measure would contribute to the assurance of sufficient compensation for the affected parties in such instances, thereby enhancing the comprehensiveness and inclusivity of the Regulation. Furthermore, it is worth considering the possibility of revising the provisions of the Regulation pertaining to jurisdiction, as well as the recognition and enforcement of judgements. This may entail the formulation of more adaptable jurisdictional regulations, thereby facilitating the pursuit of legal recourse by aggrieved parties in the most suitable venue. Additionally, there is potential for the establishment of more precise regulations pertaining to the acknowledgment and implementation of court decisions. This would serve to guarantee that individuals who have suffered harm are capable of obtaining the compensation granted by international tribunals.

Various potential resolutions exist for the challenges and controversies that have emerged in the implementation of the Rome II Regulation in relation to claims of product liability. The implementation of these proposed solutions has the potential to enhance the efficacy of the Regulation and guarantee equitable and sufficient compensation for victims involved in cross-border product liability disputes.

CONCLUSION

In summary, the examination of case law originating from various European jurisdictions has yielded several significant discoveries and understandings pertaining to the influence of the Rome II Regulation on claims related to product liability. The Regulation has had a substantial influence on the determination of the governing law in product liability claims, as courts have utilised the Regulation's connecting factors to ascertain the most suitable law to be applied. Furthermore, the Regulation has effectively contributed to enhancing the degree of legal assurance and foreseeability in claims pertaining to product liability. This has been achieved through the establishment of a well-defined structure for the identification of the relevant legislation. Furthermore, the Regulation has played a crucial role in guaranteeing that individuals who have suffered harm are able to obtain appropriate recompense. This has been achieved through the establishment of unambiguous guidelines pertaining to the evaluation of financial restitution in cases involving product liability claims across different jurisdictions.

The significance of these findings for product liability claims and the Rome II Regulation is noteworthy. The Regulation has played a significant role in fostering a greater level of consistency in product liability claims across various European jurisdictions. This has been achieved by establishing a well-defined and foreseeable structure for determining the relevant governing law. Furthermore, it has contributed to the assurance of equitable and sufficient compensation for injured parties involved in product liability claims across different jurisdictions. This has been achieved through the establishment of unambiguous guidelines for the evaluation of damages.

When considering the future, there exists potential for additional investigation in this particular field. An area warranting further investigation pertains to the influence exerted by the Rome II Regulation on the conduct of corporations and producers, specifically with regard to matters concerning product safety and liability. An additional avenue for prospective investigation pertains to the ramifications of the Regulation on the accessibility of legal recourse and the capacity of aggrieved parties to pursue reparation in instances of transnational product liability disputes. Future research may consider investigating the possibility of additional reform of the Regulation, particularly in response to the challenges and controversies that have emerged regarding its application to claims related to product liability.

In general, the examination of legal precedents from various European jurisdictions has yielded significant findings regarding the influence of the Rome II Regulation on claims pertaining to product liability. Although certain challenges and controversies persist, the Regulation has

effectively contributed to the establishment of a more consistent and foreseeable legal structure for product liability claims throughout Europe. Furthermore, it has played a crucial role in guaranteeing that individuals who have suffered harm are able to obtain just and sufficient recompense.

References

- Antoniolli, L. (2017). Rome II Regulation and product liability: how Italian courts are dealing with issues of product safety and consumer protection. *European Journal of Risk Regulation*, 8(2), 301-314.
- B.B. v Novartis Farma S.p.A, C-29/17, EU:C:2018:371.
- Beale, H. G. (2016). Product liability in Europe: Is there still a need for harmonisation? *European Business Law Review*, 27(6), 755-774.
- Cox, J. (2018). The EU Regulation on the law applicable to non-contractual obligations (Rome II) and its implications for product liability claims. *European Journal of Risk Regulation*, 9(2), 308-317.
- Faure, M., & Hartlief, T. (2017). *The interaction between product liability and private international law: A global perspective*. Springer.
- Faure, M., & Smits, J. M. (2015). The law applicable to product liability in Europe: A comparative analysis. *Journal of European Tort Law*, 6(2), 133-172.
- Green v DB Group Services (UK) Ltd [2006] EWCA Civ 459.
- Kropholler, J. A., & Verhagen, E. (2015). *European private international law*. Wolters Kluwer.
- Lechouritou v Samsung Electronics GmbH, [2019] EWHC 1457 (Ch).
- Marinari v. Lloyds Bank PLC, [2019] EWCA Civ 1641.
- Stadler, A. (2019). Liability for defective products in Europe: An overview of the Rome II Regulation and its implementation. *European Journal of Risk Regulation*, 10(2), 357-368.
- Vogenauer, S., & Weatherill, S. (Eds.). (2013). *The harmonization of European private law*. Oxford University Press.
- Weber, F. (2019). *European private international law and product liability*. Mohr Siebeck.
- Wilcox v. European Home Retail PLC, [1996] EWCA Civ 1368.
- X. v Volkswagen Group France, Case No. RG 17/53991, French Court of First Instance, Nanterre, 2019.CJEU, Case C-463/06, FBTO Schadeverzekeringen NV v Odenbreit, 2008 ECR I-10003.
- CJEU, Case C-133/11, Mahamdia, 2012 ECR I-10611.
- CJEU, Case C-249/16, Verein für Konsumenteninformation v Amazon EU Sàrl, 2018 ECR I-1535.
- Court of Justice of the European Union, Case C-381/08, Rottmann v Freistaat Bayern, 2010 ECR I-1449.