



# Cross-Border Traffic Accidents: Jurisdiction and Applicable Law:

An Introduction to the Relevant Rules of Private International  
Law

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## Applicable Law in Road Traffic Accidents

In Europe, there exist **two** international instruments regulating cross-border traffic accidents.

THE ROME II REGULATION

THE HAGUE 1971 CONVENTION  
ON THE LAW APPLICABLE TO  
TRAFFIC ACCIDENTS

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## Applicable Law in Road Traffic Accidents

Which instrument applies?

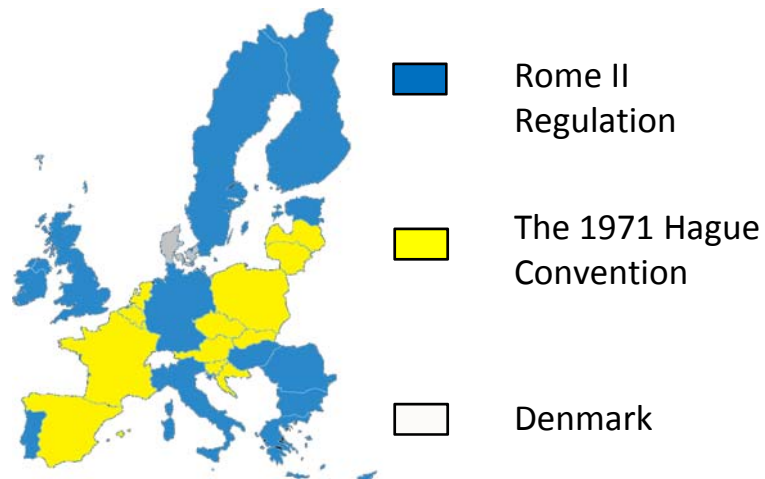
Art. 28(1) of the Rome II Regulation

“[this Convention] shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down choice-of-law rules relating to non-contractual obligations [such as the 1971 Hague Convention]”

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## Applicable Law in Road Traffic Accidents



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## Applicable Law in Road Traffic Accidents

The general rule – the applicable law is the place of the accident.

Rome II Regulation Art 4(1)

“[...] **law of the country in which the damage occurs** [...]”

The 1971 Hague Convention Art 3

“**internal law of the State where the accident occurred.**”

## Applicable Law in Road Traffic Accidents

**Difference 1 ?:** The role of party autonomy

Rome II Regulation **Art 14**

“[...] **The parties may agree to submit non-contractual obligations to the law of their choice** [...]”

## Applicable Law in Road Traffic Accidents

### Difference 2: Exceptions to the general rule

Rome II Regulation Art 4(2)

“[...] where the person claimed to be liable and the person sustaining damage both have their *habitual residence in the same country* at the time when the damage occurs, the law of that country shall apply. [...]”

1971 Hague Convention Art 4

“[...] where only one vehicle is involved in the accident and it is registered in a State other than that where the accident occurred, the internal law of the State of registration is applicable to determine liability [...]”

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## Applicable Law in Road Traffic Accidents

### Difference 3: Whether there is a contractual relationship between the parties

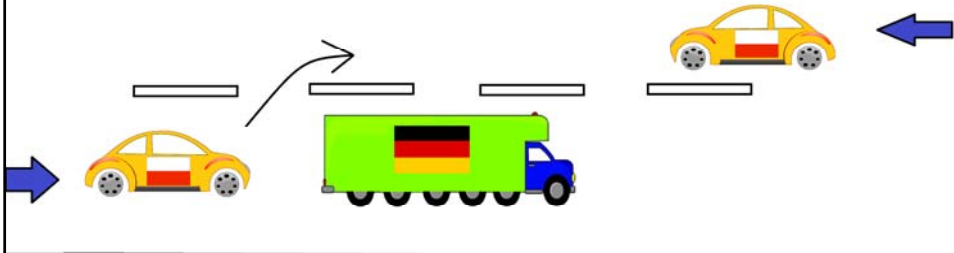
Rome II Regulation Art 4(3)

“[...] the law [which has a manifestly closer connection with another country] shall apply. A manifestly closer connection with another country might be based in particular on a *preexisting relationship between the parties, such as a contract*, that is closely connected with the tort/delict in question. [...]”

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### Scenário 1



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### Different solutions under national law



**Polish law**  
Bereavement damages awarded



**German law**  
Bereavement damages *not* awarded

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## Applicable Law

### The German judge applies the Rome II Regulation

Art 4(2) “where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply”.



Bereavement damages awarded

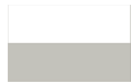
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## Applicable Law

### The Polish judge applies the 1971 Hague Convention

Art 3 “internal law of the State where the accident occurred”.

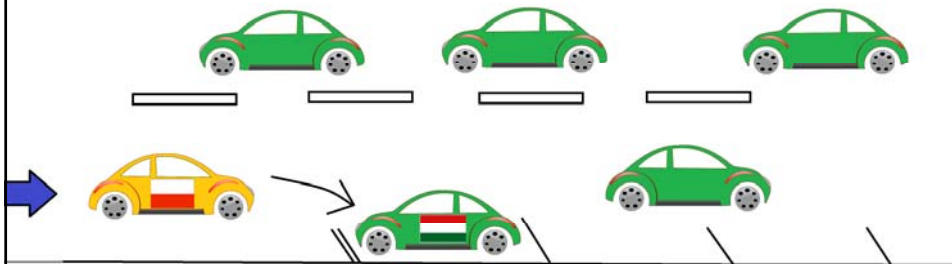


Bereavement damages **not** awarded

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## Scenario 2



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## Applicable Law

The Polish judge applies the 1971 Hague Convention

Art 3 "internal law of the State where the accident occurred".



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## Applicable Law

The Hungarian judge applies the Rome II Regulation

Art 4(2) “where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply”.



## Jurisdiction in Road Traffic Accidents

Two general heads of jurisdiction for direct claims against liability insurers

Brussels I Regulation (recast) **Art 11(1)(a)**

“An insurer domiciled in a Member State may be sued: in the courts of the Member State in which he is domiciled; [...]”

Brussels I Regulation (recast) **Art 12**

“In respect of liability insurance [...], the insurer may in addition be sued in the courts for the place where the harmful event occurred.”



## Jurisdiction in Road Traffic Accidents

Special head of jurisdiction for road traffic victims

**“where the claimant is domiciled”**

Brussels I Regulation (recast) Art 13(2) in conjunction with Art 11(1)(b)

**“[i]f the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them”**

Brussels I Regulation (recast) Art 13(3)

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## Secondary victims

Implicit that the law applicable to claims by primary victims also governs claims by secondary victims.

**“[t]he law applicable to non-contractual obligations under this Regulation shall govern in particular [...] (f) persons entitled to compensation for damage sustained personally.”**

Rome II Regulation Art 15

**“[...] irrespective of the country or countries in which the indirect consequences of that event occur”**

Rome II Regulation Art 4(2)

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## Conclusions

- An injured party can bring a claim:
  - a) At the defendant's domicile, or
  - b) At the place of the accident, or
  - c) At the courts of his or her own domicile (in claims against the defendant's liability insurer).
- Applicable law is determined by either the Rome II Regulation or the 1971 Hague Traffic Accident Convention, which contain significantly different connecting factors.

## A proposition for better coordinating Rome II and the Hague Conventions

Art. 28 Rome II (*proposal for reform*)

**“Where the person claimed to be liable and the injured person have their habitual residence in EU Member States at the time the damage occurred, this Regulation will take precedence over other conventions to which the Member States are or become party.”**