EUROPEAN
COMMISSION

Brussels, 31.1.2025
COM(2025) 20 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the application of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II Regulation)

{SWD(2025) 9 final}

Glossary

Term	*Meaning or definition*
1971 HCCH Convention	Convention of the Hague Conference on Private International Law of 4 May 1971 on the Law Applicable to Traffic Accidents.
2021 Study	Study by British Institute of International and Comparative Law and Civic Consulting on the Rome II Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations. The Study assesses the practical experience and problems of interpretation in the application of Rome II for the period 2010-2020. See the summary in Section 2 of the staff working document accompanying this report ('SWD').
2023 Questionnaire	Questionnaire that was circulated to the EU Member States in 2023 to collect up-to-date information on the application of Rome II. See Section 3 of the SWD.
Anti-SLAPP Directive	Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation'), OJ L, 2024/1069, 16.4.2024.
Brussels Ia Regulation	Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1–32.
CJEU	Court of Justice of the European Union.
EU	European Union.
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, OJ L 119, 4.5.2016, p. 1–88.
MS	Member State(s) of the European Union.
Rome I Regulation	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) OJ L 177, 4.7.2008, p. 6–16.
Rome II	Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) OJ L 199, 31.7.2007, p. 40–49.
SLAPP	Strategic Lawsuit Against Public Participation.
Study on application of foreign law	2011 study by Swiss Institute of Comparative Law on the Application of Foreign Law in Civil Matters in the EU Member States and Its Perspectives For the Future. See the summary in Section 2 of the SWD.
Study on privacy	2009 study by MainStrat, Comparative Study on the Situation in the 27 EU Countries as regards the Law Applicable to Non-Contractual Obligations Arising out of Violations of Privacy and Rights Relating to Personality. See the summary in Section 2 of the SWD.
Study on road traffic accidents	2009 study by Demolin, Brulard, Barthelemy – Hoche - Compensation of Victims of Cross-border Road Traffic Accidents in the EU: Comparison of National Practices, Analysis of Problems and Evaluation of Options for Improving the Position of Cross-border Victims.

	See the summary in Section 2 of the SWD.

1. INTRODUCTION

On 11 July 2007 the European Union adopted Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations ('Rome II'), harmonising the Member States' conflict of laws rules regarding non-contractual obligations. It entered into application on 11 January 2009.

Rome II establishes a legal framework to determine which national substantive law applies within the EU in cross-border disputes involving non-contractual obligations, in particular in cases of tort or delict. By providing uniform rules for conflicts of laws in the EU, Rome II enhances legal certainty, predictability and fairness in civil and commercial matters involving more than one country. Without changing the Member States' substantive rules on non-contractual obligations, it ensures that the same substantive law is applicable irrespective of where in the EU an action is brought. These elements make Rome II a fundamental piece of the EU's conflict of laws legislation, addressing key issues that arise in an increasingly interconnected European context and ensuring that non-contractual disputes are handled with a high degree of coherence and consistency across the EU.

This report presents the first general assessment of the application of the Regulation since 2009, drawing, amongst others, upon several studies, a review of the case law of the CJEU and national courts, other consultations, and academic and other reports. The extended assessment period has enabled the Commission to collect sufficient experience with the application of the Regulation. The report also looks into a number of new and emerging issues such as artificial intelligence, an increasingly online environment and SLAPPs.

According to the review clause of the Regulation, three specific studies were carried out[1] on road traffic accidents (2009), on privacy and rights relating to personality (2009) and on the application of foreign law (2011).

Besides these studies, the Commission assessed the practical experience with Rome II through questions addressed to Member States ('MS') and their courts and authorities. The first such collection of information in 2012 showed that Rome II generally worked well but that practical experience with its application and relevant case law was still limited at the time. The second collection of information took place in 2023 ('2023 Questionnaire')[2], including specific questions on the areas already covered by the previous studies. Moreover, the European Judicial Network in civil and commercial matters met twice to discuss the operation of Rome II in 2012 and 2023.

Finally, as part of the long-term monitoring of the application of the Regulation and in view of the preparation of this report, the Commission commissioned an external study in 2021 to map the application of Rome II from 2010 to 2020 ('2021 Study').

This report builds on these sources to highlight the main findings about the application of Rome II. Additional information, including more detailed explanations going beyond this report, case

[1] See Section 2 of the SWD for details on the studies.
[2] See Section 3 of the SWD for details about the questionnaire.

law and sources used are included in the staff working document accompanying this report ('SWD').

2. General Overview of the Application of Rome II

2.1 Scope

Rome II establishes rules on the law applicable to **non-contractual obligations that have arisen or are likely to arise in cross-border civil and commercial matters**. These include important areas such as liability in cases of traffic accidents, intellectual property infringements, unfair competition and acts restricting free competition, environmental damage or product liability.

The provisions defining the material scope of Rome II have not posed major problems in practice[3]. However, despite the CJEU case law clarifying the term 'non-contractual obligations'[4], there are still areas where, in the absence of case law, uncertainties persist about whether certain claims are contractual or non-contractual, such as the protective effects of certain contracts for third parties and obligations resulting from the offering or announcement of a promotional prize. In addition, the interpretation of specific exclusions from the scope (particularly those in Art. 1(2) (c) and (d)[5]) is still subject to debate. However, it is generally agreed that these challenges in determining the scope of Rome II can be solved through future case law.

On the other hand, the exclusion from the scope of 'non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation' remains a contentious issue among experts where legislative action has been advocated[6].

2.2 Rules on the law applicable to torts/delicts

Under Rome II, the default rule is that the law applicable to a non-contractual obligation arising out of tort or delict is the **law of the country in which the damage occurred** (Art. 4(1) also called *lex loci damni*), with specific rules in Art. 4(2) (law of country of common habitual residence of victim and tortfeasor) and (3) (manifestly closer connection), the latter providing a flexibility mechanism to address cases where the general rule may not lead to the most appropriate legal outcome. This framework ensures legal certainty and predictability as to the law applicable in most cases. The application of the general rule has been largely unproblematic, though some questions remain regarding the application of the rule to indirect victims, multi-party torts, and the localisation of damage in cases of purely financial/economic losses, especially in cases of financial market torts[7].

Rome II also provides for several specific rules tailored to situations where the general rule may not be sufficient and appropriate. These include provisions on product liability (Art. 5), unfair competition and acts restricting free competition (Art. 6), environmental damage (Art. 7), infringements of intellectual property ('IP') rights (Art. 8), and industrial action (Art. 9). While those tailored rules seek to provide solutions to limitations of the general rule, defining

[3] See Section 1 of the SWD on residual uncertainties about the characterisation of certain specific claims.
[4] See Section 4 of the SWD for case law.
[5] See Section 4 of the SWD, case *Wunner*, pending.
[6] See Chapter 3.1 for details.
[7] For financial market torts, see Chapter 3.3. For other details, see Section 1 of the SWD.

their scope may also cause difficulties. For instance, interpretation issues persist regarding the interpretation of the term 'product' in relation to product liability[8] and regarding the IP rights covered by Art. 8[9].

More generally, problems were reported where the connecting factors lead to the application of several different laws to a single dispute, especially as concerns copyright, making it very complicated for courts to apply foreign laws with a sufficient level of knowledge, increasing transaction costs, such as translation and expertise, and ultimately leading to uncertainties on the outcome of the proceedings[10]. This phenomenon, which may require the simultaneous application of a complex 'mosaic' of applicable laws to a single dispute, materialises in particular with respect to torts committed online, where (i) the damage can occur simultaneously in a number of countries or where (ii) a single action may infringe IP rights, in particular copyright, in more than one country. Similar problems may arise for instance in cases of collective redress or mass accidents. Several suggestions exist on how to tackle the problem of simultaneous application of multiple laws in particular in the area of infringements of copyright. As detailed in Section 1 of the SWD, some of these suggestions include legislative amendments to Rome II[11].

2.3 Other rules of Rome II

Rome II also includes rules on the law applicable in cases of 'unjust enrichment, *negotiorum gestio* and *culpa in contrahendo'* (Chapter III). Chapter IV then provides for the possibility that parties agree to submit non-contractual obligations to the law of their choice. The application of these provisions is generally not problematic, with few issues reported[12].

2.4 Common rules, other provisions and final provisions

The Chapters of Rome II on common rules, other provisions and final provisions generally function without major issues. Nevertheless, the relationship with existing international conventions and other instruments, in particular the 1971 HCCH Convention on the Law Applicable to Traffic Accidents, has led to some practical difficulties related to the existence of two conflict of laws regimes for claims arising from cross-border road traffic accidents, as elaborated in Section 1 of the SWD.

3. Application of Rome II in Selected Areas

3.1 Privacy, rights relating to personality, including defamation and SLAPP

Non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, were excluded from the scope of Rome II as no agreement was reached in the legislative negotiations on an appropriate connecting factor for this area of

[8] See Section 1 para 1.2.2 of the SWD. The question is whether the term 'product' in the first sub-paragraph also refers to (i) a product, which is not the very same item as the defective product in question but belongs to the same issue or series of the manufacturer and shows therefore only minor differences (e.g. in marking or packaging); or (ii) any product of the same type.

[9] Despite the non-exhaustive list of IP rights in recital 26.

[10] Study on Cross-border Enforcement of Intellectual Property Rights in the EU. 2021, p. 57, 58

[11] E.g. to apply the closest connection with the infringement as the relevant connecting factor or to allow, contrary to current Art. 8(3) of Rome II, the choice of applicable law.

[12] For details, see Section 1 of the SWD.

torts. Privacy-related torts necessitate balancing out conflicting fundamental rights to freedom of expression and information on the one hand and to privacy and reputation on the other. Differences exist in how individual MS strike this balance in their legal and constitutional systems. These differences in legislative approaches[13] and the critical role that freedom of expression plays in democratic societies were some of the driving factors behind excluding privacy claims from the scope of Rome II in the absence of a consensus on a suitable connecting factor.

As a result, the applicable law in such cases continues to be determined by the national conflict rules of each MS with significant divergences between those rules. The existence of this legal patchwork makes it difficult to predict what law will be applicable in cases of cross-border privacy violations and thus what result the dispute will have.

The criticism of excluding this important group of claims from the scope of Rome II seems to be generally shared. For instance, professionals and stakeholders surveyed in the context of the Study on privacy and the 2021 Study generally found the current situation unsatisfactory. Moreover, in their 2023 replies, most MS were of the view that conflict-of-law rules in this area should better be harmonized. There did not seem to be any rigid positions excluding the future coverage of these torts by Rome II; however, doubts were expressed by some MS whether an acceptable uniform connecting factor can be found adequately balancing the conflicting rights and interests.

Several proposals have been made on a suitable connecting factor since the adoption of Rome II. In addition, other work was also carried out on the topic of privacy and personality rights. This includes:

- **2008 Study on privacy and follow-up by the European Parliament**: The Study on privacy, detailed in Section 2 of the SWD, mapped the Member States' rules relating to privacy and identified possible solutions to the difficulties emerging in the absence of a rule in Rome II. It also showed an overwhelming support in favour of a harmonisation of the law applicable to defamation.

  Following the publication of the 2008 Study, the European Parliament adopted a resolution in 2012 where it proposed to complement Rome II with a conflict of laws rule on privacy and rights relating to personality that would be based on a qualified *lex loci damni*[14].

- **GDPR**: Regulation (EU) 2016/679 ('GDPR'), applicable to the protection of personal data of natural persons in the EU since 2018, harmonises certain aspects of private enforcement of data protection law in Articles 79 and 82[15]. These provisions contain substantive rules on the right to an effective judicial remedy against controllers and

[13] In particular the UK's legislative approach considerably favouring the claimant in defamation cases was at the time markedly distinct from that of most other MS. See the Study on privacy.
[14] More specifically, the law of the country in which the most significant element(s) of the loss or damage occurred should be applied pursuant to the resolution. However, if the defendant could not have reasonably foreseen the substantial consequences of their act occurring in that country, the law of the country in which the defendant is habitually resident would be applied.
[15] The GDPR is limited to the processing of personal data and does not cover other violations of the right to privacy.

processors and the right to claim compensation against data controllers and processors for damages that individuals have suffered as a consequence of breaches of the GDPR.

Should a rule on law applicable to privacy and personality rights be included in Rome II, the interplay with the GDPR will need to be thoroughly considered. While on aspects of the right to compensation that have been uniformly regulated in the GDPR the designation of the law of one rather than another Member State as applicable law pursuant to Rome II would be without practical consequence, that would not be the case for aspects of that right that have not been addressed in the GDPR[16].

- **Brussels Ia Regulation and related case law**: International jurisdiction rules concerning violations of privacy and personality rights and defamation claims are covered by the Brussels Ia Regulation. In a series of preliminary rulings over an extended period of time, the CJEU had the opportunity to clarify these rules, in particular the notion of the place where the damage materialises in the event of defamation both in paper publications and on the internet[17]. Accordingly, it is possible under the Brussels Ia Regulation to bring proceedings for damages for defamation in several jurisdictions at the discretion of the claimant[18].

  In practice, given both the choice of available jurisdictions and the absence of a uniform applicable law rule in the EU, claimants often choose to bring proceedings in the forum having the most favourable applicable law. In some cases[19], this forum may have a rather marginal connection with the dispute at hand. This may create a fertile ground for strategies of judicial harassment, such as in the context of SLAPPs.

- **SLAPPs** ('Strategic lawsuits against public participation') are court proceedings – typically defamation or privacy claims - which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation. Indications of such a purpose include for example the excessive nature of the claim, the initiation of multiple proceedings or the use in bad faith of procedural tactics. Where SLAPPs have a cross-border dimension, claimants may initiate proceedings in a jurisdiction that they perceive to be favourable or where costs inflicted on the defendant are particularly high, or even in multiple jurisdictions.

[16] For example, in the absence of rules on the quantification of damages in the GDPR, it is for the legal system of each MS to prescribe such rules, subject to compliance with the principles of equivalence and effectiveness. Of course, the applicable law of a MS pursuant to Rome II may also have practical consequences regarding claims concerning non-personal data and thus not regulated by the GDPR, e.g. claims based on the processing of data of deceased persons or legal persons.

[17] See p.113, 114 in the 2023 Study on the application of the Brussels Ia Regulation for details of the case law.

[18] In addition to the general forum of the defendant's domicile, the 'place where the damage materialised' includes the place where the victim has their 'centre of interests' as a forum where the entire damage can be claimed, albeit only in the context of a defamation online, as well as each MS where the defamatory content is accessible, but only with respect to the damage caused in that MS.

[19] E.g. case *Gtflix TV*. See Section 4 of the SWD.

Due to the growth of this phenomenon in the EU and the risk it implies for freedom of expression and free media by stifling public debate, the EU adopted the Anti-SLAPP Directive in 2024 to ensure adequate procedural safeguards against such abusive litigation. During the negotiations the European Parliament proposed to include a special conflict of laws rule but in the end the co-legislators agreed that any future review of Rome II should assess the SLAPP-specific aspects of the rules on applicable law.

The recent SLAPP phenomenon specifically underscores that the problems posed by the multiplication of available jurisdictions and by the absence of a conflict of laws rule in defamation and privacy cases can be exploited in an abusive manner to hinder public participation. However, these problems are common to all defamation and privacy cases. Therefore, if a conflict-of-law rule were added to Rome II, it should possibly apply generally to cases of violations of privacy and rights relating to personality, irrespective of whether they are abusive. Member States consulted on this aspect likewise agreed that any possible rule in Rome II should be a general one[20].

In conclusion, there seems to be a critical mass of arguments to consider an amendment to Rome II that includes *non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation*, within the scope. In the context of this consideration, the interplay with the Brussels Ia Regulation and suitable options for an appropriate conflict-of-law rule have to be comprehensively assessed.

3.2 Artificial intelligence ('AI')

The future application of Rome II to cases concerning non-contractual obligations related to the use of AI will be influenced by the evolution of substantive legal systems in response to AI-related disputes. As more cases involving AI will come before the courts and technology advances, legal systems will need to adapt and develop frameworks to address the challenges posed by AI. This may include determining liability, establishing standards of care, and defining legal responsibilities in AI-related contexts. The ongoing development of technology and the legal landscape in terms of substantive rules governing the use of AI will shape questions concerning the application of Rome II to AI cases in the future[21] .

However, due to the still emerging nature of identifying approaches to cope with the intricacies related to the expanding use of AI, it is difficult to assess whether and to what extent specific rules may be needed in Rome II. Most MS in their input agreed that there was little practical experience of choice of law problems in cases involving the use of AI and where potential

[20] See Section 3 of the SWD on the 2023 Questionnaire. Several MS indicated that they were not aware of considerable difficulties for victims of SLAPPs in a cross-border context or stated that a uniform EU approach to conflict-of-law rules may not alleviate them. In contrast, one MS expressly argued that with a uniform applicable law, the exercise of the right to defence would be simplified.

[21] See COM Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive), COM/2022/496 final. The Proposal does not contain conflict of law rules and although the harmonisation reduces the differences in outcome that could derive from the application of the national law of one or other MS it only addresses very specific elements related to disclosure of evidence and the burden of proof and even within its restricted scope it represents minimum harmonisation so that differences will remain.

problems were alluded to, they were not specified. It was pointed out that it would be premature to seek solutions to problems without waiting to see what they might be, and the question was articulated whether one should even consider special rules for AI liability since Rome II is deliberately technology neutral.

This generally cautious approach was also followed by the 2021 Study which pointed to the lack of practical examples in this area and the fact that legal systems had not yet defined their approach to the imposition of substantive liability, in particular the question whether the producer or the user of the AI system should be primarily liable.

Against that background it can be concluded that, subject to further analysis, the time may not yet be ripe to envisage any potential amendments to Rome II to introduce AI-specific rules.

3.3 Financial market torts and prospectus liability

The application of Rome II to financial market torts and prospectus liability has been frequently debated, especially in academia. In particular, it has been controversially discussed how to apply Art. 4 to cases of non-contractual obligations arising out of a tort on the financial market. Some authors argue that the general rule in Art. 4 of Rome II is ill-fitted to govern **cases of financial market torts, including cases of prospectus liability,** as the sustained damage is only a purely economic one and its localisation following the *lex loci damni* is thus complicated. Moreover, depending on the interpretation of Art. 4(1), in situations where affected investors or their accounts are located in various countries, the issuers of securities (or other persons liable) may be subject to claims under various legal regimes for a single act such as making incorrect representations in a prospectus.

The question of how to localise purely financial loss under Rome II is not limited to cases of financial market torts[22] but it has mostly been raised in that context. Several preliminary references regarding the localisation of financial loss have been submitted to the CJEU in the context of determining jurisdiction under the Brussels Ia Regulation but no unequivocally clear jurisprudence has yet emerged on this question[23]. The transfer of these rulings to the context of Rome II could cause undesirable outcomes, including a fragmentation of the law applicable to a single financial market tort[24]. The fragmentation of the applicable law would also render collective actions of investors more difficult and would lead to possibly unjustified differences in the standards of protection between investors. In addition, it may be difficult to predict the law in advance, since transactions with financial instruments usually take place in secondary markets or the habitual residence of the investor or the place of establishment of the account-holding bank is mostly unknown to an issuer (or an intermediary).

Different options have been proposed as to an appropriate solution. For instance, it was suggested by some scholars that Art. 4 be (re)interpreted through case law on the basis of an

[22] See e.g. the pending case *Wunner* where the CJEU is asked to determine the 'place where the damage occurred' in a case of tortious liability in respect of gaming losses.

[23] The CJEU held e.g. in *Kolassa*, that the damage arising from misinformation in a prospectus occurred at the domicile of the investor, as long as this place coincided with the place of establishment of the bank which manages the investor's account. In contrast, in its most recent decision, *VEB v BP*, the CJEU took the stricter view that the place where the damage occurred is not the MS in which the bank or investment firm in which the account is held has its registered office where that firm was not subject to statutory reporting obligations in that MS.

[24] That would be the case especially if the line of case law were followed that locates the financial damage in the country where the investor account is held.

unchanged text to address the uncertainty concerning the place of damage. In particular, it is often argued that that place should correspond to the relevant affected financial market. Other suggestions included e.g. that the escape clause in Art. 4(3) is used, thus leading to a single applicable law to the whole dispute, such as the law of the country where the securities are listed or admitted to trading.

Alternatively, in order to address these concerns holistically, it has been proposed to amend Rome II to lay down a special conflict of law rule concerning non-contractual obligations arising out of torts on a financial market, including prospectus liability[25]. This rule could subject those obligations **to the law of the country where the relevant market is located (where the affected financial instrument has been admitted to trading)**. However, it is questioned whether such a rule would work in all cases, including non-listed financial instruments (over-the-counter sales). While introducing a conflict-of-law rule centred around the relevant regulated market seems to be preferred by most scholars, other proposals exist[26].

Member States reported, similarly to the 2021 Study[27], that the cases involving cross-border financial market torts and liability for prospectuses did not occur often and related issues with the application of Rome II were thus limited. On the other hand, three MS reported practical difficulties with applying Rome II to this area of torts and proposed that a special conflict-of-law rule in this area is considered. The law of either the country on whose market the securities are listed or the country where the issuer has their registered office was recommended.

Although the problem is especially raised by academia, the CJEU preliminary rulings in the context of establishing jurisdiction in case of financial market torts and prospectus liability show that the localisation of financial loss is becoming a relevant issue also among the practitioners. It follows that it should be examined in more detail how to address cases where damages are purely economic, possibly by including a special conflict-of-law rule in Rome II dealing with financial market torts and prospectus liability or by leaving it to the interpretation of the courts.

3.4 Collective redress and cases involving multiple parties

Multi-state scenarios involving cases of product liability, acts of unfair competition and acts restricting free competition, prospectus liability, multi-vehicle accidents, or mass harm consumer cases are some of the examples where a group of victims may suffer harm from the same act. In those situations, where a collective action seeks compensation for all members of the harmed group, damage is to be located independently and separately for each claim and each victim. Therefore, in cases of collective redress, the court seised may have to apply several substantive laws to the claims of different claimants of the group. This may be the case in particular in the context of representative actions for the protection of the collective interests of consumers brought pursuant to the relatively recently adopted Directive (EU) 2020/1828[28],

[25] See e.g. the Resolution of the German Council on Private International Law of 31. 03. 2012, *IPRax* 2012/5 p. 471 which suggests introducing a special conflict rule for financial torts based on the law of the country where the affected financial instrument is traded. There is also an escape clause and a clause for instruments traded on more than one trading venue, in addition to a proposed change to the recitals. See also 2021 Study, p. 34.
[26] For examples, see 2021 Study p. 33, 239.
[27] p. 396.
[28] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers, OJ L 409, 4.12.2020, p. 1–27.

when the consumers represented are domiciled in more than one country. The application of several substantive laws tends to complicate the assessment of the case, increase costs and length of the litigation and may have a cooling effect on consumer movement litigation strategies. On the other hand, the alternative, *i.e.* subjecting the claims to different applicable laws depending on whether the claims are pursued individually or jointly in the context of collective redress, may affect the predictability of the applicable law rules and, consequently, legal certainty.

On the question whether Rome II is well adapted to deal with collective redress, which may involve a large number of potentially applicable laws, MS opinions in the 2023 Questionnaire varied. While the majority did not comment or found the present situation satisfactory[29], some alluded to potential problems or took the view that the solution lay in dividing the action into batches according to the relevant applicable law.

Even though it cannot be concluded at this stage whether there could be a solution other than the current status that would both facilitate collective redress and ensure legal certainty on the applicable law irrespective of the procedure chosen to claim compensation, further attention should be given to that assessment in the context of a possible review of Rome II.

4. CONCLUSION

Taking stock of the practical experience over the fifteen years since Rome II has entered into application, on the basis of the views collected from Member States and stakeholders as well as of the assessment of that experience in various studies, it can be concluded that the Regulation generally works well and is fit for purpose. Legal certainty as to the interpretation of the Regulation was further enhanced by the emergence of CJEU rulings[30] and national case law.

However, the findings in this report reveal several issues that merit further in-depth analysis with a view to assessing whether targeted legislative adjustments of Rome II are desirable and what options may exist to efficiently address them. These issues most notably include the following:

- a reassessment of the exclusion from scope of Rome II for privacy and personality rights, including defamation;
- the application of Rome II in cases where the damage occurs simultaneously in many jurisdictions, leading to a possible application of multiple national laws to the non-contractual obligation (e.g. cases of collective redress and torts committed online, including infringements of IP rights online, esp. of copyright);
- torts causing purely economic losses, including financial market torts and prospectus liability.

On this basis, with a view to assessing whether legislative change is needed, the Commission will carry out further analysis in order to consider and potentially prepare a proposal to amend or recast the Regulation in accordance with the Better Regulation rules. In that context, further

[29] One MS indicated that recourse to Art. 4(3) would normally provide a solution.
[30] See Section 4 of the SWD on case law.

analysis can also be carried out to assess the merits of other conceivable modifications or, in areas where the existing rules are fully appropriate, possible textual clarifications to facilitate their application.