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Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2003/0168(COD)

15.4.2005

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council
on the law applicable to non-contractual obligations ("Rome II")
(COM(2003)0427 – C5-0338/2003 – 2003/0168(COD))

Draftswoman: Barbara Kudrycka

PA_Leg

SHORT JUSTIFICATION

The Draftsman would call upon the draftsman of the Committee on Legal Affairs to include in the report the following amendments which fall in its remit.

Article 6 concerns violation of privacy and rights relating to the personality and its content has an enormous impact on fundamental principles as regards freedom of expression and right to information. By amending this Article the Draftsman tries to find a balance between the responsibility of publishers and broadcasters and the freedom of press as well as the predictability and foreseeability of law.

In the amended version of Article 25 the Draftsman takes into account the process of harmonisation of private international law in the EC. The Rome II Regulation together with Regulations Brussels I and II and measures taken in order to transform the Rome I Convention into a community instrument are aiming at the creation of a uniform system of rules concerning conflict of laws in the EC. Therefore, it seems appropriate to give the Regulation the widest possible scope of application.

Lastly the Draftsman wants to thank Ms. Diana Wallis, the Draftsman for the Committee of Legal Affairs, for her extended impact assessment and for her valuable draft report.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Article 6

1. The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality shall be the law of the *forum where the application of the law designated by Article 3 would be contrary to the fundamental principles of the forum as regards freedom of expression and information.*

1. The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality shall be the law of the *country in which the most significant element or elements of the loss or damage occur or are likely to occur. However, a manifestly closer connection with a particular country may be deemed to exist, having regard to factors such as the country to which a publication or broadcast*

¹ OJ C, 15.4.2005, p.

is principally directed or the language of the publication or broadcast or sales or audience size in a given country as a proportion of total sales or audience size, or a combination of these factors. This provision shall apply mutatis mutandis to internet publications.

2. The law applicable to the right of reply or equivalent measures shall be the law of the country in which the **broadcaster** or **publisher** has its habitual residence.

2. The law applicable to the right of reply or equivalent measures **and to any preventive measures or prohibitory injunctions against a publisher or broadcaster regarding the content of a publication or broadcast** shall be the law of the country in which the **publisher** or **broadcaster** has its habitual residence.

2a. Where the Regulation designates the law of a third country, the law of the forum shall apply if the application of the law of the third country would be contrary to the fundamental principles of the forum as regards freedom of expression and information.

Justification

The aim of this amendment is to provide protection of individuals and grant publishers and broadcasters more legal certainty. This amendment covers all types of publications, even those carried out on the internet. It takes into account the case law of the European Court of Justice.

Amendment 2

Article 25, paragraph 1 a (new)

1a. This Regulation shall prevail over the rules of international conventions concluded between two or more Member States, with the exception of the conventions listed in an Annex.

Justification

The amendment takes into account the process of harmonisation of private international law at Community level which is essential and would not be reached without this amendment.