

**P6\_TA(2005)0284**

**Law applicable to non-contractual obligations ("Rome II") \*\*\*I**

**European Parliament legislative resolution 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))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003)0427)<sup>1</sup>,
  - having regard to Articles 251(2) and 61(c) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0338/2003),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0211/2005),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ.

**Position of the European Parliament adopted at first reading on 6 July 2005 with a view to the adoption of Regulation (EC) No .../2005 of the European Parliament and of the Council on the law applicable to non-contractual obligations ("ROME II")**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in *particular* Article 61(c) thereof,

Having regard to the proposal from the *Commission*,

Having regard to the opinion of the European Economic and Social *Committee*<sup>1</sup>,

Acting in accordance with the procedure laid down in Article 251 of the *Treaty*<sup>2</sup>,

Whereas:

- (1) The Union has set itself the objective of establishing an area of freedom, security and justice. To that end the Community must adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market, including measures promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.
- (2) For the purposes of effectively implementing the relevant provisions of the Amsterdam Treaty, the Council (Justice and Home Affairs) on 3 December 1998 adopted a plan of action specifying that the preparation of a legal instrument on the law applicable to non-contractual obligations is among the measures to be taken within two years following the entry into force of the Amsterdam *Treaty*<sup>3</sup>.
- (3) The Tampere European Council on 15 and 16 October 1999<sup>4</sup> approved the principle of mutual recognition of judgments as a priority matter in the establishment of a European law-enforcement area. The *draft mutual recognition programme*<sup>5</sup> states that measures relating to harmonisation of conflict-of-law rules are measures that “actually do help facilitate” the implementation of the *principle*.

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<sup>1</sup> OJ C 241, 28.9.2004, p. 1.

<sup>2</sup> *Position* of the European Parliament of 6 July 2005.

<sup>3</sup> Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (OJ C 19, 23.1.1999, p. 1).

<sup>4</sup> Presidency conclusions of 16 October 1999, points 28 to 39.

<sup>5</sup> OJ C 12, 15.1.2001, p. 1.

- (4) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law and the free movement of judgments, for the rules of conflict of laws in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.
- (5) The scope *and provisions* of *this* Regulation must be determined in such a way as to be consistent with *Council* Regulation (EC) No 44/2001 of 22 December 2000 on *jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*<sup>1</sup> and Regulation (EC) No .../... on the law applicable to contractual obligations ("*Rome I*")<sup>2</sup>.
- (6) *The concern for consistency in Community law requires that this Regulation be without prejudice to provisions relating to or having an effect on the applicable law, contained in instruments of secondary legislation other than this Regulation, such as conflict rules in specific matters, overriding mandatory rules of Community origin, and the basic legal principles of the internal market. As a result, this Regulation should promote the proper functioning of the internal market, in particular the free movement of goods and services.*
- (7) Only uniform rules applied irrespective of the law they designate can avert the risk of distortions of competition between Community litigants.
- (8) *It is necessary to have conflict rules which are as uniform as possible throughout the Member States in order to minimise uncertainty in the law. However, the need for legal certainty must always be subordinate to the overriding need to do justice in individual cases and consequently the courts must be able to exercise discretion. Furthermore, it is necessary to respect the intentions of the parties where they have made an express choice as to the law applicable to an issue in tort or delict or where such a choice may reasonably be inferred by the court.*

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

<sup>2</sup> OJ L ...

- (9) ***This Regulation should*** serve to improve the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. ***It should also satisfy the reasonable expectations of the parties by allowing courts to take an approach to the question of the law applicable in a given dispute which satisfies the needs of international trade and transactions in a Community of States without internal borders.***
- (10) ***The conflict of laws rules set out in this Regulation also cover obligations based on strict liability and the harmonised rules on connecting factors also apply to the question of the capacity to incur liability in tort/delict.***
- (11) ***Regarding*** product liability, the conflict rule must meet the objectives of fairly spreading the risks inherent in a modern high-technology society, protecting consumers' health, stimulating innovation, securing undistorted competition and facilitating trade. Connection to the law of the place where the person sustaining the damage has his habitual residence, together with a foreseeability clause, is a balanced solution in regard to these ***objectives.***
- (12) ***This Regulation does not prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media. The country in which the most significant element or elements of the damage occur or are likely to occur should be deemed to be the country to which the publication or broadcasting service is principally directed or, if this is not apparent, the country in which editorial control is exercised, and that country's law should be applicable. The country to which a publication or broadcast is directed should be determined in particular by the language of the publication or broadcast or by sales or audience size in a given country as a proportion of total sales or audience size or by a combination of those factors. Similar considerations should apply in respect of publication via the Internet or other electronic networks.***

- (13) *In a communications environment operating increasingly on a continent-wide basis, the various forms of law relating to the personality and historically established press traditions in the European Union suggest that, in this area too, more uniform prerequisites and rules for dispute resolution should be sought. The very nature, which merits safeguarding, of press freedom and its role in society would suggest, however, that in the process priority should be given to media which deal responsibly with rights relating to the personality and are prepared to establish autonomously, and on the basis of consensus, a self-obligating European Media Code and/or a European Media Council which can provide consolidating decision-taking guidelines for the relevant courts as well. The Commission is called on to provide support for such a process.*
- (14) *Regarding infringements* of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of the present Regulation, the *expression* intellectual property rights *should be understood as meaning* copyright *and* related rights, *the* sui generis right for the protection of databases and industrial property rights.
- (15) *Special* rules should be *laid down* for *liability arising out of* unjust enrichment *or* agency without authority.
- (16) To preserve their freedom of will, the parties should be allowed to determine the law applicable to a non-contractual obligation. Protection should be given to weaker parties by imposing certain conditions on the choice.
- (17) Considerations of the public interest warrant giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory rules.
- (18) The concern to strike a reasonable balance between the parties means that, *in so far as is appropriate*, account must be taken of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligations *are* governed by another law. *This should not apply to violations of rights relating to the personality or of fair competition.*

- (19) *The law applicable to a non-contractual obligation arising out of any industrial action, pending or carried out, should be the law of the country in which the action is to be taken or has been taken.*
- (20) *In the interests of ensuring that the issue of applicable law is properly considered by the parties and the court, the parties should be under a duty to inform the court in the document originating proceedings and the defence of the law or laws which they maintain are applicable to all or any parts of the claim.*
- (21) **Respect** for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties. To make the rules easier to read, the Commission will publish the list of the relevant conventions in the Official Journal of the European Union on the basis of information supplied by the Member States.
- (22) Since the objective of the proposed action, namely better foreseeability of court judgments requiring genuinely uniform rules determined by a mandatory and directly applicable Community legal instrument, cannot be *sufficiently achieved* by the Member States, who cannot lay down uniform Community rules, and can therefore, by reason of its effects throughout the Community, be better achieved at Community level, the Community *may adopt* measures, in accordance with the *principle of subsidiarity* set out in Article 5 of the Treaty. In accordance with the *principle of proportionality* as set out in that Article, *this* Regulation, which increases certainty in the law without requiring harmonisation of the substantive rules of domestic law, does not go beyond what is necessary *in order to achieve* that objective.
- (23) [In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, *those* Member States have stated their intention of participating in the adoption and application of this Regulation. / In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, *those* Member States are not participating in the adoption of this Regulation, which will accordingly not be binding on those Member States.]
- (24) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, that Member State is not participating in the adoption of this Regulation, which will accordingly not be binding on that Member State,

HAVE ADOPTED THIS REGULATION:

Chapter I

Scope

Article 1

Material scope

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. ***For the purposes of this Regulation only, obligations arising out of unjust enrichment and agency without authority shall be considered as non-contractual obligations.***

*This Regulation shall not apply to revenue, customs or administrative matters, or to the liability of public administrations in respect of acts or omissions occurring in the performance of their duties.*

2. The following are excluded from the scope of this Regulation:

- (a) non-contractual obligations arising out of family relationships and relationships deemed to be equivalent, including maintenance obligations;
- (b) non-contractual obligations arising ***or likely to arise*** out of matrimonial property regimes, ***property regimes of relationships deemed by the law applicable to such relationships as having comparable effects to marriage*** and successions;
- (c) obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
- (d) ***non-contractual obligations arising or likely to arise out of*** personal liability of officers and members as such for the ***obligations*** of a company or firm or other body corporate or incorporate, and the ***personal liability of auditors to a company or its members in*** the statutory audits of accounting documents;
- (e) non-contractual obligations among the *settlers*, trustees and beneficiaries of a trust ***created voluntarily***;

- (f) non-contractual obligations arising out of nuclear damage;
- (g) *evidence and procedure, without prejudice to Articles 18 and 19;*
- (h) *liability for acts of public authority, including liability of publicly appointed office-holders.*

**3. This Regulation shall not prejudice the application or adoption of acts of the institutions of the European Communities which:**

- (a) *in relation to particular matters, lay down choice-of-law rules relating to non-contractual obligations; or*
- (b) *lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or*
- (c) *prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or*
- (d) *lay down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of private international law.*

4. For the purposes of this Regulation, "Member State" means any Member State other than [the United Kingdom, Ireland or] Denmark.

## Article 2

### Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

## Chapter II

### Uniform rules

#### Section 1

Rules applicable to non-contractual obligations arising out of a tort or delict

#### *Article 3*

##### *Freedom of choice*

***1. The parties may agree, by an agreement entered into after their dispute arose or, where there is a pre-existing arms-length commercial relationship between traders of equal bargaining power, by an agreement freely negotiated before the dispute arose, to submit non-contractual obligations to the law of their choice. The choice must be expressed or demonstrated with reasonable certainty by the circumstances of the case. It may not affect the rights and obligations of third parties and shall be without prejudice to the application of mandatory rules within the meaning of Article 14.***

***2. A choice of law made by the parties shall not deprive an employee who is a party to a contract of employment of the protection that would be afforded to him by the mandatory rules***

***(a) of the country in which he habitually carries out his work in performance of the contract; or***

***(b) if the employee does not habitually carry out his work in any one country, of the law of the country in which the place of business through which he was engaged is situated; or***

***(c) of the country with which the contract is most closely connected.***

***3. If all the other elements of the situation at the time when the loss or damage is sustained are located in one or more of the Member States, the parties' choice of the applicable law shall not debar the application of provisions of Community law.***

## Article 4

### General rule

1. ***In the absence of an agreement within the meaning of Article 3 and unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort or a delict shall be the law of the country in which the damage occurs or is likely to occur, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.***

2. ***In the case of personal injuries arising out of traffic accidents, however, and with a view to the motor insurance directive, the court seised and the liable driver's insurer shall, for the purposes of determining the type of claim for damages and calculating the quantum of the claim, apply the rules of the individual victim's place of habitual residence unless it would be inequitable to the victim to do so.***

***With regard to liability, the applicable law shall be the law of the place where the accident occurred.***

3. Notwithstanding ***paragraph 1 and by way of exception***, where it is clear from all the circumstances of the case that the non-contractual obligation is manifestly more closely connected with another country, the law of that other country shall ***apply***.

***The factors that may be taken into account as manifestly connecting a non-contractual obligation with another country include:***

- (a) as far as loss-distribution and legal capacity are concerned, the fact that the person(s) claimed to be liable and the person(s) sustaining loss or damage have their habitual residence in the same country or that the relevant laws of the country of habitual residence of the person(s) claimed to be liable and of the country of habitual residence of the person(s) sustaining loss or damage are substantially identical;***
- (b) a pre-existing legal or de facto relationship between the parties, such as, for example, a contract, that is closely connected with the non-contractual obligation in question;***

- (c) *the need for certainty, predictability and uniformity of result;*
  - (d) *protection of legitimate expectations;*
  - (e) *the policies underlying the foreign law to be applied and the consequences of applying that law.*
4. *In resolving the question of the applicable law, the court seised shall, where necessary, subject each specific issue of the dispute to separate analysis.*

## *Section 2*

### *Special rules applicable to specific torts/delicts and non-contractual obligations*

#### *Article 5*

##### Violations of privacy and rights relating to the personality

1. *As regards the law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality, the law of the country in which the most significant element or elements of the loss or damage occur or are likely to occur shall be applicable.*

*Where the violation is caused by the publication of printed matter or by a broadcast, the country in which the most significant element or elements of the damage occur or are likely to occur shall be deemed to be the country to which the publication or broadcasting service is principally directed or, if this is not apparent, the country in which editorial control is exercised, and that country's law shall be applicable. The country to which the publication or broadcast is directed shall be determined in particular by the language of the publication or broadcast or by sales or audience size in a given country as a proportion of total sales or audience size or by a combination of those factors.*

*This provision shall apply mutatis mutandis to publications via the Internet and other electronic networks.*

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.

3. *Paragraph 2 shall also apply to a violation of privacy or of rights relating to the personality resulting from the handling of personal data.*

#### *Article 6*

##### *Industrial action*

*The law applicable to a non-contractual obligation arising out of industrial action, pending or carried out, shall be the law of the country in which the action is to be taken or has been taken.*

#### *Article 7*

##### *Traffic accidents*

1. *Until such time as the Community adopts detailed legislation on the law applicable to traffic accidents, Member States shall either apply the general rules set out in this Regulation, subject to Article 15, or the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.*

2. *In the case of personal injuries arising out of traffic accidents the court seised shall apply the rules relating to the quantum of damages of the individual victim's place of habitual residence, unless it would be inequitable to do so.*

## *Article 8*

### Infringement of intellectual property rights

1. The law applicable to a non-contractual obligation arising from an infringement of *an* intellectual property right shall be the law of the country for which protection is sought.
2. In the case of a non-contractual obligation arising from an infringement of a unitary Community industrial property right, the relevant Community instrument shall apply. For any question that is not governed by that instrument, the applicable law shall be the law of the Member State in which the act of infringement is *committed*.

## *Article 9*

### *Unjust enrichment*

1. *If a non-contractual obligation arising out of unjust enrichment concerns a relationship previously existing between the parties, such as a contract closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.*
2. *Where the applicable law cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the applicable law shall be the law of that country.*
3. *Where the applicable law cannot be determined on the basis of paragraphs 1 and 2, the applicable law shall be the law of the country in which the event giving rise to unjust enrichment substantially occurred, irrespective of the country in which the enrichment occurred.*
4. *Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than the one indicated by paragraphs 1, 2 or 3, the law of that other country shall apply.*

## *Article 10*

### *Negotiorum gestio*

- 1. If a non-contractual obligation arising out of an action or actions performed without due authority in connection with the affairs of another person concerns a relationship previously existing between the parties, such as a contract closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.*
- 2. Where the applicable law cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to the loss or damage occurs, the applicable law shall be the law of that country.*
- 3. Where the applicable law cannot be determined on the basis of paragraphs 1 and 2, the applicable law shall be the law of the country in which the action took place.*
- 4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of an action or actions performed without due authority in connection with the affairs of another person is manifestly more closely connected with a country other than the one indicated by paragraphs 1, 2 or 3, the law of that other country shall apply.*

### Section 3

Common rules applicable to non-contractual obligations arising out of a tort or delict and out of an act other than a tort or *delict*

#### *Article 11*

##### Scope of the law applicable to non-contractual obligations

The law applicable to non-contractual obligations under Articles 3 to 10 of this Regulation shall govern in particular:

- (a) the *basis* and extent of liability, including the determination of persons *whose acts give rise to liability*;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (c) the existence, *the nature and the assessment of damages or the redress sought*;
- (d) within the limits of its powers, the measures which a court has power to take under its procedural law to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the assessment of the damage in so far as prescribed by law;
- (f) the question whether a right to compensation may be assigned or inherited;
- (g) persons entitled to compensation for damage sustained personally;
- (h) liability for the acts of another person;
- (i) the manners in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement of a period of prescription or limitation and the interruption and suspension of the period.

***Except where otherwise provided in this Regulation or in a valid choice-of-law agreement, the court seised shall apply its national rules relating to the quantification of damages, unless the circumstances of the case warrant the application of another country's rules.***

#### ***Article 12***

##### ***Contentions as to applicable law***

***Any litigant making a claim or counterclaim before a national court or tribunal which falls within the scope of this Regulation shall notify the court or tribunal and any other parties by statement of claim or other equivalent originating document of the law or laws which that litigant maintains are applicable to all or any parts of his/her claim.***

#### ***Article 13***

##### ***Determination of the content of foreign law***

- 1. The court seised shall establish the content of the foreign law of its own motion. To this end, the parties' collaboration may be required.***
- 2. If it is impossible to establish the content of the foreign law and the parties agree, the law of the court seised shall be applied.***

#### ***Article 14***

##### ***Overriding mandatory rules***

- 1. Nothing in this Regulation shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.***
- 2. Where the law of a specific country is applicable by virtue of this Regulation, effect may be given to the mandatory rules of another country with which the situation is closely connected, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the non-contractual obligation. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.***

### *Article 15*

#### Rules of safety and conduct

Whatever may be the applicable law, in determining liability account shall be taken, ***as a matter of fact, and in so far as is appropriate***, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the damage.

### *Article 16*

#### Direct action against the insurer of the person liable

The right of persons who have suffered damage to take direct action against the insurer of the person claimed to be liable shall be governed by the law applicable to the non-contractual obligation unless the person who has suffered damage prefers to base his claims on the law applicable to the insurance contract ***in so far as this possibility exists under one of those laws***.

### *Article 17*

#### Subrogation and multiple liability

1. Where a person ("the creditor") has a non-contractual claim *against* another ("the debtor"), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law *governing* the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship in whole or in part.
2. The same rule shall apply where several persons are subject to the same claim and one of them has satisfied the creditor.

*Article 18*

Formal validity

A unilateral act intended to have legal effect and relating to a non-contractual obligation *shall be* formally valid if it satisfies the formal requirements of the law *governing* the non-contractual obligation in question or the law of the country in which *that* act is done.

*Article 19*

Burden of proof

1. The law governing a non-contractual obligation under this Regulation *shall apply* to the extent that, in matters of non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.
2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in *Article 18* under which that act is formally valid, provided that such mode of proof can be administered by the forum.
3. ***Notwithstanding Articles 12 and 13 and paragraphs 1 and 2 of this Article, the rules of this Regulation shall not apply to evidence and procedure.***

## Chapter III

### Other provisions

#### *Article 20*

##### Assimilation to the territory of a State

For the purposes of this Regulation, the following shall be treated as being the territory of a State:

- (a) installations and other facilities for the exploration and exploitation of natural resources in, on or below the part of the seabed situated outside the State's territorial waters if the State, under international law, enjoys sovereign rights to explore and exploit natural resources there;
- (b) a ship on the high seas which is registered in the State or bears lettres de mer or a comparable document issued by it or on its behalf, or which, not being registered or bearing lettres de mer or a comparable document, is owned by a national of the State;
- (c) an aircraft *in airspace* which is registered in or on behalf of the State or entered in its register of nationality, or which, not being registered or entered in the register of nationality, is owned by a national of the State.

#### *Article 21*

##### Assimilation to habitual residence

1. For *companies, firms* and other *incorporated or unincorporated* bodies, *the principal establishment* shall be considered to be the habitual residence. However, where the event giving rise to the damage occurs or the damage arises in the course of operation of a *subsidiary, branch or other establishment, that subsidiary, branch or establishment* shall take the place of the habitual residence.
2. Where the event giving rise to the damage occurs or the damage arises in the course of the business activity of a natural person, that natural person's ***actual place of establishment*** shall take the place of the habitual residence. ***Where the activity in question is peripatetic or domiciliary, that natural person's officially registered address shall take the place of the habitual residence.***
3. For the purpose of *Article 5 (2)*, the place where the broadcaster is established within the meaning of *Council Directive 89/552/EEC<sup>1</sup>* shall take the place of the habitual residence.

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<sup>1</sup> *Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23). Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).*

*Article 22*

Exclusion of renvoi

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

*Article 23*

States with more than one legal system

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.
2. A State within which different territorial units have their own rules of law in respect of non-contractual obligations shall not be bound to apply this Regulation to conflicts solely between the laws of such units.

*Article 24*

Public policy of the forum

*1.* The application of a rule of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy ("*ordre public*") of the forum.

*2. In particular, the application of a rule of law of any country specified by this Regulation may be refused and/or the law of the forum applied if such application would be in breach of fundamental rights and freedoms as enshrined in the European Convention on Human Rights, national constitutional provisions or international humanitarian law.*

**3. Furthermore, the application of a provision of the law designated by this Regulation which has the effect of causing non-compensatory damages, such as exemplary or punitive damages, to be awarded may be regarded as being contrary to the public policy ("ordre public") of the forum.**

**4. Where, under this Regulation, the law specified as applicable is that of a Member State, the public policy exception may only be applied at the request of one of the parties.**

#### *Article 25*

##### Relationship *with international* conventions

**1. This Regulation shall not prejudice the application of international conventions to which the Member States are parties when this Regulation is adopted and which, in relation to particular matters, lay down conflict of law rules relating to non-contractual obligations.**

**2. The rules of this Regulation shall prevail over the rules of international conventions concluded between two or more Member States unless those conventions are listed in Annex 1.**

**3. If all the other elements of the situation at the time when the loss or damage is sustained are located in one or more Member States, the rules of this Regulation shall take precedence over the rules of the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.**

## Chapter IV

### Final provisions

#### Article 26

##### List of conventions referred to in Article 25

1. The Member States shall notify the Commission, no later *than ...*, of the list of conventions referred to in Article 25. After that date, the Member States shall notify the Commission of all denunciations of such conventions.
2. The Commission shall publish the list of conventions referred to in paragraph 1 in the Official Journal of the European Union within six months of receiving the full list.

#### Article 27

##### Review

*Not later than ...<sup>\*</sup>, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee, in respect of points 1 and 2, reports on the application of this Regulation and, if necessary, make further proposals to adapt it:*

- (1) In making its report, the Commission shall pay particular attention to the effects of the way in which foreign law is treated in the different jurisdictions and the question of damages, including the possibility of awarding exemplary or punitive damages in certain jurisdictions.*
- (2) It shall also consider whether Community legislation specifically dealing with the law applicable to traffic accidents ought to be proposed. The report shall include an analytical study of the extent to which courts in the Member States apply foreign law in practice, including recommendations as to the desirability of a common approach to the application of foreign law.*

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<sup>\*</sup> *Three years after the date of adoption of this Regulation.*

***(3) In a communications environment operating increasingly on a continent-wide basis, the various forms of law relating to the personality and historically established press traditions in the European Union point to the need for more uniform prerequisites and rules for dispute resolution. The very nature, which merits safeguarding, of press freedom and its role in society would suggest, however, that in the process priority should be given to media which deal responsibly with rights relating to the personality and are prepared to establish autonomously, and on the basis of consensus, a self-obligating European Media Code and/or a European Media Council which can provide consolidating decision-taking guidelines for the relevant courts as well. The Commission is called on to consider what scope there is for providing support for such a process and to present recommendations, in a report, on what form more far-reaching steps should take.***

*Article 28*

Entry into force and application in time

This Regulation shall enter into force ***on ...***

It shall apply to non-contractual obligations arising out of acts occurring after its entry into force.

This Regulation shall be binding in its entirety and directly applicable in *the* Member States in accordance with the Treaty establishing the European Community.

Done at ...,

For the European Parliament  
The President

For the Council  
The President