

## P6\_TA-PROV(2007)0006

### Law applicable to non-contractual obligations ("ROME II") \*\*\*II

European Parliament legislative resolution on the Council common position with a view to the adoption of a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations ("ROME II") (9751/7/2006 – C6-0317/2006 – 2003/0168(COD))

(Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (9751/7/2006 – C6-0317/2006)<sup>1</sup>,
  - having regard to its position at first reading<sup>2</sup> on the Commission proposal to Parliament and the Council (COM(2003)0427)<sup>3</sup>,
  - having regard to the amended Commission proposal (COM(2006)0083)<sup>4</sup>,
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 62 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs (A6-0481/2006),
1. Approves the common position as amended;
  2. Instructs its President to forward its position to the Council and the Commission.

Council common position

Amendments by Parliament

#### Amendment 1 Recital 7

(7) The *material* scope and the provisions of this Regulation should 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 ("Brussels I") **and** the Rome Convention on the law applicable to contractual obligations.

(7) The *substantive* scope and the provisions of this Regulation should 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 ("Brussels I"), the Rome Convention on the law applicable to contractual obligations **and the future Regulation on the law applicable to**

<sup>1</sup> OJ C 289 E, 28.11.2006, p. 68.

<sup>2</sup> OJ C 157 E, 6.7.2006, p. 370.

<sup>3</sup> Not yet published in OJ.

<sup>4</sup> Not yet published in OJ.

*contractual obligations ("Rome I").*

Amendment 3  
Recital 10 a (new)

*(10a) 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.*

Amendment 4  
Recital 12 a (new)

*(12a) Nevertheless, the need to avoid distortions of competition and the requirement of legal certainty must be tempered by the need to do justice in individual cases, and consequently the courts must have a margin of discretion.*

Amendment 28  
Recital 19

(19) The special rule in Article 6 is not an exception to the general rule in Article 4(1) but rather a clarification of it. In matters of unfair **competition**, the conflict rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where **competitive relations or the collective interests of consumers are, or are** likely to be, affected generally satisfies these objectives.

(19) The special rule in Article 6 is not an exception to the general rule in Article 4(1) but rather a clarification of it. In matters of unfair **trade practices**, the conflict rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where **the market is, or is** likely to be, affected generally satisfies these objectives.

Amendment 30  
Recital 21

(21) **Examples of cases covered by** Article 6(3) **include** prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention,

(21) Article 6(3) **should cover** prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition

restriction or distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market.

within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market, ***within the meaning of Articles 81 and 82 of the Treaty.***

Amendment 32  
Recital 21 a (new)

***(21a) "Environmental damage" should cover damage to protected species and natural habitats, water damage and land damage as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage<sup>1</sup>.***

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<sup>1</sup> OJ L 143, 30.4.2004, p. 56. Directive as amended by Directive 2006/21/EC (OJ L 102, 11.4.2006, p. 15).

Amendment 9  
Recital 25 a (new)

***(25a) As regards violations of privacy or rights relating to the personality, 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.***

Amendment 10

Recital 28

(28) To respect the intentions of the parties and to enhance legal certainty, the parties should be allowed to make an express choice as to the law applicable to a non-contractual obligation. Protection should be given to weaker parties by imposing certain conditions on the choice.

(28) To respect the intentions of the parties and to enhance legal certainty, the parties should be allowed to make an express choice as to the law applicable to a non-contractual obligation. Protection should be given to weaker parties by imposing certain conditions on the choice.

***Furthermore, it is necessary to respect the intentions of the parties where a choice as to the law applicable to an issue in tort or delict may reasonably be inferred by the court.***

Amendment 11

Recital 29 a (new)

***(29a) It is appropriate to make it clear that, in quantifying damages in personal injury cases, the court seised should apply the principle of restitutio in integrum having regard to the victim's actual circumstances in his country of habitual residence. This should include, in particular, the actual cost of after-care and medical attention.***

Amendment 12

Recital 29b (new)

***(29b) Any litigant making a claim or counterclaim before a national court or tribunal which falls within the scope of this Regulation may give consideration to any issues of applicable law raised by his claim or counterclaim and accordingly where appropriate notify the court or tribunal and any other parties of the law or laws which that litigant maintains are applicable to all or any parts of his claim.***

Amendment 13  
Recital 30a (new)

*(30a) As in the Rome Convention, the principle of 'iura novit curia' applies. The court itself should of its own motion establish the foreign law. For the purposes of establishing the foreign law the parties should be permitted to assist the court and the court should also be able to ask the parties to provide assistance.*

Amendment 15  
Article 1, paragraph 2, point (g)

*(g) non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.* *deleted*

Amendment 16  
Article 1, paragraph 3

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles **15a**, 21 and 22.

Amendment 17  
Article 6

*Article 6* *deleted*

*Unfair competition and acts restricting free competition*

*1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.*

*2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.*

*3. The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country on whose market the restriction*

*has, or is likely to have, effect.*

***4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.***

Amendment 19  
Article 7 a (new)

***Article 7a***

***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.**

Amendment 22  
Article 21 a (new)

**Article 21a**

**Damages**

***In quantifying damages in personal injury cases, the court seised shall apply the principle of restitutio in integrum, having regard to the victim's actual circumstances in his country of habitual residence.***

Amendment 23  
Article 26

The application of a provision 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.

**1.** The application of a provision 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.

***1a. 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.***

Amendment 24  
Article 27

This Regulation shall not prejudice the application of ***provisions of Community law*** which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

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 conflict-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.*

Amendment 26  
Article 30

Not later than ..., the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. ***In particular, the report shall consider non-contractual obligations arising out of traffic accidents and out of violations of privacy and rights relating to personality, including defamation.***

Not later than ..., the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation.

***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.***

***The report shall also 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.***

***Not later than ..., the Commission, after extensive consultation with the interested parties, including the Hague Conference on Private International Law, shall submit to the European Parliament, the Council***

*and the European Economic and Social Committee a report on the situation with regard to the law applicable to road traffic accidents. The report shall be accompanied by an extensive study of the scale of the phenomenon, the problems and an extended impact assessment. If appropriate, the report shall propose amendments to this Regulation and/or the adoption of specific legislation.*