

**AMENDMENT 54**

by Manuel Medina Ortega, on behalf of the PSE Group

**Report****A6-0211/2005****Diana Wallis**

The law applicable to non-contractual obligations ('Rome II')

Proposal for a regulation (COM(2003)0427 – C5 0338/2003 – 2003/0168(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 54  
Article 4

***Without prejudice to Article 3(2) and (3), the law applicable to a non-contractual obligation arising out of damage or a risk of damage caused by a defective product shall be that of the country in which the person sustaining the damage is habitually resident, unless the person claimed to be liable can show that the product was marketed in that country without his consent, in which case the applicable law shall be that of the country in which the person claimed to be liable is habitually resident.***

***1. The law applicable to a non-contractual obligation arising out of damage or a risk of damage caused by a product shall be:***

***(a) that of the country in which the person sustaining the damage is habitually resident when the damage occurs, where it coincides with the country in which the product is marketed;***

***(b) where point (a) does not apply, that of the country in which the damage occurred to the person sustaining it, where it coincides with the country in which the product is marketed;***

***(c) where neither point (a) nor point (b) applies, that of the country where the product was purchased.***

***2. The reference to the place of marketing of the product includes the marketing of products of the same type by the same agent. It shall be presumed, save where***

*there is proof to the contrary, that a product marketed in a Member State is marketed in the other Member States.*

*3. The law referred to in paragraph 1 shall not apply where the person claimed to be liable can prove that he could not reasonably foresee that the product or his products of the same type would be marketed in the Member State concerned.*

*In that case, the applicable law shall be that of the country in which the person claimed to be liable is habitually resident.*

*4. Without prejudice to the provisions of paragraphs 1 to 3, where the case exhibits a manifestly closer connection with another country, the law of that country shall apply.*

Or. en

#### *Justification*

*The alternative proposed here is based on an interlocking set of connections, with a view to ensuring application of the law most closely related to the dispute.*

*Paragraph 2 contains the idea, unanimously accepted by other countries and by international conventions, that the marketing criteria should be based primarily not on the individual product but on products of the same type or kind falling under the responsibility of the same agent. Stress is also laid on the internal market by introducing the presumption that, save where there is proof to the contrary, a product marketed in a Member State is marketed in the other Member States.*