

AMENDMENT 56

by Diana Wallis on behalf of the ALDE Group, Klaus-Heiner Lehne on behalf of the PPE-DE Group, Monica Frassoni on behalf of the Verts/ALE Group, Maria Berger 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 56
Recital 12

(12) In view of the Charter of Fundamental Rights of the European Union and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the conflict must strike a reasonable balance as regards violations of privacy and rights in the personality. Respect for the fundamental principles that apply in the Member States as regards freedom of the press must be secured by a specific safeguard clause.

(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 over the Internet or other electronic networks.

Or. en

AMENDMENT 57

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Text proposed by the Commission

Amendment by Parliament

Amendment 57
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. *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.

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.

This provision shall apply mutatis mutandis to publications over 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.

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

Or. en