

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0450/2007

21.11.2007

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council
on the law applicable to contractual obligations (Rome I)
(COM(2005)0650 – C6-0441/2005 – 2005/0261(COD))

Committee on Legal Affairs

Rapporteur: Cristian Dumitrescu

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	58
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS	60
PROCEDURE.....	68

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)
(COM(2005)0650 – C6-0441/2005 – 2005/0261(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0650),
 - having regard to Article 251(2) and Articles 61(c) and 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0441/2005),
 - 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 Employment and Social Affairs (A6-0450/2007),
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.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 1

(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.**

(1) The **Community** has set itself the objective of **maintaining and developing** an area of freedom, security and justice. **For the progressive establishment of such an area,** the Community **is to** 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.

Amendment 2
Recital 1 a (new)

(1a) According to Article 65, point (b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

Amendment 3
Recital 2

(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 on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, stressing the importance of promoting the compatibility of conflict-of-law rules in order to attain the objective of mutual recognition of judgments and calling for the revision, where necessary, of certain provisions of the Convention on the Law applicable to contractual obligations, taking into account special provisions on conflict-of-law rules in other Community instruments.

deleted

Amendment 4
Recital 3

(3) The Tampere European Council on 15 and 16 October 1999 approved the principle of mutual recognition of judgments as a priority matter in the establishment of a European judicial area. The programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters specifies that the accompanying measures relating to

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement the principle of mutual recognition.

harmonisation of conflict-of-law rules actually do help facilitate the mutual recognition of judgments. In the Hague Programme, the European Council restated that work on the conflict of laws regarding contractual obligations should be actively pursued.

Amendment 5
Recital 3 a (new)

(3a) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters¹. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

¹OJ C 12, 15.1.2001, p. 1.

Amendment 6
Recital 3 b (new)

(3b) The Hague Programme¹, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the rules of conflict of laws regarding contractual obligations ("Rome I").

¹OJ C 53, 3.3.2005, p. 1.

Amendment 7
Recital 4

(4) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of

(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. ***For the same reasons there is a need to achieve the greatest harmony between three instruments – this Regulation, Council Regulation (EC) No 2001/44 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels I”) and Parliament and Council Regulation (EC) No [...] on the law applicable to non-contractual obligations (“Rome II”).***

litigation, certainty as to the law and the free movement of judgments, for the **conflict-of-law rules** in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

Amendment 8
Recital 6

(6) The scope of *the* Regulation ***must*** be ***determined in such a way as to*** be consistent with Regulation (EC) No 44/2001 ***and Parliament and Council Regulation (EC) No [...] on the law applicable to non-contractual obligations (“Rome II”).***

(6) 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”)***¹ ***and Council Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (“Rome II”)***².

¹ *OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).*

² *OJ L 199, 31.7.2007, p. 40.*

Amendment 9
Recital 6 a (new)

(6a) Family relationships should cover parentage, marriage, affinity and collateral

relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

Justification

Reproduces a recital in Rome II.

Amendment 10
Recital 6 b (new)

(6b) Obligations arising out of dealings prior to the conclusion of a contract are covered by Article 12 of Regulation (EC) No 864/2007. Therefore such objectives should be excluded from the scope of this Regulation.

Justification

This recital is necessary having regard to Rome II.

Amendment 11
Recital 7 a (new)

(7a) Where a choice of law is made and all other elements relevant to the situation are located in a country other than the country whose law has been chosen, the choice of law should not prejudice the application of provisions of the law of that country which cannot be derogated from by agreement. This rule should apply whether or not the choice of law was accompanied by a choice of court or tribunal. Whereas no substantial change is intended as compared with Article 3(3) of the Rome Convention, the wording has been aligned as far as possible with Article 14 of Regulation (EC) No 864/2007.

Justification

This recital is necessary to explain the references to provisions which cannot be derogated from by agreement and how they relate to Rome II.

Amendment 12

Recital 8

(8) To contribute to the general objective of the instrument – certainty ***as to the law*** in the European judicial area – the conflict rules ***must*** be highly foreseeable. ***But the*** courts ***must*** retain a degree of discretion to determine the law that is most closely connected to the situation ***in a limited number of hypothetical cases***.

(8) To contribute to the general objective of the instrument – ***legal*** certainty in the European judicial area – the conflict ***of law*** rules ***should*** be highly foreseeable. ***The*** courts ***should, however,*** retain a degree of discretion to determine the law that is most closely connected to the situation.

Justification

The words deleted are not themselves conducive to legal certainty in that they could be confusing.

Amendment 13

Recital 8 a (new)

(8a) An agreement of the parties to confer exclusive jurisdiction on one or more courts or tribunals of a Member State to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law was clearly demonstrated.

Justification

This recital is necessary as a result of the deletion of the provision in the Commission's proposal to the effect that a jurisdiction clause would be deemed to reflect an implicit choice-of-law in the absence of a choice-of-law clause.

Amendment 14

Recital 8 b (new)

(8b) This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law

or an international convention.

Justification

It is considered appropriate to refer to the use of such bodies of non-State law as UNIDROIT in a recital, rather than in the enacting terms.

Amendment 15
Recital 8 c (new)

(8c) Should the Community adopt in an appropriate legal instrument rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.

Amendment 16
Recital 8 d (new)

(8d) As far as the applicable law in the absence of choice is concerned, the concept of "provision of services" and "sale of goods" should be interpreted in the same way as when applying Article 5(1)(b) of Council Regulation (EC) No 44/2001 in so far as goods and services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.

Justification

This clarification appears to be desirable.

Amendment 17
Recital 8 e (new)

(8e) As far as the applicable law in the absence of choice is concerned, multilateral systems should be those where trading is conducted, such as

regulated markets and multilateral trading facilities as referred to in Article 4(1), points (14) and (15) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments¹, regardless of whether or not they rely on a central counterparty.

1 OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

Amendment 18
Recital 8 f (new)

(8f) Where there has been no choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract. Where the contract cannot be categorised as being one of the specified types or where its elements fall within more than one of the specified types, it should be governed by the law of the country where the party required to effect the characteristic performance has his habitual residence. In the case of a contract consisting of a bundle of rights and obligations capable of being categorised as falling within more than one of the specified types of contract, the characteristic performance of the contract should be determined having regard to its centre of gravity.

Justification

Recitals 8f, 8g and 8h are considered necessary in order to explain the rules on the applicable law in the absence of choice, in the particular in the case of related contracts or contracts consisting of a bundle of rights and obligations capable of being categorised as more than one of the specified types of the contract for which specific rules are laid down.

Amendment 19
Recital 8 g (new)

(8g) Where the contract is manifestly more closely connected with a country other than that indicated in Article 4(1) or (2), an escape clause in those provisions provides that the law of that country should apply. In that event, account should be taken, inter alia, of whether the contract in question has a very close relationship with another contract or contracts.

Amendment 20
Recital 8 h (new)

(8h) In the absence of choice, where the applicable law cannot be determined either on the basis of the fact that the contract can be categorised as one of the specified types or as being the law of the country of the habitual residence of the party which is required to effect the characteristic performance, the contract should be governed by the law of the country with which it is most closely connected. In order to determine that country, account should be taken, inter alia, of whether the contract in question has a very close relationship with another contract or contracts.

Amendment 21
Recital 8 i (new)

(8i) As regards the interpretation of contracts of carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the 1980 Convention on the law applicable to contractual obligations¹. Consequently single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods.

For the purposes of this Regulation, the term "consignor" should refer to any person who enters into a contract of carriage with the carrier and the term

"the carrier" should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.

¹ OJ C 334, 20.12.2005, p. 1.

Amendment 22
Recital 10 b (new)

(10b) Investment services and activities and ancillary services, as referred to in sections A and B of Annex I to Directive 2004/39/EC, as amended, should be subject to the general rule applicable to consumer contracts.

Amendment 23
Recital 10 c (new)

(10c) Various exceptions should be made to the general choice of law rule for consumer contracts. Under one such exception the general rule is not to apply to contracts relating to rights in rem in immovable property or tenancies of such property, unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchases in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis¹.

¹ OJ L 280, 29.10.1994, p. 83.

Amendment 24
Recital 10 d (new)

(10d) For the purposes of this Regulation, references to rights and obligations constituting the terms and conditions governing the issuance, offer to the public or take over bids of transferable securities and to the subscription and redemption of units in collective investment undertakings should include the terms governing, inter alia, the allocation of securities or of the units, rights in the event of over-subscription, withdrawal rights and similar matters in the context of the offer as well as those matters referred to in Articles 9, 10, 11 and 12 of this Regulation, thus ensuring that that all relevant contractual aspects of an offer binding the issuer or the offeror to the consumer are governed by a single law.

Amendment 25
Recital 10 e (new)

(10e) For the purposes of this Regulation, financial instruments are those instruments referred to in Article 4(1), point (17) of Directive 2004/39/EC, as amended, and transferable securities are those instruments referred to in Article 4(1), point (18) of the same Directive.

Amendment 26
Recital 10 f (new)

(10f) For the purpose of this Regulation, financial services such as investment services and activities and ancillary services provided by a professional to a consumer, as referred to in sections A and B of Annex I to Directive 2004/39/EC, as amended, and contracts for the sale of units in collective investment undertakings, whether or not covered by Council Directive 85/611/EEC of 20 December 1995 on the coordination of laws, regulations and administrative

provisions relating to undertakings for collective investment in transferable securities (UCITS)¹, should be subject to the general rule applicable to consumer contracts. As such, when a reference is made to terms and conditions governing the issuance or offer to the public of transferable securities or to the subscription and redemption of units in collective investment undertakings, these references should include all aspects binding the issuer or the offeror to the consumer, but should not include those aspects involving the provision of such financial services.

¹ OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council (OJ L 79, 24.3.2005, p. 9).

Amendment 27
Recital 10 g (new)

(10g) It is important to ensure that rights and obligations which constitute a financial instrument are not covered by the general rule applicable to consumer contracts, as that could lead to the applicability of different laws to each of the instruments issued, therefore changing their nature and preventing their fungible trading and offering. Likewise, whenever such instruments are issued or offered, the contractual relationship established between the issuer or the offeror and the consumer should not be necessarily subject to the mandatory application of the law of the habitual residence of the consumer, as there is a need to ensure uniformity in the terms and conditions of an issuance or an offer. The same rationale should apply with regard to the multilateral systems covered by Article 4(1)(hb), where it should be ensured that the law of the

habitual residence of the consumer will not interfere with the rules applicable to contracts concluded within those systems or with the operator of such systems.

Amendment 28
Recital 11 a (new)

(11a) The employee should not be deprived of the protection of provisions which cannot be derogated from or which can only be derogated from to his benefit.

Amendment 29
Recital 11 b (new)

(11b) As regards employment contracts, work carried out in another country is to be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.

Justification

This recital is needed in order to deal with temporary work on another country.

Amendment 30
Recital 12

(12) Regarding contracts concluded by agents, conflict rules should be laid down to govern the three legal relationships between the principal, the agent and the third party. A contract concluded between the principal and the third party would remain subject to the general rules of this Regulation.

deleted

Justification

It is proposed to delete the provision on agency.

Amendment 31

Recital 13

(13) Respect for the public policy (ordre public) of the Member States requires specific rules concerning mandatory rules and the exception on grounds of public policy. Such rules must be applied in a manner compatible with the Treaty.

(13) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of "overriding mandatory provisions" should be distinguished from the expression "provisions which cannot be derogated from by agreement" referred to for example in Article 3(4) and should be construed more restrictively.

Amendment 32

Recital 13 a (new)

(13a) In the context of voluntary assignment, the term "relationship" should make it clear that Article 13(1) also applies to the property aspects of an assignment as between assignor and assignee in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term "relationship" should not be understood as relating to any relationship between assignor and assignee that might exist. In particular, it should not comprise preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should strictly be limited to the aspects which are directly relevant to the voluntary assignment/contractual subrogation in question.

Amendment 33
Recital 15

(15) The relationship between this Regulation and certain other provisions of Community law should be spelled out.

(15) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, does not exclude the possibility of inclusion of conflict-of-law rules relating to contractual obligations in provisions of Community law with regard to particular matters.

This Regulation should not prejudice the application of other instruments laying 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 this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)¹.

¹ OJ L 178, 17.7.2000, p. 1.

Justification

This recital has been copied from Rome II, where it was introduced in conciliation at the wish of Parliament's delegation.

Amendment 34
Recital 16

(16) 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.

(16) Respect for international commitments entered into by the Member States means that this Regulation should not affect ***international*** conventions to which ***one or more*** Member States are

However, where at the time of conclusion of the contract material aspects of the situation are located in one or more Member States, the application of certain international conventions to which only some of the Member States are Parties would be contrary to the objective of a genuine European judicial area. The rule set out in this Regulation should accordingly be applied. 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.

parties at the time **this Regulation is adopted.** To make the rules **more accessible**, the Commission **should** 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.

Amendment 35
Recital 16 b (new)

(16b) The Commission will make a proposal to the European Parliament and the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude on their own behalf agreements with third countries in individual and exceptional cases, concerning sectoral matters, containing provisions on the law applicable to contractual obligations.

Amendment 36
Recital 17

(17) Since the objective of **the proposed action, namely better foreseeability of court judgments requiring genuinely uniform rules on the law applicable to contractual obligations determined by a mandatory and directly applicable Community legal instrument**, cannot be adequately attained by the Member States, **who cannot lay down uniform Community rules**, and can therefore, by reason of its effects **throughout the Community**, be

(17) Since the objective of **this Regulation** cannot be **sufficiently achieved** by the Member States and can therefore, by reason of **the scale and effects of this Regulation**, 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** set out in that Article, **this Regulation** does not go beyond

better achieved at Community level, the Community *can take* measures, in accordance with the *subsidiarity* principle set out in Article 5 of the Treaty. In accordance with the proportionality *principle* set out in that Article, a Regulation, *which increases certainty in the law without requiring harmonisation of the substantive rules of domestic law*, does not go beyond what is necessary to attain *that* objective.

what is necessary to attain *its* objective.

Amendment 37
Recital 18

(18) 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, these *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, these Member States are not participating in the adoption of this Regulation, which will accordingly not be binding on those Member States.*

(18) 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 *to* the Treaty establishing the European Community, *Ireland has given notice of its wish to take part* in the adoption and application of this Regulation.

Amendment 38
Recital 18 a (new)

(18a) The United Kingdom has not given notice 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 to the Treaty establishing the European Community, and the United Kingdom does therefore not take part in the adoption of this Regulation and is not

bound by it or subject to its application.

Amendment 39
Recital 19

(19) 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,***

(19) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and ***to*** the Treaty establishing the European Community, ***Denmark does not take part*** in the adoption of this Regulation, ***and is not bound by it or subject to its application.***

Amendment 40
Article 1

1. This Regulation shall apply, in ***any situation*** involving a conflict of laws, to contractual obligations in civil and commercial matters.

It shall not ***extend***, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

(a) questions involving the status or legal capacity of natural persons, without prejudice to Article 12;

(b) ***contractual*** obligations ***relating to a family relationship or a relationship which, in accordance with the law applicable to it, has similar*** effects, including maintenance obligations;

(c) obligations arising out of ***a*** matrimonial ***relationship or a property ownership scheme which, under the law applicable to it, has similar*** effects to a marriage, wills and ***successions***;

(d) 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;

1. This Regulation shall apply, in ***situations*** involving a conflict of laws, to contractual obligations in civil and commercial matters.

It shall not ***apply***, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

(a) questions involving the status or legal capacity of natural persons, without prejudice to Article 12;

(b) obligations ***arising out of family relationships and relationships deemed by the law to have comparable*** effects, including maintenance obligations;

(c) obligations arising out of matrimonial ***property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable*** effects to a marriage, ***and*** wills and ***succession***;

(d) 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;

(e) arbitration agreements and agreements on the choice of court;

(f) questions governed by the law of companies and other bodies corporate or *unincorporate* such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or *unincorporate*, the personal liability of officers and members as such for the obligations of the company or body **and the question whether a management body of a company or other body corporate or unincorporated can bind the company or body in relation to third parties**;

(g) the constitution of trusts and the relationship between settlers, trustees and beneficiaries;

(h) evidence and procedure, without prejudice to Article 17;

(i) obligations arising out of **a pre-contractual relationship**.

3. In this Regulation, the term “Member State” shall mean Member States with the exception of Denmark **[, Ireland and the United Kingdom]**.

(e) arbitration agreements and agreements on the choice of court;

(f) questions governed by the law of companies and other bodies corporate or *unincorporated* such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or *unincorporated*, **and** the personal liability of officers and members as such for the obligations of the company or body;

(fa) the question whether an agent is able to bind a principal or an organ to bind a company or body corporate or unincorporated, in relation to a third party;

(g) the constitution of trusts and the relationship between settlers, trustees and beneficiaries;

(h) evidence and procedure, without prejudice to Article 17;

(i) obligations arising out of **dealings prior to the conclusion of a contract**.

3. In this Regulation, the term “Member State” shall mean Member States with the exception of Denmark and the United Kingdom. **However, in Article 3(5) the term shall mean all the Member States**.

Justification

In particular, these changes are intended to bring the wording into line with Rome II.

Amendment 41 Article 2

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

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

Justification

Corrects a manifest error.

Amendment 42
Article 3

1. *Without prejudice to Articles 5, 6 and 7, a contract shall be governed by the law chosen by the parties.*

The choice *must be expressed or demonstrated with reasonable certainty* by the terms of the contract *behaviour of the parties* or the circumstances of the case. *If the parties have agreed to confer jurisdiction on one or more courts or tribunals of a Member State to hear and determine disputes that have arisen or may arise out of the contract, they shall also be presumed to have chosen the law of that Member State.*

By their choice the parties can select the law applicable to the whole or a part only of the contract.

2. *The parties may also choose as the applicable law the principles and rules of the substantive law of contract recognised internationally or in the Community. However, questions relating to matters governed by such principles or rules which are not expressly settled by them shall be governed by the general principles underlying them or, failing such principles, in accordance with the law applicable in the absence of a choice under this Regulation.*

3. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 10 or adversely affect the rights of third parties.

4. *The fact that the parties have chosen a foreign law in accordance with paragraphs 1 or 2, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of*

1. A contract shall be governed by the law chosen by the parties.

The choice *shall be made expressly or clearly* demonstrated by the terms of the contract or the circumstances of the case.

By their choice the parties can select the law applicable to the whole or a part only of the contract.

3. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 10 or adversely affect the rights of third parties.

4. *Where all other elements relevant to the situation at the time of the choice are located in a country other than a country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that country which*

rules of the law of that country which cannot be derogated from by *contract, hereinafter called “mandatory rules”*.

5. Where *the parties choose the law of a non-member State, that choice shall be without prejudice to the application of such mandatory rules of Community law as are applicable to the case.*

6. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 9, 10 and 12.

cannot be derogated from by *agreement*.

5. Where *all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate, as implemented in the Member State of the forum, which cannot be derogated from by agreement.*

6. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 9, 10 and 12.

Amendment 43

Article 4

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, *the contract shall be governed by* the law determined as follows:

(a) a contract *of* sale shall be governed by the law of the country *in which* the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country *in which* the service provider has his habitual residence;

(c) a contract of carriage shall be governed by the law of the country in which the carrier has his habitual residence;

(d) a contract relating to a right in rem or *right of user in* immovable property shall be governed by the law of the country *in which* the property is situated;

(e) notwithstanding point (d), *a lease for the temporary personal use of immovable property* for a period of no more than six consecutive months shall be governed by the law of the country *in which the owner* has his

1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 *and without prejudice to Articles 4a to 6*, the law *governing the contract shall be* determined as follows:

(a) a contract *for the sale of goods* shall be governed by the law of the country *where* the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country *where* the service provider has his habitual residence;

(d) a contract relating to a right in rem *in immovable property* or *to a tenancy of* immovable property shall be governed by the law of the country *where* the property is situated;

(e) notwithstanding point (d), *a tenancy of immovable property concluded for temporary private use* for a period of no more than six consecutive months shall be governed by the law of the country *where the landlord* has his

habitual residence, provided the tenant is a natural person and has his habitual residence in the same country;

(f) a contract relating to intellectual or industrial property rights shall be governed by the law of the country in which the person who transfers or assigns the rights has his habitual residence;

(g) a franchise contract shall be governed by the law of the country ***in which the franchised person*** has his habitual residence;

(h) a distribution contract shall be governed by the law of the country ***in which*** the distributor has his habitual residence.

2. ***Contracts not specified in paragraph 1*** shall be governed by the law of the country ***in which*** the party who is required to ***perform the service characterising*** the contract has his habitual residence ***at the time of the conclusion of the contract. Where that service cannot be identified, the contract shall be governed by the law of the country with which it is most closely connected.***

habitual residence, provided ***that*** the tenant is a natural person and has his habitual residence in the same country;

(g) a franchise contract shall be governed by the law of the country ***where*** the ***franchisee*** has his habitual residence;

(h) a distribution contract shall be governed by the law of the country ***where*** the distributor has his habitual residence;

(ha) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;

(hb) a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, as defined by Article 4(1), point (17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law.

2. ***Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (hb) of paragraph 1, the contract shall be governed by the law of the country where the party who is required to effect the performance of the contract which is characteristic of the contract has his habitual residence.***

2a. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.

2b. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the

contract shall be governed by the law of the country with which it is most closely connected.

Justification

This amendment should be read in conjunction with the new Recitals 8f, 8g and 8h.

Amendment 44
Article 4 a (new)

Article 4a

Contracts of carriage

1. To the extent that the law applicable to a contract for the carriage of goods has not been chosen in accordance with Article 3, the law applicable to such contracts shall be the law of the country of the habitual residence of the carrier, provided that the place of receipt or the place of delivery or the habitual residence of the consignor is also situated in that country. If those requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.

2. To the extent that the law applicable to a contract for the carriage of passengers has not been chosen by the parties in accordance with the second subparagraph, the law applicable shall be the law of the country where the passenger has his habitual residence, provided that either the place of departure or the place of destination is situated in that country. If these requirements are not met, the law of the place where the carrier has his habitual residence shall apply.

The parties may choose as the law applicable to the contract for the carriage of passengers in accordance with Article 3, only the law of the country where:

(a) the passenger has his habitual residence; or

*(b) the carrier has his habitual residence;
or*

*(ba) the carrier has his place of central
administration; or*

(c) the place of departure is situated; or

(d) the place of destination is situated.

*3. Where it is clear from all the
circumstances of the case that the contract,
in the absence of a choice of law, is
manifestly more closely connected with a
country other than that indicated in
paragraphs 1 or 2, the law of that other
country shall apply.*

Justification

This straightforward solution is intended to promote legal certainty.

Amendment 45 Article 5

*1. Consumer contracts within the
meaning and in the conditions provided
for by paragraph 2 shall be governed by
the law of the Member State in which the
consumer has his habitual residence.*

*1. A contract concluded by a natural
person for a purpose which can be
regarded as being outside his trade or
profession ("the consumer"), with
another person acting in the exercise of
his trade or profession ("the
professional") shall be governed by the
law of the country where the consumer has
his or her habitual residence provided that:*

*(a) the professional pursues his
commercial or professional activities in
the country where the consumer has his
habitual residence, or*

*(b) by any means, directs such activities to
that country or to several countries
including that country,*

*and the contract falls within the scope of
such activities.*

2. Paragraph 1 shall apply to contracts

2. Notwithstanding paragraph 1, the

concluded by a natural person, the consumer, who has his habitual residence in a Member State for a purpose which can be regarded as being outside his trade or profession with another person, the professional, acting in the exercise of his trade or profession.

It shall apply on condition that the contract has been concluded with a person who pursues a trade or profession in the Member State in which the consumer has his habitual residence or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities, unless the professional did not know where the consumer had his habitual residence and this ignorance was not attributable to his negligence.

3. *Paragraph 1* shall not apply to:

(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

(b) *contracts* of carriage other than *contracts* relating to package travel within the meaning of Directive 90/314/EEC of 13 June 1990;

(c) *contracts* relating to a right in rem *or* right *of user* in immovable property other than *contracts* relating to a right *of user* on a timeshare basis within the meaning of Directive 94/47/EC *of 26 October 1994*.

parties may choose the law applicable to a contract to which this Article applies in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by such provisions that cannot be derogated from by contract by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. *Paragraphs 1 and 2* shall not apply to:

(a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;

(b) *a contract* of carriage other than *a contract* relating to package travel within the meaning of Directive 90/314/EEC of 13 June 1990;

(c) *a contract* relating to a right in rem in *immovable property or a tenancy of immovable property other than a contract* relating to the right *to use immovable properties* on a timeshare basis within the meaning of Directive 94/47/EC;

(d) rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and take-over bids of transferable securities and the

subscription and redemption of units in collective investment undertakings in so far as these do not constitute provision of a financial service;

(e) a contract to subscribe for or purchase a new issue of transferable securities, as defined by Article 4(1), point (18) of Directive 2004/39/EC, or rights and obligations to subscribe for or redeem units in collective investment undertakings;

(f) a contract concluded within the type of system falling within the scope of Article 4(1)(hb) of this Regulation.

Amendment 46
Article 6

1. *Notwithstanding the provisions of Article 3, in a contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded him by **the mandatory rules of the law which would be applicable under this Article in the absence of choice.***

2. *A contract of employment shall, in the absence of choice in accordance with Article 3, be governed:*

(a) by the law of the country in or from which the employee habitually carries out his work in performance of the contract. **The place of performance** shall not be deemed to have changed if he is temporarily employed in another country. **Work carried out in another country shall be regarded as temporary if the employee is expected to resume working in the**

1. *An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by **such provisions that cannot be derogated from by contract under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 2a and 3.***

2. *To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in **which** or, **failing that**, from which the employee habitually carries out his work in performance of the contract. **The country where the work is habitually carried out** shall not be deemed to have changed if he is temporarily employed in another country.*

country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer does not preclude the employee from being regarded as carrying out his work in another country temporarily;

(b) if the employee does not habitually carry out his work in or from any one country, or he habitually carries out his work in or from a territory subject to no national sovereignty, by the law of the country in which the place of business through which he was engaged is situated.

2a. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which he was engaged is situated.

3. The law designated by paragraph 2 may be excluded where it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

3. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 2a, the law of that other country shall apply.

Amendment 47
Article 7

Article 7

deleted

Contracts concluded by an agent

1. In the absence of a choice under Article 3, a contract between principal and agent shall be governed by the law of the country in which the agent has his habitual residence, unless the agent exercises or is to exercise his main activity in the country in which the principal has his habitual residence, in which case the law of that country shall apply.

2. The relationship between the principal and third parties arising out of the fact that the agent has acted in the exercise of his powers, in

excess of his powers or without power, shall be governed by the law of the country in which the agent had his habitual residence when he acted. However, the applicable law shall be the law of the country in which the agent acted if either the principal on whose behalf he acted or the third party has his habitual residence in that country or the agent acted at an exchange or auction.

3. Notwithstanding paragraph 2, where the law applicable to a relationship covered by that paragraph has been designated in writing by the principal or the agent and expressly accepted by the other party, the law thus designated shall be applicable to these matters.

4. The law designated by paragraph 2 shall also govern the relationship between the agent and the third party arising from the fact that the agent has acted in the exercise of his powers, in excess of his powers or without power.

Amendment 48
Article 8

Mandatory rules

1. ***Mandatory rules*** are ***rules*** the respect for which is regarded as crucial by a country for safeguarding its political, social or economic organisation to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the ***rules*** of the law of the forum ***in a situation where they are mandatory***.

3. Effect may be given to the mandatory rules of the law of another country with which the situation has a close connection. In considering whether to give effect to these mandatory rules, courts shall have regard to their nature and purpose in accordance with

Overriding mandatory provisions

1. ***Overriding mandatory provisions*** are ***provisions*** respect for which is regarded as crucial by a country for safeguarding ***its public interests, such as*** its political, social or economic organisation to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the ***overriding mandatory provisions*** of the law of the forum.

the definition in paragraph 1 and to the consequences of their application or non-application for the objective pursued by the relevant mandatory rules and for the parties.

Justification

This amendment is designed to clarify the meaning of overriding mandatory provisions (see also Recital 13 as amended). It has also better-regulation aims as it will bring Rome I into line with Rome II. This would also facilitate the ultimate merger of Rome I and Rome II into a single instrument.

Amendment 49

Article 10

-1. A contract concluded between persons who or whose agents are in the same country at the time of conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.

1. A contract is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or the law of the ***country in which one or other*** of the parties or ***his agent is when it is concluded*** or the law of the country ***in which one or other*** of the parties ***has*** his habitual residence at that time.

2. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation or of the law of the country in which the act ***is performed*** or the law of the country in which the person who ***drafted*** it ***has*** his habitual residence at that time.

3. Paragraphs 1 and 2 of this Article shall not apply to contracts that fall within the scope of Article 5. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.

1. A contract ***between persons who or whose agents are in different countries*** is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation, or ***of*** the law ***either*** of the ***countries where either*** of the parties or ***either of their agents is present at the time of conclusion***, or ***of*** the law of the country ***where either*** of the parties ***had*** his habitual residence at that time.

2. A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation or of the law of the country in which the act ***was done*** or the law of the country in which the person who ***effected*** it ***had*** his habitual residence at that time.

3. Paragraphs ***-1***, 1 and 2 of this Article shall not apply to contracts that fall within the scope of Article 5. The form of such contracts shall be governed by the law of the country where the consumer has his habitual residence.

4. Notwithstanding paragraphs 1 to 3 of this Article, a contract the subject matter of which is a right in immovable property or a **right to use** immovable property shall be subject to the mandatory requirements of form of the law of the country where the property is situated if by that law those requirements are **mandatory provisions within the meaning of Article 8**.

4. Notwithstanding paragraphs -1 to 3 of this Article, a contract the subject matter of which is a right **in rem** in immovable property or a **tenancy of** immovable property shall be subject to the requirements of form of the law of the country where the property is situated if by that law those requirements are **imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract, and cannot be derogated from by agreement**.

Amendment 50
Article 13

1. The **mutual obligations of** assignor and assignee under a voluntary assignment or contractual subrogation of a **right** against another person shall be governed by the law which under this Regulation applies to the contract between the assignor and assignee.

2. The law governing the **original contract** shall determine the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor **and** whether the debtor's obligations have been discharged.

3. The question whether the assignment or subrogation may be relied on against third parties shall be governed by the law of the country in which the assignor or the author of

1. The **relationship between** assignor and assignee under a voluntary assignment or contractual subrogation of a **claim** against another person ("**the debtor**") shall be governed by the law which under this Regulation applies to the contract between the assignor and assignee.

2. The law governing the **assigned or subrogated claim** shall determine **the following matters**:

(a) **the assignability of the claim, including** the effectiveness **as against the assignee** of contractual **and legal** limitations on assignment **or subrogation** as between the assignee and the debtor;

(b) the relationship between the assignee and the debtor;

(c) the conditions under which the assignment can be invoked against the debtor;

(d) whether the debtor's obligations have been discharged; **and**

(e) **whether the assignee is entitled to the claim, including the proceeds thereof, as against other assignees of the same claim, creditors of the assignor and other third parties.**

the subrogation has his habitual residence at the material time.

Amendment 51
Article 14

Statutory subrogation

Where a person has a contractual claim *upon* another and a third person has a duty to satisfy the creditor, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to *proceed* against the debtor.

Legal subrogation

Where a person ("*the creditor*") has a 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 which governs the third person's duty to satisfy the creditor shall determine whether *and to what extent* 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*.

Amendment 52
Article 15

Multiple *liability*

Where a creditor has a claim *upon* several debtors who are *jointly* liable and one of *those* debtors has *in fact* satisfied the *creditor*, the law *of the* obligation *of this debtor* towards the creditor *governs* the *right of this debtor* to claim *against* the other debtors. *Where the law applicable to a debtor's obligation to the creditor provides for rules to protect him against actions to ascertain his liability, he may also rely on them against other debtors.*

Multiple *debtors*

If a creditor has a claim *against* several debtors who are liable *for the same claim*, and one of *the* debtors has *already* satisfied the *claim in whole or in part*, the law *governing the debtor's* obligation towards the creditor *shall also govern* the *debtor's right* to claim *recourse from* the other debtors. *The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.*

Amendment 53
Article 16

Statutory offsetting

1. Statutory offsetting shall be governed by the law applicable to the *obligation in relation to* which the right to *offset* is asserted.

Set-off

Where the right to set-off is not agreed by the parties, set-off shall be governed by the law applicable to the *claim against* which the right to *set-off* is asserted.

Amendment 54
Article 17, paragraph 1

1. The law governing *the contract* under this Regulation shall apply to the extent that it contains, *in the law of contract*, rules which raise presumptions of law or determine the burden of proof.

1. The law governing *a contractual obligation* under this Regulation shall apply to the extent that, *in matters of contractual obligations*, it contains rules which raise presumptions of law or determine the burden of proof.

Amendment 55
Article 18

Assimilation to habitual residence

1. For companies *or firms* and other bodies *or incorporate or unincorporate*, *the principal establishment shall be considered to be the habitual residence for the purposes of this Regulation.*

Where the contract is concluded in the course of operation of *a subsidiary*, a branch or any other establishment, or if, under the contract, performance is the responsibility of such an establishment, *this establishment shall be considered the habitual residence.*

2. For the purposes of this Regulation, where the contract is concluded in the course of the business activity of a natural person, that natural person's establishment shall be considered the habitual residence.

Habitual residence

1. For *the purposes of this Regulation, the habitual residence of* companies and other bodies, *corporate or unincorporated, shall be the place of central administration.*

The habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.

1a. Where the contract is concluded in the course of operation of a branch, *agency* or any other establishment, or if, under the contract, performance is the responsibility of such an establishment, *the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.*

2. When determining the habitual residence the relevant point of time shall be the time of the conclusion of the contract.

Amendment 56
Article 20

Ordre public

The application of a *rule* of the law of any country specified by this Regulation may be

Public policy of the forum

The application of a *provision* of the law of any country specified by this Regulation

refused only if such application is manifestly incompatible with the public policy (“ordre public”) of the forum.

may be refused only if such application is manifestly incompatible with the public policy (“ordre public”) of the forum.

Amendment 57
Article 21

Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State where different territorial units have their own rules of law in respect of contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

Amendment 58
Article 22

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

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 contractual obligations.

(a) in relation to particular matters, lay down choice-of-law rules relating to contractual obligations; a list of such acts currently in force is provided in Annex 1; or

(b) govern contractual obligations and which, by virtue of the will of the parties, apply in conflict-of-law situations; or

(c) lay down rules to promote the smooth operation of the internal market, where such rules cannot apply at the same time as the law designated by the rules of private international law.

Justification

This provision has been aligned on the corresponding provision of Rome II.

Amendment 59
Article 22 a (new)

Article 22a

1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.

2. Insofar as this Regulation replaces the provisions of the Rome Convention, any reference to the Convention shall be understood as a reference to this Regulation.

Amendment 60
Article 23

1. The Member States shall notify the Commission, no later than six months after the entry into force of this Regulation, of the list of multilateral conventions governing conflicts of laws in specific matters relating to contractual obligations to which they are Parties. The Commission shall publish the list in the Official Journal of the European Union within six months thereafter.

After that date, the Member States shall notify the Commission of all denunciations of such conventions, which the Commission shall publish in the Official Journal of the European Union within six months after receiving them.

2. This Regulation shall not prejudice the application of international conventions referred to in paragraph 1. However, where, at the time of conclusion of the contract, material aspects of the situation are located in

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-laws rules relating to contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this

one or more Member States, this Regulation shall take precedence over the following Conventions:

- the Hague Convention of 15 June 1955 on the law applicable to international sales of goods;

- the Hague Convention of 14 March 1978 on the law applicable to agency.

3. This Regulation shall take precedence over bilateral international conventions concluded between Member States and listed in Annex II if they concern matters governed by this Regulation.

Regulation.

Amendment 61
Article 23 a (new)

Article 23a

List of Conventions

1. By*, Member States shall notify the Commission of the conventions referred to in Article 23(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. The Commission shall publish in the Official Journal of the European Union within six months of receipt:

(i) a list of the conventions referred to in paragraph 1;

(ii) a list of the denunciations referred to in paragraph 1.

*** 12 months after the date of adoption of this Regulation.**

Amendment 62
Article 23 b (new)

Article 23b

Review clause

1. 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. The report shall be preceded, not later than ... ** , by:

(i) a study on the effects of Article 5 of this Regulation which will consider in particular:

(a) the effects on consumer contracts concluded by electronic means;

(b) the effects of the application of more than one law to the same contract and

(c) consistency with Article 15 of Regulation No 44/2001;

(ii) a study on the promotion of ADR in the field of electronic commerce and how it might usefully be fostered and promoted by legislative and other means; that study will also consider to what extent on-line ADR schemes might be used in combination with trust marks in order to increase consumer confidence in electronic commerce and obviate the need for court proceedings;

(iii) such proposals as the Commission may consider appropriate within the framework of the contract law project in order to introduce standard contract terms and conditions for use in particular in cross-border electronic transactions between businesses and consumers;

(iv) a review of the provisions on applicable law contained in Community legislation on insurance.

**** Two years after the date of application of this Regulation.***

***** One year after the date of entry into force of this Regulation.***

Amendment 63
Article 23 c (new)

Article 23c

Application in time

This Regulation shall apply to contracts concluded after its date of application.

Justification

Unlike in the case of torts and delicts, contracts are entered into deliberately and voluntarily. It is essential for the parties to know that the provisions on applicable law contained in this Regulation will apply only to contracts concluded after its date of application. Therefore proceedings brought after the date of application concerning contracts concluded before that date will apply the Rome Convention.

Amendment 64
Article 24

Entry into force and application *in time*

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall apply from [**one year** after entry into force].

It shall apply to contractual obligations arising after its entry into application. However, for contractual obligations arising before its entry into application, this Regulation shall apply where its provisions have the effect of making the same law applicable as would have been applicable under the Rome Convention of 1980.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Date of entry into force and application

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall apply from [**eighteen months** after entry into force] ***except for Article 24 which shall apply from [12 months after the date of adoption].***

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

EXPLANATORY STATEMENT

The proposal for a regulation (Rome I) purports to convert the 1980 Rome Convention into a Community instrument and to revise it, where necessary.

Although the need for the adoption of a regulation has been called in question in some quarters, your rapporteur considers that it is worthwhile on the following grounds: (a) a regulation is more readily amended than a convention and, as part of the *acquis communautaire*, can be more rapidly extended to new Member States; (b) the possibility of references to the Court of Justice for preliminary rulings will be secured (see Belgium's delay in implementing the protocols to the Rome Convention on its interpretation by the Court of Justice); (c) a regulation will afford a single instrument directly binding on national courts, whereas ratification of an international convention in many countries necessitates the adoption of national legislation in order to make the convention binding in domestic law. The only drawback is that the regulation will not apply to Denmark. It is to be hoped that the United Kingdom will overcome its initial reluctance and ultimately take part in the adoption of the regulation.

Having said this, your rapporteur notes that many of the provisions of the proposed regulation are novel as compared with the Rome Convention. These have been discussed in depth in committee and appropriate amendments made to the Commission's text.

The amendments contained in this report are designed to improve the text as proposed by the Commission in the light of the various submissions that have been made to the rapporteur and also with a view to making it more consistent with the Rome II.

Lastly, the rapporteur observes that there are numerous discrepancies between the language versions of the Commission's proposal. He trusts that these will be eliminated by the lawyer-linguists of Parliament and the Council in the course of the procedure.

14.9.2006

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL 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 contractual obligations (Rome I)
(COM(2005)0650 – C6-0441/2005 – 2005/0261(COD))

Draftsman: Jan Andersson

SHORT JUSTIFICATION

The aim of the Commission's proposal is not to establish a new set of legal rules, but to convert an existing convention, the Rome I Convention of 1980 (the Convention), into a Community instrument. However, the Commission has also tried to modernise certain provisions in the Convention, in particular those relating to contract of employment.

The proposal has been preceded by consultations of the Member States and the civil society, in particular through a Green paper and a public hearing.¹ The green paper received about 80 replies from governments, universities, practitioners etc.² The European Community has legal competence to adopt Community instruments concerning Conflict-of-laws rules (or private international law) under Article 61(c) EC Treaty.

The proposal was presented by the Commission, December 15th 2005. The Committee on Legal Affairs has been appointed the responsible Committee in the European Parliament.

The Committee on Employment and Social Affairs has decided to give a draft opinion on the proposal for the responsible committee due to the close connection between the Directive 96/71/EC, concerning the posting of workers in the framework of the provision of services, and the proposal. The proposal also covers important changes in the rules of applicable law to the contract of employment.

This draft opinion addresses inconsistencies and legal technical elements that can be clarified in order to improve the Regulation. The overall ambition is to provide greater legal certainty for the law applicable to employment contracts.

¹ COM(2002)0654 Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernisation.

² All contributions are published on DG Justice and Home affairs web page;
http://europa.eu.int/comm/justice_home/news/consulting_public/rome_i/news_summary_rome1_en.htm

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 11

(11) Regarding individual employment contracts, the conflict rule should make it possible to identify the centre of gravity of the employment relationship, looking beyond appearances. This **rule does not prejudge** the application of the mandatory rules of the country to which a worker is posted in accordance with Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

(11) Regarding individual employment contracts, the conflict rule should make it possible to identify the centre of gravity of the employment relationship, looking beyond appearances. This **Regulation is without prejudice to** the application of the mandatory rules of the country to which a worker is posted in accordance with Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

Justification

The relationship and reference to Directive 96/71/EC in the Regulation must be clear. The rule laid down in the first sentence is not the only element for which the regulation should be without prejudice to the Posting Directive. The wording "prejudge" also seem ambiguous and is changed to "without prejudice". The amendment gives clarification and consistency in relation to Directive 96/71/EC.

Amendment 2 Recital 11 a (new)

(11a) Directive 96/71/EC lays down minimum rules for the protection of workers applicable to posted workers on the territory of a Member State other than the State in which they normally work and does not prevent Member States from imposing other terms and conditions of employment laid down in collective agreements, nor from imposing other employment conditions where these are public policy provisions.

¹ OJ L 18, 21.1.97, p. 1.

Justification

This new recital clarifies the specific nature of the rules set out in Directive 96/71/EC which does not prevent Member States from adopting more protective measures at national level for instance by imposing other employment conditions in case of public policy provisions.

Amendment 3 Article 6, paragraph 1

1. Notwithstanding the provisions of Article 3, in **a** contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded him by the mandatory rules of the law which would be applicable under this Article in the absence of choice.

1. Notwithstanding the provisions of Article 3, in **an individual** contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded him by the mandatory rules of the law which would be applicable under this Article in the absence of choice.

Justification

The heading to Article 6 refers to “Individual Employment Contracts”, while the text in Article 6 speaks about “a contract of employment”. This discrepancy was also present in the Convention. This discrepancy is somewhat ambiguous. “Contract of employment” seems to be a wider notion, potentially including collective agreements in some Member States, while the wording “individual employment contract” would rule out the application of article 6 on collective agreements. The wording “individual contract of employment” is added for reason of consistency.

Amendment 4 Article 6, paragraph 2

2. **A** contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

2. **Notwithstanding the provisions of Article 4, an individual** contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

Justification

The wording “notwithstanding the provisions of Article 4” appearing in the Convention has been deleted by the Commission. This text is reintroduced due to clarity and consistency.

Amendment 5 Article 6, paragraph 2, point (a)

(a) by the law of the country in **or from** which the employee habitually carries out his work in performance of the contract. The place of performance shall not be deemed to have changed if he is temporarily employed in another country. Work carried out in another country shall be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. **The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer does not preclude the employee from being regarded as carrying out his work in another country temporarily;**

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract. The place of performance shall not be deemed to have changed if he is temporarily employed in another country. **However, his employment and pay conditions shall be subject to the law of the country in which he is temporarily employed.** Work carried out in another country shall be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his **specific** tasks abroad.

Justification

The text "work carried out in another country shall be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad" did not appear in the Convention. It carries a risk of a broad interpretation of "tasks". What if the task of the worker is, e.g. to represent the employer established in Member State X for his activities in Member State Y? When is such a task "carried out"? It could potentially be a very long period. The inclusion of "specific" points out that the temporary activity in another country should be interpreted narrowly.

The text did not appear in the Convention. In a conflict between the local employer and the employee the only relevant place of work must be in the country of posting. Another law might be applied, but only through the escape clause of Section 3. This new addition extends and thereby obscures the meaning of the place of work as the regular connecting factor. Moreover, this rule could also stimulate that employment contracts are signed only as cover for the real contract. This rule should therefore be deleted.

The terms 'from which' are highly ambiguous. The amendment aims to prevent regular posting from a Member State where employment law is less developed than in the country of posting.

Amendment 6

Article 6, paragraph 2, point (a a) (new)

(aa) if the employee does not habitually carry out his work in any one country, by the law of the country from which the employee habitually carries out his work in

performance of the contract;

Amendment 7

Article 6, paragraph 2, subparagraph 2 (new)

unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.

Amendment

Article 6, paragraph 3

3. The law designated by paragraph 2 may be excluded where it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country *deleted*

Justification

This flexibility clause should be reserved for exceptional cases, such as that of employees required, for instance, to work in aircraft, on ships or on oil rigs. For this reason it is preferable to include the clause in the paragraph dealing specifically with that issue.

Amendment 9

Article 8, paragraph 1

1. Mandatory rules are rules the respect for which is regarded as **crucial** by a country for safeguarding its political, social or economic organisation to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

1. **For the purposes of this Article,** mandatory rules are rules the respect for which is regarded as **necessary** by a country **for protecting workers or** for safeguarding its political, social or economic organisation to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

Justification

The text “for the purpose of this article” is added for the sake of clarity and consistency. Mandatory requirements occur in different articles of the Regulation, but also with different

meanings. It is therefore important to settle that the definition of mandatory rules in Article 8 is only for the purpose of that specific article to contract of employment.

The word "crucial" is replaced by "necessary". The Posting of workers Directive (POW) is based on the possibility for the host MS to derogate from the law of the MS of origin in case of posting. A narrow definition of what can be considered the "hard core" provision of the labour law of the host MS, which could be applied in case of posting, could undermine the list of art. 3(1) POW or prevent its extension to other fields of labour protection. The definition of mandatory rules also risks to undermine the application by MS of terms and conditions of employment on matters other than those referred to in art. 3(1) in the case of "public policy provisions".

The notion of mandatory rules cannot be defined/interpreted in a restrictive manner; it should at least concern rules that are crucial for the protection of workers.

PROCEDURE

Title	Proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)
References	COM(2005)0650 – C6-0441/2005 – 2005/0261(COD)
Committee responsible	JURI
Opinion by Date announced in plenary	EMPL 16.2.2006
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Jan Andersson 19.4.2006
Previous drafts(wo)man	
Discussed in committee	22.6.2006 12.9.2006
Date adopted	13.9.2006
Result of final vote	+: 26 -: 12 0: 0
Members present for the final vote	Jan Andersson, Jean-Luc Bennahmias, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Bairbre de Brún, Derek Roland Clark, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Karin Jöns, Jan Jerzy Kulakowski, Sepp Kusstatscher, Jean Lambert, Raymond Langendries, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Jan Tadeusz Masiel, Maria Matsouka, Ria Oomen-Ruijten, Pier Antonio Panzeri, Jacek Protasiewicz, José Albino Silva Peneda, Jean Spautz, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Françoise Castex, Richard Howitt, Jamila Madeira, Dimitrios Papadimoulis, Leopold Józef Rutowicz, Gabriele Stauner, Patrizia Toia
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	...

PROCEDURE

Title	Law applicable to contractual obligations (Rome I)			
References	COM(2005)0650 - C6-0441/2005 - 2005/0261(COD)			
Date submitted to Parliament	15.12.2005			
Committee responsible Date announced in plenary	JURI 16.2.2006			
Committee(s) asked for opinion(s) Date announced in plenary	EMPL 27.4.2006	LIBE 16.2.2006		
Not delivering opinions Date of decision	LIBE 22.2.2006			
Rapporteur(s) Date appointed	Cristian Dumitrescu 23.2.2006			
Previous rapporteur(s)	Maria Berger			
Discussed in committee	21.6.2006	11.9.2006	20.11.2006	20.12.2006
	26.2.2007	19.3.2007	2.5.2007	11.6.2007
	10.9.2007			
Date adopted	20.11.2007			
Result of final vote	+: -: 0:	25 0 0		
Members present for the final vote	Carlo Casini, Marek Aleksander Czarnecki, Bert Doorn, Cristian Dumitrescu, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Neena Gill, Othmar Karas, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Mogens N.J. Camre, Charlotte Cederschiöld, Luis de Grandes Pascual, Vicente Miguel Garcés Ramón, Kurt Lechner, Eva Lichtenberger, Marie Panayotopoulos-Cassiotou, Gabriele Stauner			
Substitute(s) under Rule 178(2) present for the final vote	Toine Manders, Tomáš Zatloukal			