

## **P6\_TA(2007)0006**

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

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

**(Codecision procedure: second reading)**

*The European Parliament,*

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

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

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

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

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

**Position of the European Parliament adopted at second reading on 18 January 2007 with a view to the adoption of Regulation (EC) No .../2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations ("ROME II")**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 thereof,

Having regard to the proposal from the Commission,

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

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

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

<sup>2</sup> *Position of the European Parliament of 6 July 2005 (OJ C 157 E, 6.7.2006, p. 371), Council Common Position of 25 September 2006 (OJ C 289 E, 28.11.2006, p. 68) and Position of the European Parliament of 18 January 2007.*

Whereas:

- (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.
- (2) According to Article 65(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.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities 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.
- (4) 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 matters<sup>1</sup>. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.
- (5) The Hague Programme<sup>2</sup>, adopted by the European Council on 5 November 2004, called *for* work to be pursued actively on the rules of conflict of laws regarding non-contractual obligations ("Rome II").

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

<sup>2</sup> OJ C 53, 3.3.2005, p. 1.

- (6) 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 applicable 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.
- (7) The *substantive* scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>1</sup> ("Brussels I"), the Rome Convention on the law applicable to contractual obligations<sup>2</sup> ("*Rome Convention*") **and the future Regulation on the law applicable to contractual obligations ("*Rome I*")**.
- (8) This Regulation should apply irrespective of the nature of the court or tribunal seised.
- (9) Claims arising out of "acta iure imperii" should include claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders. Therefore, these matters should be excluded from the scope of this Regulation.
- (10) 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.
- (11) ***The conflict-of-law rules set out in this Regulation also cover obligations based on strict liability and the harmonised rules on connecting factors also apply to the question of the capacity to incur liability in tort/delict.***

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

<sup>2</sup> OJ C 27, 26.1.1998, p. 34.

- (12) The concept of a non-contractual obligation varies from one Member State to another. Therefore for the purposes of this Regulation non-contractual obligation should be understood as an autonomous concept.
- (13) Uniform rules applied irrespective of the law they designate may avert the risk of distortions of competition between Community litigants.
- (14) ***Nevertheless, the need to avoid distortions of competition and the requirement of legal certainty must be tempered by the need to do justice in individual cases, and consequently the courts must have a margin of discretion.***
- (15) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries varies. This situation engenders uncertainty as to the law applicable.
- (16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.
- (17) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. Accordingly, in cases of personal injury or damage to property, the country in which the damage occurs should be the country where the injury was sustained or the property was damaged respectively.

- (18) The general rule in this Regulation should be the "lex loci damni" provided for in Article 4(1). Article 4(2) should be seen as an exception to this general principle, creating a special connection where the parties have their habitual residence in the same country. Article 4(3) should be understood as an "escape clause" from Article 4(1) and (2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country.
- (19) Specific rules should be laid down for special torts/delicts where the general rule does not allow a reasonable balance to be struck between the interests at stake.
- (20) The conflict rule in matters of product liability should meet the objectives of fairly spreading the risks inherent in a modern high-technology society, protecting consumers' health, stimulating innovation, securing undistorted competition and facilitating trade. Creation of a cascade system of connecting factors, together with a foreseeability clause, is a balanced solution in regard to these objectives. The first element to be taken into account is the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country. The other elements of the cascade are triggered if the product was not marketed in that country, without prejudice to Article 4(2) and to the possibility of a manifestly closer connection to another country.
- (21) *In* matters of unfair **trade practices**, the conflict rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where **the market is, or is** likely to be, affected generally satisfies these objectives.
- (22) The non-contractual obligations arising out of restrictions of *competition should* cover infringements of both national and Community competition law. The law applicable to such non-contractual obligations should be the law of the country on whose market the restriction has, or is likely to have, effect, provided that the effect is direct and substantial. Where the damage is sustained in more than one country, the application of the law of any of those countries should be limited to the damage which occurred in that country.

- (23) *For the purposes of this Regulation, the concept of unfair trade practices covers prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market, **within the meaning of Articles 81 and 82 of the Treaty.***
- (24) *"Environmental damage" should cover damage to protected species and natural habitats, water damage and land damage as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage<sup>1</sup>.*
- (25) Regarding environmental damage, Article 174 of the Treaty, which provides that there should be a high level of protection based on the precautionary principle and the principle that preventive action should be taken, the principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of the principle of discriminating in favour of the person sustaining the damage. The question of when the person seeking compensation can make the choice of the law applicable should be determined in accordance with the law of the Member State in which the court is seised.

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

- (26) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term "intellectual property rights" should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.
- (27) The exact concept of industrial action, such as strike action or lock-out, varies from one Member State to another and is governed by each Member State's internal rules. Therefore, this Regulation assumes as a general principle that the law of the country where the industrial action was taken should apply, with the aim of protecting the rights and obligations of workers and employers.
- (28) The special rule on industrial action in Article 9 is without prejudice to the conditions relating to the exercise of such action in accordance with national law and without prejudice to the legal status of trade unions or of the representative organisations of workers as provided for in the law of the Member States.
- (29) ***Regarding violations of privacy or rights relating to the personality, this Regulation does not prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media. The country in which the most significant element or elements of the damage occur or are likely to occur should be deemed to be the country to which the publication or broadcasting service is principally directed or, if this is not apparent, the country in which editorial control is exercised, and that country's law should be applicable. The country to which a publication or broadcast is directed should be determined in particular by the language of the publication or broadcast or by sales or audience size in a given country as a proportion of total sales or audience size or by a combination of those factors. Similar considerations should apply in respect of publication via the Internet or other electronic networks.***



- (30) Provision should be made for special rules where damage is caused by an act other than a tort/delict, such as unjust enrichment, negotiorum gestio *or* culpa in contrahendo.
- (31) Culpa in contrahendo for the purposes of this Regulation is an autonomous concept and should not necessarily be interpreted within the meaning of national law. It should *include violation* of the duty of disclosure and the breakdown of contractual negotiations. Article 12 covers only non-contractual obligations presenting a direct link with the dealings prior to the conclusion of a contract. This means that if, while a contract is being negotiated, a person suffers personal injury, Article 4 or other relevant provisions of this Regulation should apply.
- (32) To respect the intentions of the parties and to enhance legal certainty, the parties should be allowed to make an express choice as to the law applicable to a non-contractual obligation. Protection should be given to weaker parties by imposing certain conditions on the choice. ***Furthermore, it is necessary to respect the intentions of the parties where a choice as to the law applicable to an issue in tort/delict may reasonably be inferred by the court.***
- (33) 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.
- (34) ***It is appropriate to make it clear that, in quantifying damages in personal injury cases, the court seised should apply the principle of restitutio in integrum having regard to the victim's actual circumstances in his country of habitual residence. This should include, in particular, the actual cost of after-care and medical attention.***

- (35) ***Any litigant making a claim or counterclaim before a national court or tribunal which falls within the scope of this Regulation may give consideration to any issues of applicable law raised by his claim or counterclaim and accordingly where appropriate notify the court or tribunal and any other parties of the law or laws which that litigant maintains are applicable to all or any parts of his claim.***
- (36) In order to strike a reasonable balance between the parties, account must be taken, in so far as appropriate, of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligation is governed by the law of another country. The term "rules of safety and conduct" should be interpreted as referring to all regulations having any relation to safety and conduct, including, for example, road safety rules in the case of an accident.
- (37) ***As in the Rome Convention, the principle of 'iura novit curia' applies. The court itself should of its own motion establish the foreign law. For the purposes of establishing the foreign law the parties should be permitted to assist the court and the court should also be able to ask the parties to provide assistance.***
- (38) 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 non-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 insofar as they cannot be applied in conjunction with the law designated by the rules of this Regulation.

- (39) 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 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.
- (40) 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 non-contractual obligations.
- (41) 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 the Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity *as* set out in Article 5 of the Treaty. In accordance with the principle of proportionality, *as* set out in that Article, this Regulation does not go beyond what is necessary to *achieve* that objective.
- (42) *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, *the United Kingdom and Ireland* have *notified* their wish to take part in the adoption and application of *the present* Regulation.
- (43) 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, Denmark does not take part in the adoption of *the present* Regulation, and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

# Chapter I

## Scope

### Article 1 Material scope

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").
2. The following shall be excluded from the scope of this Regulation:
  - (a) non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;
  - (b) non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
  - (c) non-contractual obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;

- (d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;
  - (e) non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;
  - (f) non-contractual obligations arising out of nuclear *damage*.
3. ***This*** Regulation shall not apply to evidence and procedure, without prejudice to ***Articles 21, 22 and 23***.
4. For the purposes of this Regulation, "Member State" shall mean any Member State other than Denmark.

## Article 2 Non-contractual obligations

- 1. For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, negotiorum gestio or culpa in contrahendo.
- 2. This Regulation shall apply also to non-contractual obligations that are likely to arise.
- 3. Any reference in this Regulation to:
  - (a) an event giving rise to damage shall include events giving rise to damage that are likely to occur; and
  - (b) damage shall include damage that is likely to occur.

## Article 3 Universal application

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

## Chapter II

### Torts/delicts

#### Article 4

##### General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.
2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.
3. Where it is clear from all the circumstances of the case that the tort/delict 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. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

**Article 5**  
**Product liability**

1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:

- (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
- (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,
- (c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in *question*.

**Article 6**  
**Environmental damage**

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

**Article 7**  
***Violations of privacy and rights relating to the personality***

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

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

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

***2. The law applicable to the right of reply or equivalent measures and to any preventive measures or prohibitory injunctions against a publisher or broadcaster regarding the content of a publication or broadcast shall be the law of the country in which the publisher or broadcaster has its habitual residence.***

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



Article 8  
Infringement of intellectual property rights

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.
2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.
3. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

Article 9  
Industrial action

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

# Chapter III

## Unjust enrichment, negotiorum gestio and culpa in contrahendo

### Article 10 Unjust enrichment

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

Article 11  
Negotiorum gestio

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

Article 12  
Culpa in contrahendo

1. The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.
2. Where the law applicable cannot be determined on the basis of paragraph 1, it shall be:
  - (a) the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred; or
  - (b) where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country; or
  - (c) where it is clear from all the circumstances of the case that the non-contractual obligation arising out of dealings prior to the conclusion of a contract is manifestly more closely connected with a country other than that indicated in points (a) and (b), the law of that other country.

Article 13  
Applicability of Article 8

For the purposes of this Chapter, Article 8 shall apply to non-contractual obligations arising from an infringement of an intellectual property right.

## Chapter IV

### Freedom of choice

#### Article 14

##### Freedom of choice

1. The parties may agree to submit non-contractual obligations to the law of their choice:
  - (a) by an agreement entered into after the event giving rise to the damage occurred;
  - or
  - (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

2. Where all the elements relevant to the situation at the time when the event giving rise to the damage *occurs are* located in a country other than the 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 cannot be derogated from by agreement.

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage *occurs are* located in one or more of the Member States, the parties' choice of the law applicable 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.

## Chapter V

### Common rules

#### Article 15

##### Scope of the law applicable

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

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;
- (c) the existence, the nature and the assessment of damage or the remedy claimed;
- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;
- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;
- (f) persons entitled to compensation for damage sustained personally;
- (g) liability for the acts of another person;
- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

Article 16  
Overriding mandatory provisions

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

Article 17  
Rules of safety and conduct

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

Article 18  
Direct action against the insurer of the person liable

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

Article 19  
Subrogation

Where a person ("the creditor") has a non-contractual claim upon 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 the extent to which, 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.

Article 20  
Multiple liability

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 question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

Article 21  
Formal validity

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

*Article 22*  
*Damages*

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



*Article 23*  
Burden of proof

1. The law governing a non-contractual obligation under this Regulation shall apply to the extent that, in matters of non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.
2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

**Chapter VI**  
**Other provisions**

*Article 24*  
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.

Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

*Article 25*  
Exclusion of renvoi

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

*Article 26*  
States with more than one legal system

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

*Article 27*  
Public policy of the forum

1. The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy ("ordre public") of the forum.
2. ***Furthermore, the application of a provision of the law designated by this Regulation which has the effect of causing non-compensatory damages, such as exemplary or punitive damages, to be awarded may be regarded as being contrary to the public policy ("ordre public") of the forum.***

#### Article 28

##### Relationship with other provisions of Community law

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

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

#### Article 29

##### Relationship with existing international conventions

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-law rules relating to non-contractual obligations.
2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them insofar as such conventions concern matters governed by this Regulation.

## Chapter VII

### Final provisions

#### *Article 30* List of conventions

1. By ...<sup>\*</sup>, Member States shall notify the Commission of the conventions referred to in *Article 29(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) the denunciations referred to in paragraph 1.

#### *Article 31* Review clause

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

***In making its report, the Commission shall pay particular attention to the effects of the way in which foreign law is treated in the different jurisdictions and the question of damages, including the possibility of awarding exemplary or punitive damages in certain jurisdictions.***

***The report shall also include an analytical study of the extent to which courts in the Member States apply foreign law in practice, including recommendations as to the desirability of a common approach to the application of foreign law.***

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<sup>\*</sup> 12 months after the date of the adoption of this Regulation.

<sup>\*\*</sup> Four years after the date of entry into force of this Regulation.

*Not later than ...<sup>\*</sup>, the Commission, after extensive consultation with the interested parties, including the Hague Conference on Private International Law, shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the situation with regard to the law applicable to road traffic accidents. The report shall be accompanied by an extensive study of the scale of the phenomenon, the problems and an extended impact assessment. If appropriate, the report shall propose amendments to this Regulation and/or the adoption of specific legislation.*

*Article 32*  
Application in time

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

*Article 33*  
Date of application

This Regulation shall apply from ...<sup>\*\*</sup>, except for *Article 30*, which shall apply from ...<sup>\*\*\*</sup>.

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

*Done at,*

For the European Parliament  
The President

For the Council  
The President

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<sup>\*</sup>

<sup>\*\*</sup> 18 months after the date of adoption of this Regulation.

<sup>\*\*\*</sup> 12 months after the date of adoption of this Regulation.