

EUROPEAN PARLIAMENT

2004



2009

Committee on Legal Affairs

5.3.2007

PE 386.328v01-00

AMENDMENTS 86-96

Draft report

(PE 374.427v01-00)

Cristian Dumitrescu

Proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)

Proposal for a regulation (COM(2005)0650 – C6-0441/2005 – 2005/0261(COD))

Draft legislative resolution

Amendment by Klaus-Heiner Lehne

Amendment 86
Paragraph 2 a (new)

2a. Notes that there has been no impact assessment for this proposed regulation and demands, with reference to the Interinstitutional Agreement of 16 December 2003 between the European Parliament, the Council and the Commission on Better Lawmaking¹, that in future when planning legislation the Commission carries out an impact assessment that takes due account of the financial and administrative implications of its legislative proposals; and makes clear that otherwise Parliament will itself arrange for impact assessments to be carried out, in order to ensure that the quality of legislation is improved.

Or. de

Justification

In accordance with the principles of subsidiarity and proportionality the Commission is required to submit its legislative proposals to an impact assessment. Such scrutiny is necessary to make a positive contribution to improving the quality of Community legislation both for its scope and its content. Parliament can no longer accept that the Commission puts

¹ OJ C 321, 31.12.2003, p. 1.

forward legislative proposals whose financial and administrative implications have not first been scrutinised.

Proposal for a regulation

Text proposed by the Commission

Amendments by Parliament

Amendment by Cristian Dumitrescu

Amendment 87
Recital 7

(7) Freedom for the parties to choose the applicable law must be one of the cornerstone of the system of conflict-of-laws rules in matters of contractual obligations.

(7) Freedom for the parties to choose the applicable law must be one of the cornerstone of the system of conflict-of-laws rules in matters of contractual obligations.

However, the parties' freedom to choose the applicable law can be exercised only in favour of the law of a Member State or of principles adopted by the Community legislator in accordance with the codecision procedure. In cases where the parties choose such principles as the applicable law, those principles apply without prejudice to the imperative provisions of the law applicable in the absence of choice and of other Community legal instruments.

Or. fr

Justification

There is a need to respect the normal codecision procedure which allows Parliament to scrutinise the content of the principles of substantive law applicable.

Amendment by Edith Mastenbroek

Amendment 88
Recital 10

(10) With more specific reference to

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consumer contracts, the conflict rule must make it possible to cut the cost of settling disputes on what are commonly relatively small claims and to take account of the development of distance-selling techniques. Harmony with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of “targeted activity” as a condition for applying the consumer-protection rule and that the concept be interpreted harmoniously in the two instruments, ***bearing in mind that a joint declaration by the Council and the Commission on Article 15 of Regulation No 44/2001 states that “for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer’s residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities”. The declaration also states that “the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor.”***

consumer contracts, the conflict rule must make it possible to cut the cost of settling disputes on what are commonly relatively small claims and to take account of the development of distance-selling techniques. Harmony with Regulation (EC) No 44/2001 requires both that there be a reference to the concept of “targeted activity” as a condition for applying the consumer-protection rule and that the concept be interpreted harmoniously in the two instruments.

Or. en

Amendment by Edith Mastenbroek

Amendment 89
Recital 10 a (new)

(10a) In order for Article 5 to be applicable, it is not sufficient for an economic operator to direct its activities at the Member State/country where a consumer is habitually resident, or at a number of Member States/countries including that Member State/country; a contract must

also be concluded within the framework of its directed activities. In determining whether the economic operator is directing its activities by electronic means to the Member State/country where the consumer is habitually resident, only positive conduct on the part of that economic operator may be taken into account. In this context, the following considerations should not by themselves constitute the necessary directing by the economic operator: first, the fact that its Internet site is accessible in that Member State/country; second, the fact that the site permits the conclusion of distance contracts; and third, the fact that the contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses should not constitute a relevant factor.

Or. en

Amendment by Cristian Dumitrescu

Amendment 90
Article 3, paragraph 2

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.

2. The parties may also choose as the applicable law the principles and rules of the substantive law of contract, ***provided that those principles and rules have been incorporated in a Community instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty.***

However,

(a) questions relating to matters governed by such principles or rules which are not expressly settled by them shall be governed

in accordance with the law applicable in the absence of a choice under this Regulation;

(b) the imperative provisions of the law applicable in the absence of choice under this Regulation shall remain applicable, in particular in the case of consumer protection.

The application of these principles and rules shall not affect the application other relevant provisions of Community law.

Or. fr

Justification

This amendment takes account of Amendments 41 to 45 and ensures that the normal codecision procedure is respected, allowing Parliament to scrutinise the content of the principles of the substantive law applicable. The amendment also restores the conditions of legal certainty required for proper application of the substantive principles of contract law which will possibly be adopted.

Amendment by Cristian Dumitrescu

Amendment 91
Article 4 a (new)

Article 4a

Notwithstanding Articles 3 and 4, the law applicable to real property rights, including security rights in the form of immovable property, shall be the law of the place in which the immovable property is situated.

Or. fr

Justification

The principle of lex rei sitae is universally applied. It is the most effective principle for immovable property rights, housing law, town planning law and security law.

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.

2. Paragraph 1 shall apply to contracts 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

1. This Article applies to a contract the object of which is the supply of goods or services to a person (“the consumer”) for a purpose which can be regarded as being outside his trade or profession, or a contract for the provision of credit for that object.

2. Notwithstanding the provisions of Article 3, a choice of law made by the parties shall not have the result of depriving the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence:

- if in that country the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and he had taken in that country all the steps necessary on his part for the conclusion of the contract, or**
- if the other party or his agent received the consumer’s order in that country, or**
- if the contract is for the sale of goods and the consumer travelled from that country to another country and there gave his order, provided that the consumer’s journey was arranged by the seller for the purpose of inducing the consumer to buy.**

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.

3. Notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence if it is entered into in the circumstances described in paragraph 2 of this Article.

4. This Article shall not apply to:

(a) a contract of carriage,

(b) 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.

Or. de

Justification

The aim of this amendment is to replace the Commission's proposed wording for Article 5 with the wording of Article 5 of the Rome Convention. Incorporation of that article is needed because there is a risk that small businesses will be particularly disadvantaged by the Commission proposal. They cannot be expected to increase their cross-border activities if they are required to conclude their contracts with consumers of other Member States exclusively in accordance with the law of those countries. The financial and human resources this demands are not available to small businesses and so the internal market policy aim of encouraging cross-border business would be undermined. Such disadvantages would have

been spotted if the Commission had carried out an impact assessment on the proposed regulation. Since there was no such scrutiny, it makes sense to interpolate Article 5 of the Rome Convention in the regulation.

Amendment by Piia-Noora Kauppi

Amendment 93
Article 5 a (new)

Article 5a

In order for Article 5(2) to be applicable, it is not sufficient for a professional to target its activities at the Member State where the consumer is habitually resident, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities. In determining whether it is targeting its activities by electronic means to the Member State where the consumer is habitually resident, only positive conduct on the part of the professional may be taken into account; the mere fact that the professional's Internet site is accessible in that Member State, that it permits the conclusion of distance contracts and that the contract has actually been concluded at a distance, by whatever means, should not by itself be sufficient to constitute the necessary targeting by the professional. In this respect, the language or currency which a website uses should not constitute a relevant factor.

Or. en

Justification

This Article helps provide the legal security and the balance between businesses providing services across borders and consumers purchasing across borders. Article 5 should only be triggered by proactive conduct on behalf of the service provider that precedes the making of the contract e.g. by a specific invitation to the consumer in another EU country or through targeted advertising.

Article 7

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.

Article 7

Voluntary agency

1. ***A contract between principal and agent shall be governed by the law designated by Articles 3 to 6.***
2. ***As between the principal and third parties, the existence and extent of the agent's powers and the effects of the exercise or purported exercise by the agent of his powers*** 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:
 - (a) the agent did not act in the course of his trade or profession,***
 - (b) the third party neither knew nor ought to have known the habitual residence of the agent, or***
 - (c) the agent acted at an exchange or auction.******For the purposes of this paragraph, an employed agent who acts in his professional capacity but who has no personal business establishment shall be deemed to have his habitual residence at the business establishment of the principal to which he is attached, provided that the third party knew or ought to have known that the agent is attached to the principal's establishment.***

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.

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 **third party** and accepted by the other party, the law thus designated shall be applicable to these matters, **provided that the agent knew or ought to have known that designation.**

4. Notwithstanding paragraphs 2 and 3, to the extent that the subject-matter of the agency is a right in immovable property the law of the country where the immovable property is situated shall apply to the matters covered by paragraph 2.

5. The law designated by **paragraphs 2 to 4** 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.

Or. en

Justification

This amendment is intended to take account of criticism of the Commission's proposal.

Amendment by Cristian Dumitrescu

Amendment 95
Article 10, paragraph 4

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 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.

Or. fr

Amendment by Cristian Dumitrescu

Amendment 96

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 the subrogation has his habitual residence at the ***material*** time.

1. The mutual obligations of assignor and assignee under a voluntary assignment or contractual subrogation of a ***claim*** 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 claim*** shall determine the effectiveness of contractual ***and legal*** 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 the subrogation has his habitual residence at the time ***of the assignment or subrogation***.

Or. en

Justification

This amendment is intended to take account of criticism of the Commission's proposal.