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*Committee on Legal Affairs*

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PE 393.856v01-00

## COMPROMISE AMENDMENTS 2-44

### 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))

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Text proposed by the Commission

Amendments by Parliament

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Compromise amendment by Cristian Dumitrescu

Compromise amendment 2  
Recital 5

(5) The concern for transparency in Community legislation is such that the largest possible number of conflict-of-laws rules should be brought together in a single instrument ***or at least that this Regulation should contain a list of special rules laid down by sectoral instruments.***

(5) The concern for transparency in Community legislation is such that the largest possible number of conflict-of-laws rules should be brought together in a single instrument.

Or. en

### *Justification*

*The proposed compromise amendments set out in this paper have several aims. First, they are intended to bring the Regulation more closely into line with Rome II as adopted. Secondly, they seek to introduce changes already accepted in the Council working group and hence aim at reaching an agreement with the Council. Thirdly, they propose solutions in areas where the*

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*Council has not yet been able to reach agreement. Fourthly, they are designed to facilitate e-commerce by positing solutions lying outside the area of private international law to difficulties which conflict-of-laws rules cannot resolve in themselves. Lastly, the amendments are intended to bring into the public domain, and hence make available for public debate in a democratic assembly, technical changes discussed so far only within the Council. The rapporteur has presented them in order to foster debate within the Committee and negotiations with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 3  
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.***

Or. en

*Justification*

*Reproduces a recital in Rome II.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 4  
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 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II")<sup>1</sup> and hence fall outside the scope of this Regulation.***

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<sup>1</sup> OJ L 199, 31.7.2007, p. 40.

Or. en

*Justification*

*This recital is necessary having regard to Rome II.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 5

Recital 7 a (new)

***(7a) This Regulation does not preclude parties from choosing as the applicable law a non-State body of law or an international convention by incorporation by reference.***

Or. en

*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.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 6

Recital 7 b (new)

***(7b) The parties may also choose as the applicable law such principles and rules of the substantive law of contract, including standard terms and conditions, as the Community may adopt in an appropriate legal instrument.***

Or. en

*Justification*

*This recital is offered as an attempt to deal with the vexed question of the common frame of reference.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 7

Recital 7 c (new)

***(7c) An agreement between the parties to confer exclusive jurisdiction on one or more courts or tribunals of a Member State to determine disputes arising under the contract should be a factor to be taken into account in determining whether a choice of law has been clearly demonstrated.***

Or. en

*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.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 8

Recital 7 d (new)

***(7d) 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.***

Or. en

*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.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 9  
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 – 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.

Or. en

*Justification*

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

Compromise amendment by Cristian Dumitrescu

Compromise amendment 10  
Recital 8 a (new)

***(8a) As far as the applicable law in the absence of choice is concerned, the concept of provision of services should be interpreted in the same way as when applying Article 5(1)(b) of 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) in so far as services are covered by that Regulation. Although franchise and distribution contracts are in the nature of contracts for services, they are the subject of specific rules.***

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<sup>1</sup> 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).

Or. en

*Justification*

*This clarification appears to be desirable.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 11

Recital 8 b (new)

***(8b) Where there has been no effective choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract (sale of goods, provision of services, etc.). 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. Where, in the case of related contracts, the characteristic performance cannot be determined, they should be governed by the law of the country with which they are most closely connected.***

Or. en

*Justification*

*Recitals 8b, 8c and 8d 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.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 12

Recital 8 c (new)

***(8c) Where the contract is manifestly more closely connected with another country, the law of that country should apply. In that event, account should be taken of whether the contract in question has a very close relationship with another contract or contracts.***

Or. en

Compromise amendment by Cristian Dumitrescu

Compromise amendment 13

Recital 8 d (new)

***(8d) In the event that 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 country where the party required to effect the characteristic performance has his habitual residence, 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 of whether the contract in question has a very close relationship with another contract or contracts.***

Or. en

Compromise amendment by Cristian Dumitrescu

Compromise amendment 14

Recital 10 a (new)

***(10a) With further reference to consumer contracts, recourse to the courts must be regarded as the last resort. Legal proceedings, especially where foreign law has to be applied, are expensive and slow.***

***The introduction of a mechanism to deal with small claims in cross-border cases is a step forward. However, the protection afforded to consumers by conflict-of-laws provisions is largely illusory in view of the small value of most consumer claims and the cost and time consumed by bringing court proceedings. It is therefore considered that, particularly as regards electronic commerce, the conflicts rule should be backed up by easier and more widespread availability of appropriate on-line alternative dispute resolution (ADR) systems. The Member States are encouraged to promote such systems, in particular mediation complying with Directive .../..., and to cooperate with the Commission in promoting them.***

Or. en

#### *Justification*

*Article 5 on consumer contracts raises problems which cannot be solved solely by recourse to private international law. Recitals 10a and 10b suggest other means of tackling the underlying problems.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 15

Recital 10 b (new)

***(10b) It is further recognised that electronic commerce will be made more accessible to businesses, more transparent and more consumer-friendly, when standard terms and conditions have been introduced at EU level for, in particular, business-to-consumer contracts.***

Or. en



Compromise amendment by Cristian Dumitrescu

Compromise amendment 16

Recital 11 a (new)

***(11a) Further 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 does not preclude the employee from being regarded as carrying out his work in another country temporarily.***

Or. en

*Justification*

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

Compromise amendment by Cristian Dumitrescu

Compromise amendment 17

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***

Or. en

*Justification*

*It is proposed to delete the provision on agency.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 18

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) Respect for the public policy (*ordre public*) of the Member States requires specific rules concerning **overriding mandatory provisions** and the exception on grounds of public policy. Such rules must be applied in a manner compatible with the Treaty. **Overriding mandatory provisions correspond to the understanding of this expression in Regulation (EC) No 864/2007 (see in particular recital 32 and Article 16 thereof). The expression "overriding mandatory provisions" is to be distinguished from the expression "provisions which cannot be derogated from by agreement" utilised in certain provisions of this Regulation and is to be construed more restrictively.**

Or. en

*Justification*

*This clarification is necessary in particular in the light of Rome II.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 19

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)<sup>1</sup>.*

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<sup>1</sup> OJ L 178, 17.7.2000, p. 1.

Or. en

### *Justification*

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

Compromise amendment by Cristian Dumitrescu

### Compromise amendment 20 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***

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***

*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;

(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].**

*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 *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.**

Or. en

#### *Justification*

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

Compromise amendment 21

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*

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*

**one country only**, prejudice the application of **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.

Or. en

#### *Justification*

*This amendment is intended to facilitate reaching agreement with the Council. It should be read in conjunction with the new Recitals 7a and 7b.*

Compromise amendment by Cristian Dumitrescu

#### Compromise amendment 22 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**

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**

*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 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*

*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 *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)(17) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>1</sup>, 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

*it is most closely connected.*

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.*

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<sup>1</sup> OJ L 145, 30.4.2004, p. 1. Directive as amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

Or. en

#### *Justification*

*This amendment is intended to facilitate reaching agreement with the Council. It should be read in conjunction with the new Recitals 8b, 8c and 8d.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 23  
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 persons has not been chosen in accordance with Article 3,*



*the law applicable to such contracts 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 those requirements are not met, the contract for the carriage of passengers shall be governed by the law of the place where the carrier has his habitual residence.*

*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.*

Or. en

#### *Justification*

*This straightforward solution is intended to promote legal certainty and, although bold, afford a solution which the Council might be prepared to accept.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 24  
Article 5, paragraph 3, point (c)

(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.

(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 property* on a timeshare basis within the meaning of Directive 94/47/EC *of the European Parliament and the Council* of 26 October 1994 *on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis;*

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<sup>1</sup> OJ L 280, 29.10.1994, p. 83.

Or. en

*Justification*

*This amendment is designed to improve the existing compromise amendment to Article 5 in line with current thinking in the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 25  
Article 5, paragraph 3, point (c a) (new)

***(ca) the following contracts:***

***(i) rights and obligations which constitute a financial instrument, as defined by Article 4(1)(17) of Directive 2004/39/EC;***

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

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

Or. en

*Justification*

*This amendment is designed to improve the existing compromise amendment to Article 5 in line with current thinking in the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 26  
Article 5 a (new)

***Article 5a***

***Insurance contracts***

***1. An insurance contract covering a large risk within the meaning of paragraph 2 and a reinsurance contract shall be governed by the law of the country in which the insurer or the re-insurer has his habitual residence, unless the applicable law has been chosen in***

*accordance with Article 3.*

*2. Large risks within the meaning of paragraph 1 are those risks enumerated in Article 5(d) of the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>1</sup>. This shall also apply when such risks are situated in a third country.*

*3. An insurance contract covering a risk for which a country imposes compulsory insurance shall be governed by the law of that country.*

*If that country, in the case of a contract covering a risk within the meaning of paragraph 1, grants a free choice of law applicable to the contract, the parties may choose any law in accordance with the provisions of Article 3 and, irrespective of the law chosen, must comply with the provisions of the law of that country which cannot be derogated from by agreement.*

*4. An insurance contract which is not subject to paragraphs 1 or 3 shall be governed by the law of the country where the risk is situated at the time of the conclusion of the contract.*

*The parties may choose as the law applicable to the insurance contract in accordance with Article 3:*

*(a) the law of any country where the risk is situated at the time of the conclusion of the contract;*

*(b) the law of the country where the policy holder has his habitual residence;*

*(c) in the case of a life insurance contract, the law of the country of which the policy holder is a national if, at the time of the conclusion of the contract, he has his habitual residence in a country other than that of which he is a national;*

*(d) for an insurance contract limited to events occurring in one country, the law of that country.*

*5. For the purposes of paragraph 3 and*

*paragraph 4, first subparagraph, where the insurance contract covers risks situated in more than one country, the contract shall be regarded as constituting several contracts each relating to only one country.*

*6. The country in which the risk is situated is:*

*(a) for insurance of risks associated with immovable property, particularly buildings and facilities as well as the property located therein which are covered by the same insurance contract, the country in which such property is situated;*

*(b) for insurance of risks associated with vehicles of all types which are subject to entry in an official or officially recognised register and to which a distinguishing sign is attached, the country of registration;*

*(c) for insurance of travel or holiday risks in insurance contracts with an effective term of a maximum of four months, the country in which the policy holder took out the policy;*

*(d) in all other cases, the country in which the policy holder has his habitual residence.*

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<sup>1</sup> OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

Or. en

#### *Justification*

*This amendment reflects the position reached in the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 27

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***

**1. *An individual contract of 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***

*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 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.**

**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**

**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.**

**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. 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**

*the law of that country.*

*other country shall apply.*

Or. en

*Justification*

*This amendment reflects the position reached in the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 28  
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.*

Or. en

Compromise amendment by Cristian Dumitrescu

Compromise amendment 29  
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 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.***

### ***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.

Or. en

### ***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.*

*The rapporteur has preferred to follow his predecessor, Maria Berger, in deleting paragraph 2 pending further consideration of whether a compromise solution is necessary.*

***-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.

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.***

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 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.*

Or. en

*Justification*

*Designed to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 31

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 ***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.***

*Justification*

*Adopts a position which could be acceptable to the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 32

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***.

*Justification*

*Adopts a position which could be acceptable to the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 33

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***

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***

*ascertain his liability, he may also rely on them against other debtors.*

*the extent allowed by the law governing their obligations towards the creditor.*

Or. en

*Justification*

*Intended to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 34  
Article 16

***Statutory offsetting***

***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.

Or. en

*Justification*

*Intended to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 35  
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.

Or. en

*Justification*

*Intended to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 36  
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.*

Or. en

*Justification*

*Intended to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 37  
Article 20

*Ordre public*

The application of a *rule* 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.

*Public policy of the forum*

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.

*Justification*

*Intended to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 38

Article 22

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 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.*

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.*

*Justification*

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

Compromise amendment by Cristian Dumitrescu

Compromise amendment 39

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.*

Or. en

*Justification*

*Intended to reach agreement with the Council.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 40  
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 one or more Member States, this Regulation shall take precedence over the following Conventions:*

*- the Hague Convention of 15 June 1955 on*

*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 Regulation.*

*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.***

Or. en

*Justification*

*Intended to reach agreement with the Council. Aligned with Rome II.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 41  
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.***

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

Or. en

*Justification*

*Intended to reach agreement with the Council. Aligned with Rome II.*

Compromise amendment 42  
Article 23 b (new)

*Article 23b*

*Review clause*

***1. 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. The report shall be preceded, not later than ...<sup>\*\*</sup>, by:***

***(i) a study on the effects of Article 5 of this Regulation on electronic commerce;***

***(ii) a study on the promotion of ADR in the field on 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;***

***(ii) such proposals as the Commission may consider appropriate in order to introduce standard contract terms and conditions for use in particular in cross-border electronic transactions between businesses and consumers.***

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

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

Or. en



Compromise amendment by Cristian Dumitrescu

Compromise amendment 43  
Article 23 c (new)

**Article 23c**

***Application in time***

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

Or. en

*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.*

Compromise amendment by Cristian Dumitrescu

Compromise amendment 44  
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 [one year after entry into force].

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

Or. en

