



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 December 2007

15832/07

**Interinstitutional File:
2005/0261 (COD)**

**CODEC 1357
JUSTCIV 320**

NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council
Subject: Proposal for a Regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I)
– Outcome of the European Parliament's first reading
(Brussels, 28 to 29 November 2007)

I. INTRODUCTION

The Committee on Legal Affairs adopted sixty-four amendments to the proposal for a Regulation (amendments 1- 64).

In accordance with the provisions of Article 251(2) of the EC Treaty and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5.

In this context, the rapporteur, Mr Cristian DUMITRESCU (PES - RO), and the PES, EPP-ED, ALDE, UEN and Greens/EFA political groups together tabled a further twenty-one compromise amendments (amendments 65-85). These amendments had been agreed during the informal contacts referred to above.

During the debate, Vice-President of the Commission Frattini made a statement regarding Article 5a on behalf of the Commission, and invited the Council to support it.

II. VOTE

At the vote which took place on 29 November 2007, the plenary adopted the twenty-one compromise amendments (amendments 65-85) and forty-nine of the Committee's original amendments (amendments 1-9, 11-21, 23, 25, 27-37, 42-44, 46-47, 51, 53-57, 59-61, 63-64).

The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the lawyer-linguists¹ have scrutinised the text, the Council should be in a position to adopt the legislative act.

The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendments are presented in the form of a consolidated text where added wordings are highlighted in ***bold and italics***, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

¹ Delegations with legal-linguistic observations can send them to the secretariat of the Council's Directorate for the Quality of Legislation (secretariat.jl-codecision@consilium.europa.eu) until 18.1.2008, in order better to prepare the lawyer-linguistic's meeting with national experts.

European Parliament legislative resolution of 29 November 2007 on the proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) (COM(2005)0650 – C6-0441/2005 – 2005/0261(COD))
(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0650),
 - having regard to Article 251(2) and Articles 61(c) and 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0441/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Employment and Social Affairs (A6-0450/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Position of the European Parliament adopted at first reading on 29 November 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 contractual obligations (Rome I)

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 the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission ^{||},

Having regard to the Opinion of the European Economic and Social Committee¹,

Acting in accordance with the procedure *laid down in* Article 251 of the Treaty²,

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, point (b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.***
■
- (3) The ^{||} European Council ***meeting in Tampere*** on 15 and 16 October 1999 ***endorsed*** the principle of mutual recognition of judgments ***and other decisions as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement the principle of mutual recognition.***
- (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***³. ***The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.***

¹ OJ C 318, 23.12.2006, p. 56.

² Position of the European Parliament of 29 November 2007.

³ OJ C 12, 15.1.2001, p. 1.

- (5) *The Hague Programme¹, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the rules of conflict of laws regarding contractual obligations ("Rome I").*
- (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 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 ("Brussels I")² and 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")³.
- (8) *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.*
- (9) *Obligations under bills of exchange, cheques and promissory notes and other negotiable instruments should also cover bills of lading to the extent that the obligations under the bill of lading arise out of its negotiable character.*
- (10) *Obligations arising out of dealings prior to the conclusion of the contract are covered by Article 12 of Regulation (EC) No 864/2007. Therefore such obligations should be excluded from the scope of this Regulation.*
- (11) Freedom for the parties to choose the applicable law must be one of the *cornerstones* of the system of conflict-of-laws rules in matters of contractual obligations.
- (12) *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.*

¹ OJ C 53, 3.3.2005, p. 1.

² 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).

³ OJ L 199, 31.7.2007, p. 40.

- (13) To contribute to the general objective of the instrument – **legal** certainty in the European judicial area – the conflict of law rules **should** be highly foreseeable. **The** courts **should, however,** retain a degree of discretion to determine the law that is most closely connected to the situation.
- (14) *An agreement of the parties to confer exclusive jurisdiction on one or more courts or tribunals of a Member State to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law was clearly demonstrated.*
- (15) *This Regulation does not preclude parties from incorporating by reference into their contract a non-State body of law or an international convention.*
- (16) *Should the Community adopt in an appropriate legal instrument rules of substantive contract law, including standard terms and conditions, such instrument may provide that the parties may choose to apply those rules.*
- (17) *As far as the applicable law in the absence of choice is concerned, the concept of "provision of services" and "sale of goods" should be interpreted in the same way as when applying Article 5(1)(b) of Regulation (EC) No 44/2001 in so far as goods and services are covered by that Regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.*
- (18) *As far as the applicable law in the absence of choice is concerned, multilateral systems should be those where trading is conducted, such as regulated markets and multilateral trading facilities as referred to in Article 4(1), points (14) and (15) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments¹, regardless of whether or not they rely on a central counterparty.*
- (19) *Where there has been no choice of law, the applicable law should be determined in accordance with the rule specified for the particular type of contract. Where the contract cannot be categorised as being one of the specified types or where its elements fall within more than one of the specified types, it should be governed by the law of the country where the party required to effect the characteristic performance has his habitual residence. In the case of a contract consisting of a bundle of rights and obligations capable of being categorised as falling within more than one of the specified types of contract, the characteristic performance of the contract should be determined having regard to its centre of gravity.*
- (20) *Where the contract is manifestly more closely connected with a country other than that indicated in Article 4(1) or (2), an escape clause in those provisions provides that the law of that country should apply. In that event, account should be taken, inter alia, of whether the contract in question has a very close relationship with another contract or contracts.*

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

- (21) *In the absence of choice, where the applicable law cannot be determined either on the basis of the fact that the contract can be categorised as one of the specified types or as being the law of the country of the habitual residence of the party which is required to effect the characteristic performance, the contract should be governed by the law of the country with which it is most closely connected. In order to determine that country, account should be taken, inter alia, of whether the contract in question has a very close relationship with another contract or contracts.*
- (22) *As regards the interpretation of contracts of carriage of goods, no change in substance is intended with respect to Article 4(4), third sentence, of the 1980 Convention on the law applicable to contractual obligations¹. Consequently, single-voyage charter parties and other contracts the main purpose of which is the carriage of goods should be treated as contracts for the carriage of goods. For the purposes of this Regulation, the term "consignor" should refer to any person who enters into a contract of carriage with the carrier and the term "the carrier" should refer to the party to the contract who undertakes to carry the goods, whether or not he performs the carriage himself.*
- (23) As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict rules that are more favourable to their interests than the general rules.
- (24) With more specific reference to consumer contracts, the conflict rule must make it possible to cut the cost of settling disputes *concerning* what are commonly relatively small claims and to take account of the development of distance-selling techniques. *Consistency* 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 (EC) No 44/2001² 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."
- (25) *Consumers should be protected by such rules of the country of their habitual residence that cannot be derogated from by agreement, provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. The same protection should be guaranteed if the professional, while not pursuing his commercial or professional activities in the country where the consumer is habitually resident, by any means directs his activities to that country or to several countries, including that country, and the contract is concluded as a result of such activities.*

¹ OJ C 334, 30.12.2005, p. 1.

² Accessible at: http://europa.eu.int/comm/justice_home/unit/civil/justciv_conseil/justciv_en.pdf.

- (26) *Various exceptions should be made to the general choice of law rule for consumer contracts. Under one such exception the general rule is not to apply to contracts relating to rights in rem in immovable property or tenancies of such property unless the contract relates to the right to use immovable property on a timeshare basis within the meaning of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchases in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis¹.*
- (27) *For the purposes of this Regulation, references to rights and obligations constituting the terms and conditions governing the issuance, offer to the public or public take-over bids of transferable securities and to the subscription and redemption of units in collective investment undertakings should include the terms governing, inter alia, the allocation of securities or of the units, rights in the event of over-subscription, withdrawal rights and similar matters in the context of the offer as well as those matters referred to in Articles 10, 11, 12 and 13 of this Regulation, thus ensuring that all relevant contractual aspects of an offer binding the issuer or the offeror to the consumer are governed by a single law.*
- (28) *For the purposes of this Regulation, financial instruments are those instruments referred to in Article 4(1), point (17) of Directive 2004/39/EC, as amended, and transferable securities are those instruments referred to in Article 4(1), point (18) of the same Directive.*
- (29) *For the purposes of this Regulation, financial services such as investment services and activities and ancillary services provided by a professional to a consumer, as referred to in sections A and B of Annex I to Directive 2004/39/EC and contracts for the sale of units in collective investment undertakings, whether or not covered by Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)², should be subject to the provision on the law applicable to consumer contracts. As such, when a reference is made to terms and conditions governing the issuance or offer to the public of transferable securities or to the subscription and redemption of units in collective investment undertakings, that reference should include all aspects binding the issuer or the offeror to the consumer, but should not include those aspects involving the provision of such financial services.*

¹ OJ L 280, 29.10.1994, p. 83.

² OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council (OJ L 79, 24.3.2005, p. 9).

- (30) *It is important to ensure that rights and obligations which constitute a financial instrument are not covered by the general rule applicable to consumer contracts, as that could lead to the applicability of different laws to each of the instruments issued, therefore changing their nature and preventing their fungible trading and offering. Likewise, whenever such instruments are issued or offered, the contractual relationship established between the issuer or the offeror and the consumer should not be necessarily subject to the mandatory application of the law of the habitual residence of the consumer, as there is a need to ensure uniformity in the terms and conditions of an issuance or an offer. The same rationale should apply with regard to the multilateral systems covered by Article 4(1)(h), where it should be ensured that the law of the habitual residence of the consumer will not interfere with the rules applicable to contracts concluded within those systems or with the operator of such systems.*
- (31) *Nothing in this Regulation should prejudice the operation of a formal arrangement designated as a system under Article 2, point (a) of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems¹.*
- (32) *Owing to the particular nature of contracts of carriage and insurance contracts, specific provisions should ensure an adequate level of protection of passengers and policy holders. Therefore, the provision determining the law applicable to contracts concluded by consumers should not apply in the context of those particular contracts.*
- (33) *Where an insurance contract not covering a large risk covers more than one risk at least one of which is situated in a Member State and at least one of which is situated in a third country, the special rules on insurance contracts in this Regulation shall apply only to the risk or risks situated in the relevant Member State or Member States.*
- (34) *The rule on individual employment contracts ■ should ■ not prejudice the application of the mandatory rules of the country to which a worker is posted in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services².*
- (35) *The employee should not be deprived of the protection of provisions which cannot be derogated from or which can only be derogated from to his benefit.*
- (36) *As regards employment contracts, work carried out in another country is to be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer should not preclude the employee from being regarded as carrying out his work in another country temporarily.*

¹ OJ L 166, 11.6.1998, p. 45.

² OJ L 18, 21.1.1997, p. 1.

- (37) *Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of "overriding mandatory provisions" should be distinguished from the expression "provisions which cannot be derogated from by agreement" referred to for example in Article 3(3) and should be construed more restrictively.*
- (38) *In the context of voluntary assignment, the term "relationship" should make it clear that Article 14(1) also applies to the property aspects of an assignment as between assignor and assignee in legal orders where such aspects are treated separately from the aspects under the law of obligations. However, the term "relationship" should not be understood as relating to any relationship between assignor and assignee that might exist. In particular, it should not comprise preliminary questions as regards a voluntary assignment or a contractual subrogation. The term should be strictly limited to the aspects which are directly relevant to the voluntary assignment/contractual subrogation in question.*
- (39) For the sake of certainty as to the law there should be a clear definition of habitual residence, in particular for bodies corporate. Unlike Article 60(1)(c) of Regulation (EC) No 44/2001, which establishes three criteria, the conflict-of-laws rule should proceed on the basis of a single criterion; otherwise, it would remain impossible for parties to foresee the law applicable to their situation.
- (40) *A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, does not exclude the possibility of inclusion of conflict-of-law rules relating to contractual obligations in provisions of Community law with regard to particular matters.*

This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)¹.

- (41) 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.

¹ OJ L 178, 17.7.2000, p. 1.

- (42) *The Commission will make a proposal to the European Parliament and the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude on their own behalf agreements with third countries in individual and exceptional cases, concerning sectoral matters, containing provisions on the law applicable to contractual obligations.*
- (43) Since the objective of *this Regulation* cannot be *sufficiently achieved* by the Member States and can therefore, by reason of *the scale and effects of this Regulation*, be better achieved at Community level, the Community *may adopt* measures, in accordance with the principle of *subsidiarity* set out in Article 5 of the Treaty. In accordance with the *principle of proportionality* set out in that Article, *this Regulation* does not go beyond what is necessary to attain *its* objective.
- (44) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and *to* the Treaty establishing the European Community, *Ireland has given notice of its wish to take part* in the adoption and application of this Regulation.
- (45) *In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the United Kingdom has not taken part in the adoption of this Regulation and is not bound by it or subject to its application.*
- (46) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and *to* the Treaty establishing the European Community, *Denmark does not take part* in the adoption of this Regulation, *and is not bound by it or subject to its application*,

HAVE ADOPTED THIS REGULATION:

Chapter One

Scope

Article 1

Material Scope

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. *This Regulation shall not apply to:*

- (a) questions involving the status or legal capacity of natural persons, without prejudice to *Article 13*;
- (b) **■** obligations *arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects*, including maintenance obligations;
- (c) obligations arising out of matrimonial **■** property regimes, *property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to 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 ■* ;
- (g) *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*;
- (h) the constitution of trusts and the relationship between *settlers*, trustees and beneficiaries;
- (i) evidence and procedure, without prejudice to *Article 18*;
- (j) obligations arising out of *dealings prior to the conclusion of a contract*;
- (k) *insurance contracts arising out of operations carried out by organisations other than undertakings referred to in Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance¹ (moved from p. 14) the object of which is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, or of sickness related to work or accidents at work.*

3. In this Regulation, the term “Member State” shall mean Member States *to which this Regulation applies. However, in Article 3(4) the term shall mean all the Member States.*

¹ *OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2007/44/EC.*

Article 2

Application of law of non-member States

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

Chapter II

Uniform rules

Article 3

Freedom of choice

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.

■

2. 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 11* or adversely affect the rights of third parties.

3. ***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 cannot be derogated from by ***agreement***.

4. 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.***

5. 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 10, 11 and 13*.

Article 4

Applicable law in the absence of choice

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 5 to 8*, 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;

■

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

(d) notwithstanding *point (c)*, *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;

■

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

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

(g) *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;*

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

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

3. *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.*

4. *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.*

Article 5

Contracts of carriage

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

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

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

- (a) the passenger has his habitual residence; or*
- (b) the carrier has his habitual residence; or*
- (c) the carrier has his place of central administration; or*
- (d) the place of departure is situated; or*
- (e) the place of destination is situated.*

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

Article 6

Consumer contracts

1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession ("the consumer") with another person acting in the exercise of his trade or profession ("the professional") shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or*
- (b) by any means, directs such activities to that country or to several countries including that country,*

and the contract falls within the scope of such activities.

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

3. *If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.*

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

- (a) a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;
- (b) *a contract* of carriage other than *a contract* relating to package travel within the meaning of Council Directive 90/314/EEC of 13 June 1990 *on package travel, package holidays and package tours*¹;
- (c) *a contract* relating to a right in rem *in immovable property* or *a tenancy of* immovable property other than *a contract* relating to *the right to use immovable properties* on a timeshare basis within the meaning of Directive 94/47/EC ||;
- (d) *rights and obligations which constitute a financial instrument and rights and obligations constituting the terms and conditions governing the issuance or offer to the public and public take-over bids of transferable securities, and the subscription and redemption of units in collective investment undertakings in so far as these activities do not constitute provision of a financial service;*
- (e) *a contract concluded within the type of system falling within the scope of Article 4(1)(h).*

Article 7

Insurance contracts

1. *This Article shall apply to contracts referred to in paragraph 2, whether or not the risk covered is situated in a Member State, and to all other insurance contracts covering risks situated inside the territory of the Member States. It shall not apply to reinsurance contracts.*

2. *An insurance contract covering a large risk as defined 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 assurance² shall be governed by the law chosen by the parties in accordance with Article 3.*

¹ *OJ L 158, 23.6.1990, p. 59.*

² *OJ L 5, 7.1.1978, p. 27. Directive as last amended by Directive 2006/101/EC (OJ L 363, 20.12.2006, p. 238).*

To the extent that the applicable law has not been chosen by the parties, the insurance contract shall be governed by the law of the country where the insurer has his habitual residence. Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that other country shall apply.

3. In the case of an insurance contract other than a contract falling within paragraph 2, only the following laws may be chosen by the parties in accordance with Article 3:

- (a) the law of any Member State 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 life insurance, the law of the Member State of which the policy holder is a national;*
- (d) for insurance contracts covering risks limited to events occurring in one Member State, other than the Member State where the risk is situated, the law of that Member State;*
- (e) where the policy holder by virtue of a contract falling under this paragraph pursues a commercial or industrial activity or a liberal profession and the insurance contract covers two or more risks which relate to those activities and are situated in different Member States, the law of any of the Member States concerned or the law of the country in which the habitual residence of the policy holder is situated.*

Where, in the cases set out in points (a), (b) or (e), the Member States referred to grant greater freedom of choice of the law applicable to the insurance contract, the parties may take advantage of that freedom.

To the extent that the law applicable has not been chosen by the parties in accordance with this paragraph, such a contract shall be governed by the law of the Member State in which the risk is situated at the time of the conclusion of the contract.

4. *The following additional rules shall apply to insurance contracts for which a Member State imposes an obligation to take out insurance:*

- (a) *the insurance contract shall not satisfy the obligation to take out insurance unless it complies with the specific provisions relating to that insurance laid down by the Member State that imposes the obligation. Where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail;*
- (b) *by way of derogation from paragraphs 2 and 3, a Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance.*

5. *For the purposes of paragraph 3, last subparagraph, and paragraph 4, where the contract covers risks situated in more than one Member State, the contract shall be considered as constituting several contracts each relating to only one Member State.*

6. *For the purposes of this Article, the country in which the risk is situated is determined in accordance with Article 2(d) of the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services¹ and, in the case of life insurance, the country where the risk is situated shall be the country of the commitment within the meaning of Article 1(1)(g) of Directive 2002/83/EC.*

Article 8

Individual employment contracts

1. *An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by such provisions that cannot be derogated from by contract under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4.*

¹ *OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2005/14/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 14).*

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.* ■

3. *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.*

4. *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 3, the law of that other country shall apply.*



Article 9

Overriding mandatory provisions

1. **Overriding mandatory provisions** are *provisions* the 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 ■ .

3. Effect may be given to the **overriding mandatory provisions** of the law of *the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful*. In considering whether to give effect to *those provisions, regard shall be had* to their nature and purpose ■ and to the consequences of their application or non-application.■

Article 10

Consent and material validity

1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.
2. Nevertheless, a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in *paragraph 1*.

Article 11

Formal validity

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 **■** .
2. ***A contract concluded between persons who or whose agents are in different countries 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 either of the countries where either of the parties or their agent 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.***
3. 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 where the act ***was done*** or the law of the country ***where*** the person who ***effected it had*** his habitual residence at that time.
4. Paragraphs ***1, 2 and 3*** **||** shall not apply to contracts that fall within the scope of *Article 6*. The form of such contracts shall be governed by the law of the country ***where*** the consumer has his habitual residence.

5. Notwithstanding *paragraphs 1 to 4* ||, 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 which cannot be derogated from by agreement.*

Article 12

Scope of applicable law

1. The law applicable to a contract by virtue of this Regulation shall govern in particular:
 - (a) interpretation;
 - (b) performance;
 - (c) within the limits of the powers conferred on the court by its procedural law, the consequences of the total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law;
 - (d) the various ways of extinguishing obligations, and prescription and limitation of actions;
 - (e) the consequences of nullity of the contract.
2. In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

Article 13

Incapacity

In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law only if the other party to the contract was aware of *that* incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 14

Voluntary assignment and contractual subrogation

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 that applies to the contract between the assignor and assignee under this Regulation.
2. The law governing the **assigned or subrogated claim** shall determine **its assignability**, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.
3. The **concept of** assignment **in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims.**

Article 15

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.**

Article 16

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 law **governing** the **debtor's** obligation **towards** the creditor **also** governs the **debtor's** right to claim **recourse from** the other debtors. **The other debtors may rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.**

Article 17

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.

Article 18

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.

2. A contract or an act 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 11* under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.

Chapter III

Other provisions

Article 19

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.

2. 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.***

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

Article 20

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, ***unless provided otherwise in this Regulation.***

Article 21

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.

Article 22

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 contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

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

Article 23

Relationship with other provisions of Community law

With the exception of Article 7, 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.

Article 24

Relationship with the Rome Convention

- 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. In so far as this Regulation replaces the provisions of the Rome Convention, any reference to the Convention shall be understood as a reference to this Regulation.*

Article 25

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-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.*

Article 26

List of Conventions

- 1. By*, Member States shall notify the Commission of the conventions referred to in Article 25(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.*

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

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.*

Article 27

Review clause

1. *No later than ... ** , the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If appropriate, the report shall be accompanied by proposals to adapt this Regulation. The report shall include:*

- (i) a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any; and*
- (ii) an evaluation on the application of Article 6, in particular as regards the coherence of Community law in the field of consumer protection.*

2. *No later than ... *** , the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person. The report shall be accompanied, if appropriate, by a proposal to amend this Regulation and an assessment of the impact of the provisions to be introduced.*

****** *Five years after the entry into force of this Regulation.*

******* *Two years after the entry into force of this Regulation.*

Article 28
Application in time

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

Chapter IV
Final provisions

Article 29
Date of entry into force and application

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

This Regulation shall apply from [*eighteen months* after entry into force] *except for Article 26 which shall apply from ... * J.*

■

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

Done at ||,

For the European Parliament
The President

For the Council
The President

* *12 months after the date of adoption.*