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Committee on Legal Affairs

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PE 357.792v02-00

AMENDMENTS 51-128

Draft report
Diana Wallis

(PE 349.977v02-00)

The law applicable to non-contractual obligations ("Rome II")

Proposal for a regulation (COM(2003) 0427 – C5-0338/2003 – 2003/0168(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Manuel Medina Ortega

Amendment 51
Article 1(1)

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

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

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. ***For the purposes of this Regulation only, enrichment without case and administration of others' affairs without a mandate shall be considered as non-contractual obligations.***

It shall not apply to revenue, customs or administrative matters, ***or to the liability of public administrations in respect of acts or omissions occurring in the performance of their duties.***

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PE 357.792v02-00

Justification

The concepts referred to in the Regulation are in several legal systems considered as quasi-contractual and thus different in kind from extracontractual obligations in the strict sense. The aim of this first change is to include the former concepts while ensuring that they are not identified with the latter.

The second change entails excluding the liability of public administrations from the scope of the Regulation, so as to ensure that they are not subject to the law of another country. This is especially important for those Member States where, for purposes of obligation, acts under the headings of both 'iure gestionis' and 'iure imperio' are governed by the same regime.

Amendment by Francesco Enrico Speroni

Amendment 52
Article 1, paragraph. 1

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply to revenue, customs or administrative matters.

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply to revenue, customs or administrative matters, ***including public administration activities and judicial activities.***

Or. it

Justification

Public administration activities and judicial activities should be specifically excluded from the scope of the regulation.

Amendment by Katalin Lévai

Amendment 53
Article 1, paragraph 2, point a)

a) non-contractual obligations arising out of family relationships and relationships deemed ***to be equivalent***, including maintenance obligations;

a) non-contractual obligations arising ***or likely to arise*** out of family relationships and relationships deemed ***by the law applicable to such relationships as having comparable effects*** including maintenance obligations;

Justification

Technical, grammatical and terminological correction.

Amendment by Katalin Lévai

Amendment 54

Article 1, paragraph 2, point b)

b) non-contractual obligations arising out of matrimonial property regimes and successions;

b) non-contractual obligations arising **or likely to arise** out of matrimonial property regimes, **property regimes of relationships deemed by the law applicable to such relationships as having comparable effects to marriage** and successions;

Or. xm

Justification

The amendment to point b) makes it clear that not only marital property regime questions, but also property regime questions in connection with similar relationships in law (e.g. extra-marital cohabitation) are excluded from the substantive scope of the regulation.

Amendment by Katalin Lévai

Amendment 55

Article 1, paragraph 2, point c)

c) 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;

c) **non-contractual** obligations arising **or likely to arise** 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;

Or. en

Justification

Technical, grammatical and terminological correction.

Amendment by Katalin Lévai

Amendment 56

Article 1, paragraph 2, point d)

d) *the* personal **legal** liability of officers and members as such for the **debts** of a company or firm or other body corporate or incorporate, and the personal **legal** liability of **persons responsible for carrying out** the statutory audits of accounting documents;

d) **non-contractual obligations arising or likely to arise out of** personal liability of officers and members as such for the **obligations** of a company or firm or other body corporate or incorporate, and the personal liability of **auditors to a company or its members in** the statutory audits of accounting documents;

Or. en

Justification

Technical, grammatical and terminological correction.

Amendment by Katalin Lévai

Amendment 57

Article 1, paragraph 2, point e)

e) non-contractual obligations **among** the settlers, trustees and beneficiaries of a trust;

e) non-contractual obligations **arising or likely to arise out of the relations between** the settlers, trustees and beneficiaries of a trust;

Or. en

Justification

Technical, grammatical and terminological correction.

Amendment by Katalin Lévai

Amendment 58

Article 1, paragraph 2, point f a) (new)

f a) evidence and procedure, without prejudice to Articles 16 and 17.

Justification

This amendment takes account of the universal principle of 'lex fori' within private international law that the law applicable to procedural questions, including questions of evidence, is not the law governing the substantive legal relationship ('lex causae'), but, rather, the procedural law of the forum.

Amendment by Kurt Lechner and Klaus-Heiner Lehne

Amendment 59

Article 1, paragraph 2, point f a (new)

f a) liability for acts of public authority, including liability of publicly appointed offices holders.

Or. de

Justification

Legal certainty is served by excluding liability for acts of public authority from the scope of the regulation. The special nature of the liability of public office holders in some Member States for their actions should also be taken into account.

Amendment by Francesco Enrico Speroni

Amendment 60

Article 1, paragraph 2, letter f a) (new)

f a) non-contractual obligations arising out of e-commerce.

Or. it

Amendment by Klaus-Heiner Lehne and Hans-Peter Mayer

Amendment 61

Article 1, paragraph 2 a (new)

2a. 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 non-contractual obligations; or*
- b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or*
- (c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or*
- (d) are laid down in relation to particular matters and in areas coordinated by such instruments and subject the supply of services or goods to the laws of the Member State where the service-provider is established and, in the area coordinated, allow restrictions on freedom to provide services or goods originating in another Member State only in limited circumstances.*

Or. de

Justification

The amendment takes up the rapporteur's proposal that the scope should be determined at the start of the regulation. The only change to the rapporteur's draft concerns point (d), which maintains the wording of Article 23(2) of the Commission proposal.

Amendment by Giuseppe Gargani

Amendment 62

Article 1, paragraph 2 a) (new)

2a. 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 non-contractual obligations; or*
- (b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue*

*of this Regulation; or
(c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or
(d) lay down provisions designed to contribute to the proper functioning of the internal market and in particular subject the supply of services to the laws of the Member State where the provider of the services is established and prohibit or limit restrictions on freedom to provide services.*

Or. en

Justification:

In order to ensure that this regulation does not hamper the proper functioning of the internal market, it is of utmost importance to preserve a clear carve-out for instruments containing country of origin provision.

For the sake of clarity and legal certainty, recital 5 and Article 1(d) set out in the proposed draft report need to be reworded so that they reflect the idea that private international law rules shall not apply in addition to the country of origin principle.

Amendment by Malcolm Harbour

Amendment 63

Article 1, paragraph 2 a) (new)

2a. 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 non-contractual obligations; or***
- (b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or***
- (c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or***
- (d) lay down provisions designed to contribute to the proper functioning of the internal market and in particular subject***

the supply of services to the laws of the Member State where the provider of the services is established and prohibit or limit restrictions on freedom to provide services.

Or. en

Justification:

For the sake of clarity and legal certainty recital 5 and Article 1(d) set out in the proposed draft report need to be reworded so that they reflect the idea that private international law rules shall not apply in addition to the country of origin principle.

Amendment by Piia-Noora Kauppi

Amendment 64

Article 1, paragraph 2 a (new)

2a. This Regulation shall not prevent the adoption or application of acts of the institutions of the European Communities which:

***(a) in relation to particular matters, lay down choice-of-law rules relating to non-contractual obligations; or
(b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or
(c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or
(d) lay down provisions designed to contribute to the proper functioning of the internal market and in particular subject the provision of goods and services to the laws of the Member State where the provider is established and prohibit or limit restrictions on freedom to provide goods or services.***

Or. en

Justification

It should be clarified that a future Regulation on Rome II should not prejudice the application of EU legislation containing country of origin provisions.

Amendment by Monica Frassoni

Amendment 65

Article 1, paragraph 2 a (new)

2a. 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 non-contractual obligations; or

(b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or

(c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or

(d) lay down provisions designed to contribute to the proper functioning of the internal market.

Or. en

Justification

The change made in indent (d) is intended to emphasise the existing internal market instruments, such as television without frontiers and the e-commerce directive

Amendment by Rainer Wieland

Amendment 66

Article 1 , paragraph 2 a (new)

2a. 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 non-contractual obligations; or

(b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or

(c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation; or

(d) lay down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of private international law; or

(e) are laid down in relation to particular matters and in areas coordinated by such instruments and subject the supply of services or goods to the laws of the Member State where the service-provider is established and, in the area coordinated, allow restrictions on freedom to provide services or goods originating in another Member State only in limited circumstances.

Or. de

Justification

The amendment takes up the rapporteur's proposal that the scope should be determined at the start of the regulation. The only change to the rapporteur's draft concerns point (e), which maintains the wording of Article 23(2) of the Commission proposal.

Amendment by Adeline Hazan

Amendment 67

Article 1, paragraph 2 a (new)

2a.

(a) in relation to particular matters, lay down choice-of-law rules relating to non-contractual obligations; or

(b) lay down rules which apply irrespective of the national law governing the non-contractual obligation in question by virtue

***of this Regulation; or
(c) prevent application of a provision or provisions of the law of the forum or of the law designated by this Regulation.***

Or. fr

Justification

While the material scope of the regulation should be set out in a single article in order to clearly specify the cases in which Community law overrides the precepts of international law, it is definitely not appropriate for its scope to extend in the same way to the provisions relating to the internal market, such as the television without frontiers and the e-commerce directives.

Amendment by Jean-Paul Gauzès

Amendment 68
Article 1 paragraph 2 a (new)

2a. This Regulation shall not affect the application of sectoral instruments adopted by the institutions of the European Communities which resolve conflicts of law and determine the law applying to non-contractual obligations.

Or. fr

Justification

Clarifies how the regulation affects sectoral instruments.

Amendment by Arlene McCarthy

Amendment 69
Article 2 a (new)

Article 2 a

The parties may agree, by an agreement entered into after their dispute arose or, where there is a pre-existing arms-length commercial relationship between traders by an agreement freely negotiated before the dispute arose, to submit non-contractual

obligations to the law of their choice. The choice must be expressed or demonstrated with reasonable certainty by the circumstances of the case. It may not affect the rights and obligations of third parties and shall be without prejudice to the application of mandatory rules within the meaning of Article 12.

Or. en

Justification

The requirement that traders must be of "equal bargaining power" is unclear in its meaning and could undermine the legal certainty which the freedom of choice provisions would create.

Amendment by Manuel Medina Ortega

Amendment 70
Article 3

1. The law applicable to a non-contractual obligation shall be the law of the country in which the damage arises or is likely to arise, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.

2. However, *where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country when the damage occurs, the non-contractual obligation shall be governed by the law of that country.*

3. *Notwithstanding paragraphs 1 and 2, where it is clear from all the circumstances of the case that the non-contractual*

1. The law applicable to a non-contractual obligation shall be the law of the country in which the damage arises or is likely to arise, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.

2. However, *where it is clear from all the circumstances of the case that the non-contractual obligation is manifestly more closely connected with another country, the law of that country shall apply. A manifestly closer connection with another country may be based on a pre-existing relationship between the parties, such as a contract that is closely connected with the non-contractual obligation in question, or on habitual residence in the same country of the person claimed to be liable and the person sustaining damage when the damage occurs.*

obligation is manifestly more closely connected with another country, the law of that other country shall apply. A manifestly closer connection with another country may be based in particular on a pre-existing relationship between the parties, such as a contract that is closely connected with the non-contractual obligation in question.

Or. es

Justification

The general principle behind the Regulation is the application of 'lex loci delicti'. It follows that the factor of habitual residence in the same country should not be accorded absolute priority, but should be treated as a simple presumption which may be applied to the 'closer connection' clause.

Amendment by Jean-Paul Gauzès

Amendment 71
Article 3, paragraph 1

1. **The** law applicable to a non-contractual obligation shall be the law of the country in which the damage arises or is likely to arise, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.

1. ***In the absence of an agreement within the meaning of Article 2a, and unless otherwise specified by this Regulation, the*** law applicable to a non-contractual obligation shall be the law of the country in which the damage arises or is likely to arise, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.

Or. fr

Justification

Brings text into line with the amendment introducing a new Article 2a.

Amendment by Katalin Lévai

Amendment 72
Article 3, paragraph 1

1. **The** law applicable to a **non-contractual obligation** shall be the law of the country in which the damage **arises** or is likely to **arise**, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event **arise**.

1. **Unless otherwise provided for in this Regulation, the** law applicable to a **tort or delict** shall be the law of the country in which the damage **occurs** or is likely to **occur** irrespective of the country in which the event giving rise to the damage occurred **or may occur** and irrespective of the country or countries in which the indirect consequences of that event **occur**.

Or. en

Justification

Technical, grammatical and terminological correction.

Amendment by Arlene McCarthy

Amendment 73
Article 3, paragraph 1

1. **The** law applicable to a non-contractual obligation shall be the law of the country in which the damage **arises** or is likely to **arise**, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.

1. **In the absence of an agreement within the meaning of Article 2a and unless otherwise provided for in this Regulation, the** law applicable to a non-contractual obligation **arising out of a tort or a delict** shall be the law of the country in which the damage **occurs** or is likely to **occur**, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise.

Or. en

Amendment by Katalin Lévai and Maria Berger

Amendment 74
Article 3, paragraph 1 a (new)

*1a. In the case of personal injuries arising out of traffic accidents, however, and with a view to the motor insurance directive, the court seised and the liable driver's insurer should, as regards determining the type of claim for damages and calculating the quantum of the claim, apply the rules of the individual victim's place of habitual residence unless it would be inequitable to the victim to do so.
With regard to liability, the applicable law shall be the law of the place where the accident occurred.*

Or. de

Justification

Under the provisions of the fourth and fifth motor insurance directives, a party sustaining damage in a traffic accident is at liberty, in cross-border cases, either to bring about an out-of-court settlement directly with the loss adjuster of the other party's insurer, in the home country of the party sustaining damage, or, failing agreement, to bring an action directly against the other party's insurer (also in the home country of the party sustaining damage). In traffic accident cases, then, applying the law of the state of the victim's place of habitual residence is more equitable (for the victim, e.g. where he or she needs lifelong care) and more practicable for insurers and the courts.

In the case of personal injuries, not only the level of compensation is important, i.e. the question of how much; rather, what FORM of compensation to be received by an injured party is also important (in particular whether there is an entitlement to damages for pain and suffering, a nursing and attendance allowance or certain pensions). Accordingly, the type of compensation should be governed by the law applicable at the injured party's place of habitual residence.

Amendment by Katalin Lévai

Amendment 75 Article 3, paragraph 2

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country when the damage occurs, the **non-contractual obligation** shall be governed by the law of that country.

2. However, where the person claimed to be liable and the person sustaining **or likely to sustain** damage both have their habitual residence in the same country **at the time** when the damage occurs **or is likely to occur**, the **tort or delict** shall be governed by the law of that country.

Justification

Technical, grammatical and terminological correction.

Amendment by Arlene McCarthy

Amendment 76
Article 3, paragraph 2

2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country when the damage occurs, the non-contractual obligation shall be governed by the law of that country. *deleted*

Amendment by Katalin Lévai

Amendment 77
Article 3, paragraph 3

3. Notwithstanding paragraphs 1 and 2, where it is clear from all the circumstances of the case that the *non-contractual obligation* is manifestly more closely connected with another country, the law of that other country shall apply. A manifestly closer connection with another country *may* be based in particular on a pre-existing relationship between the parties, such as a contract that is closely connected with the *non-contractual obligation* in question.

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

Justification

Technical, grammatical and terminological correction.

Amendment by Arlene McCarthy

Amendment 78
Article 3, paragraph 3

3. Notwithstanding paragraphs 1 and 2 where it is clear from all the circumstances of the case that the non-contractual obligation is manifestly more closely connected with another country, the law of that other country shall apply. ***A manifestly closer connection with another country may be based in particular on a pre-existing relationship between the parties, such as a contract that is closely connected with the non-contractual obligation in question.***

2. Notwithstanding ***paragraph 1 and by way of exception***, where it is clear from all the circumstances of the case that the non-contractual obligation is manifestly more closely connected with another country, the law of that other country shall apply.

The factors that may be taken into account as manifestly connecting a non-contractual obligation with another country include:

(a) a pre-existing legal or de facto relationship between the parties, such as, for example, a contract, that is closely connected with the non-contractual obligation in question;

(b) protection of legitimate expectations.

In resolving the question of the applicable law, the court seised shall, where necessary, subject each specific issue of the dispute to separate analysis.

Or. en

Justification

The factors deleted, in respect to the rapporteur's amendments, are relevant to the application of the displacement rule and national courts should be able to operate satisfactorily broad discretion in the rule of displacement. The factors deleted could be interpreted in different ways by different courts. In some cases i.e. (c) are imprecise and could lead to legal uncertainty and potentially encourage national courts not to apply the law that would be otherwise applicable under Article 3(1) (re; e)

Amendment by Manuel Medina Ortega

Amendment 79
Article 4

Without prejudice to Article 3(2) and (3), the law applicable to a non-contractual obligation arising out of damage or a risk of damage caused by a defective product shall be that of the country in which the person sustaining the damage is habitually resident, unless the person claimed to be liable can show that the product was marketed in that country without his consent, in which case the applicable law shall be that of the country in which the person claimed to be liable is habitually resident.

1. The law applicable to a non-contractual obligation arising out of damage or a risk of damage caused by a product shall be:

a) that of the country in which the person sustaining the damage is habitually resident when the damage occurs, where it coincides with the country in which the product is marketed;

b) should the above not apply, that of the country in which the damage occurred to the person sustaining it, where it coincides with the country in which the product is marketed;

c) should neither of the above apply, that of the country where the product was purchased.

2. The reference to the place of marketing of the product includes the marketing of products of the same type by the same agent. It shall be presumed, save where there is proof to the contrary, that a product marketed in a Member State is marketed in the other Member States.

3. The law referred to in paragraph 1 shall not apply where the person claimed to be liable can prove that he could not reasonably foresee that the product or his products of the same type would be marketed in the Member State concerned. In this case, the applicable law shall be that of the country in which the person claimed to be liable is habitually resident.

4. Without prejudice to the provisions of the above paragraphs, where the case exhibits a manifestly closer connection with another country the law of that country shall apply.

Or. es

Justification

The alternative proposed here is based on an interlocking set of connections, with a view to ensuring application of the law most closely related to the dispute.

Paragraph 2 contains the idea, unanimously accepted by other countries and by international conventions, that the marketing criteria should be based primarily not on the individual product but on products of the same type or kind falling under the responsibility of the same agent. Stress is also laid on the internal market by introducing the presumption that, save where there is proof to the contrary, a product marketed in a Member State is marketed in the other Member States.

Amendment by Katalin Lévai

Amendment 80
Article 5, paragraph 1

1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are or are likely to be directly and substantially affected.

1. The law applicable to a non-contractual obligation arising ***or likely to arise*** out of an act of unfair competition, ***including an act restricting free competition***, shall be the law of the country where competitive relations or the collective interests of consumers are or are likely to be directly and substantially affected.

Or. en

Justification

This amendment is recalled that this Regulation covers only non-contractual obligations falling within the field of private law.

Amendment by Katalin Lévai

Amendment 81
Article 5, paragraph 2

2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 3(2) **and** (3) shall apply.

2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 3 shall apply.

Or. en

Justification

This paragraph should refer to the whole of Article 3.

Amendment by Adeline Hazan

Amendment 82
Article 6

1. The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality shall be the law of the forum ***where the application of the law designated by Article 3 would be contrary to the fundamental principles of the forum as regards freedom of expression and information.***

2. The law applicable to the right of reply or equivalent measures shall be the law of the country in which the broadcaster or publisher has its habitual residence.

1. The law applicable to a non-contractual obligation arising out of a violation ***or potential violation*** of privacy or rights relating to the personality, ***including defamation***, shall be the law of the forum.

2. However, a non-contractual obligation arising out of a violation or potential violation of privacy or rights relating to the personality caused by a printed publication, book, audiovisual programme or information society service shall be governed by the law of the country for which the programme or service is primarily intended. In cases where it is not possible to determine the country for which the publication or broadcasting service is primarily intended because of its international nature, the law of the country in which the editorial decision is taken shall apply.

3. That law shall also apply to the right of reply or equivalent measures and to any preventive measures, including actions for a prohibitive injunction, whether temporary or permanent, against an editor or broadcasting organisation relating to the

content of a publication, programme or service.

Or. fr

Justification

In the light of the Charter of Fundamental Rights of the European Union and the Convention on the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, a special provision should be inserted to deal with violations of privacy or rights relating to the personality by broadcasting organisations or the press, with due respect to the fundamental principle of press freedom.

Applying the law of the forum would make it difficult to secure legal certainty for the media. With globalisation, the media potentially have global reach, especially through satellite technology and the Internet. The multiplicity of laws which would be applicable to them by virtue of the law of the forum would be a source of excessive legal uncertainty for the media, which could not be expected to know all the specific legislation applying to them in all their distribution markets. The country for which a publication or broadcast is primarily intended should be determined by reference to factors such as the language of the publication or broadcast, volume of sales or audience ratings. In the case of publications and broadcast services which, by their international nature, do not target a particular country, the country where editorial decisions are taken can provide an alternative objective basis for determining the applicable law.

The aim is to prevent the dubious practice of "forum shopping" and ensure that the media have full knowledge of the law with which they must comply.

Amendment by Klaus-Heiner Lehne

Amendment 83

Article 6

1. *The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality shall be the law of the forum where the application of the law designated by Article 3 would be contrary to the fundamental principles of the forum as regards freedom of expression and information.*

2. The law *applicable* to the right of reply or equivalent measures *shall be the law of the country in which the broadcaster or publisher has its habitual residence.*

1. *A non-contractual obligation arising out of a violation of privacy or rights relating to the personality, caused by a publication, broadcast or other communication, shall be governed by the law of the country for which the publication, broadcasting service or communication is mainly intended. Should it not be apparent which country that is, the law of the country in which the editorial decisions are taken shall apply.*

2. The law *determined under paragraph 1 shall also apply* to the right of reply or equivalent measures *and to any preventive measures, including provisional and*

***temporary prohibitory injunctions
regarding the content of a publication,
broadcast or other communication.***

Or. de

Justification

The amendment takes account of the special position of the print media and television.

Amendment by Jean-Paul Gauzès

Amendment 84
Article 6

1. ***The law applicable to*** a non-contractual obligation arising out of a violation of privacy or rights relating to the personality shall be ***the law of the forum where the application of the law designated by Article 3 would be contrary to the fundamental principles of the forum as regards freedom of expression and information.***

2. The law applicable to the right of reply or equivalent measures shall be the law of the country in which the broadcaster or publisher has its habitual residence.

1. ***A*** non-contractual obligation arising out of a violation of privacy or rights relating to the personality ***caused by a publication or a broadcast shall be governed by the law of the country for which the programme or service is primarily intended or, where it is not possible to determine the country for which the publication or broadcasting service is primarily intended, by the law of the country in which the editorial decision is taken.***

2. The law applicable to the right of reply or equivalent measures ***and to any preventive measures, including actions for a prohibitive injunction, whether temporary or permanent, against an editor or broadcasting organisation relating to the content of a publication or broadcast,*** shall be the law of the country in which the broadcaster or publisher has its habitual residence.

Or. fr

Justification

In the light of the Charter of Fundamental Rights of the European Union and the Convention on the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, a special provision should be inserted to deal with violations of privacy or rights relating to the

personality by broadcasting organisations or the press, with due respect to the fundamental principle of press freedom. The country for which a publication or broadcast is primarily intended should be determined by reference to factors such as the language of the publication or broadcast, volume of sales or audience ratings.

In the case of publications and broadcast services which, by their international nature, do not target a particular country, the country where editorial decisions are taken can provide an alternative objective basis for determining the applicable law.

Amendment by Rainer Wieland and Klaus-Heiner Lehne

Amendment 85

Article 6

1. ***The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality shall be the law of the forum where the application of the law designated by Article 3 would be contrary to the fundamental principles of the forum as regards freedom of expression and information.***

1. ***A non-contractual obligation arising out of a violation of privacy or rights relating to the personality, caused by a publication, shall be governed by the law of the country for which the publication is mainly intended.***

2. ***Should it not be apparent which country that is, the law of the country in which the editorial decisions are taken shall apply.***

3. ***Paragraph 1 shall not apply if doing so would mean acquiescing in a violation in other countries or if it would be reasonable to forego publication there in the light of circumstances as a whole, such as:***

- the language of the publication,***
- the distribution arrangements for it,***
- circulation at the intended places of sale,***
- or***
- the scale of the damage as a result of the violation. In such cases, the law of the country in which the most significant element or elements of the loss or damage occur or are likely to occur shall be applicable.***

4. ***Accordingly, publication means any public dissemination of printed, broadcast or otherwise communicated content.***

2. The law **applicable** to the right of reply or equivalent measures **shall be the law of the country in which the broadcaster or publisher has its habitual residence**.

5. The law **determined under the above paragraphs shall also apply** to the right of reply or equivalent measures **and to any preventive measures, including provisional and temporary prohibitory injunctions regarding the content of the publication**.

Or. de

Justification

This wording is an attempt to take account of conflicting notions to be safeguarded - right to privacy, freedom of expression, right to engage in economic activity, and the need for legal certainty - in the light of Case C-68/93, Fiona Shevill and others, ECR (1995) I-415.

Amendment by Manuel Medina Ortega

Amendment 86

Article 6(1)

1. The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to **the personality shall be the law of the forum where the application of the law designated by Article 3 would be contrary to the fundamental principles of the forum as regards freedom of expression and information**.

1. The law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to **a person's reputation or image shall be that specified in Article 3. For the purposes of the first paragraph of that article, where the damage occurs or threatens to occur in more than one Member State, the applicable law shall be that of the country in which the person sustaining the damage is habitually resident**.

Or. es

Justification

The proposal introduces a derogation from the general rule of Article 3 and resolves the problem of variations in national law where the damage occurs in more than one country.

The rights to privacy and reputation are fundamental rights. Freedom of expression is also a fundamental right, but its protection should fall under the public policy clause, and its inclusion here is therefore not appropriate.

Finally, the right of reply is best seen as a means of compensation for damage (like any other), and should therefore be governed by the same law as all the other aspects.

Amendment by Evelin Lichtenberger

Amendment 87
Article 6 a (new)

Article 6 a

Traffic accidents

1. Until such time as the Community adopts detailed legislation on the law applicable to traffic accidents, Member States shall either apply the general rules set out in this Regulation, subject to Article 13, or the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.

2. In the case of personal injuries arising out of traffic accidents the court seised should apply the rules relating to the type, the modality and the quantum of damages of the individual victim's place of habitual residence, unless it would be inequitable to do so.

Or. en

Justification

This amendment aims to clarify that in the case of personal injuries arising out of traffic accidents the court seised should apply the rules relating to the type, the modality and the quantum of damages of the individual victim's place of habitual residence.

Amendment by Katalin Lévai

Amendment 88
Article 7

The law applicable to a non-contractual obligation arising out of a violation of the environment shall be the law determined by the application of Article 3(1), unless the person **sustaining damage prefers** to base his claim on the law of the country in which the event giving rise to the damage occurred.

The law applicable to a non-contractual obligation arising **or likely to arise** out of a violation of the environment, **including damage caused to persons or property**, shall be the law determined by the application of Article 3(1), unless the person **seeking compensation for damage chooses, at the latest at the time the court is seised**, to base

his *or her* claim on the law of the country in which the event giving rise to the damage occurred.

Or. en

Justification

These amplifications are necessary for the correct application of the proposed regulation. The expression „seeking compensation for damage chooses, at the latest at the time the court is seized” seems to be a reasonable limitation. It serves the defence of the person seeking compensation for damage.

Amendment by Jonas Sjöstedt, Daniel Stroz

Amendment 89
Article 7

Violation of the environment

The law applicable to a non-contractual obligation arising out of ***a violation of the environment*** shall be the law determined by the application of Article 3(1), unless the person sustaining damage prefers to base his claim on the law of the country in which the event giving rise to the damage occurred.

Environmental damage

The law applicable to a non-contractual obligation arising out of ***environmental damage, as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage***¹, shall be the law determined by the application of Article 3(1), unless the person sustaining damage prefers to base his claim on the law of the country in which the event giving rise to the damage occurred.

¹ ***OJ L 143, 30.4.2004, p. 56.***

Or. en

Justification

Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage provides clear and harmonised definitions of environmental damage and related terms.

Amendment by Jean-Paul Gauzès

Amendment 90
Article 7

The law applicable to a non-contractual obligation arising out of a violation of the environment shall be the law determined by the application of Article 3(1), unless the person sustaining damage prefers to base his claim on the law of the country in which the event giving rise to the damage occurred.

The law applicable to a non-contractual obligation arising out of a violation of the environment, ***including damage caused to persons or property***, shall be the law determined by the application of Article 3(1), unless the person sustaining damage prefers, ***at the latest at the time the court is seised***, to base his claim on the law of the country in which the event giving rise to the damage occurred.

Or. fr

Justification

Technical clarification.

Amendment by Katalin Lévai

Amendment 91
Article 8, paragraph 1

1. The law applicable to a non-contractual obligation arising from an infringement of ***a*** intellectual property right shall be the law of the country for which protection is ***sought***.

1. The law applicable to a non-contractual obligation arising ***or likely to arise*** from an infringement of ***an*** intellectual property right shall be the law of the country for which protection is ***claimed***.

Or. en

Justification

Technical, grammatical and terminological correction.

Amendment by Katalin Lévai

Amendment 92
Article 8, paragraph 2

2. In the case of a non-contractual obligation arising from an infringement of a unitary Community **industrial** property right, the relevant Community instrument **shall apply**. **For any question that is not governed by that instrument, the applicable law shall be the law of the Member State in which the act of infringement is committed.**

2. In the case of a non-contractual obligation arising **or likely to arise** from an infringement of a unitary Community **intellectual** property right, **the applicable law shall be the law of the Member State in which the act of infringement was committed and the law of the forum for any question that is not governed by** the relevant Community instrument.

Or. en

Justification

Technical, grammatical and terminological correction. The second phrase is necessary for any question that is not governed by that instrument.

Amendment by Katalin Lévai

Amendment 93
Article 9, paragraph 1

1. If a non-contractual obligation arising out of **an act other than a tort or delict** concerns a relationship **previously** existing between the parties, such as a contract closely connected with **the non-contractual obligation**, it shall be governed by the law that governs that relationship.

1. If a non-contractual obligation arising **or likely to arise** out of **unjust enrichment, including undue payment**, concerns a relationship existing between the parties, such as a contract **or a tort or delict under Chapter II**, closely connected with **that unjust enrichment**, it shall be governed by the law that governs that relationship.

Or. en

Justification

Technical, grammatical and terminological correction and distinction.

Amendment by Jean-Paul Gauzès

Amendment 94
Article 9 a (new)

Article 9 a

1. If a non-contractual obligation arising

out of an unjust enrichment, including an undue payment, concerns a relationship previously existing between the parties, such as a contract closely connected with that enrichment, it shall be governed by the law that governs that relationship.

2. Where the applicable law cannot be determined on the basis of paragraph 1, and where the person claimed to be liable and the claimant have their habitual residence in the same country when the event giving rise to the enrichment occurs, the applicable law shall be the law of that country.

3. Where the applicable law cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the enrichment takes place.

Or. fr

Justification

It is more difficult to determine the place where the events giving rise to the undue enrichment occurred than the place where the enrichment occurred.

Amendment by Manuel Medina Ortega

Amendment 95 Article 10

1. The parties may agree, by an agreement entered into after their dispute arose, to submit non-contractual obligations other than the obligations to which **Article 8 applies** to the law of their choice. The choice must **be expressed or demonstrated with reasonable certainty by the circumstances of the case. It may not** affect the rights of third parties.

2. If all the other elements of the situation at the time when the loss is sustained are located in a country other than the country whose law has been chosen, the choice of

1. The parties may agree, by an agreement entered into after their dispute arose, to submit non-contractual obligations other than the obligations to which **Articles 5 and 8 apply** to the law of their choice. The choice must **not adversely** affect the rights of third parties.

2. Where the parties are persons exercising professional or commercial activity, the choice may also precede the commencement of the dispute.

the parties shall be without prejudice to the application of rules of the law of that country which cannot be derogated from by contract.

3. The parties' choice of the applicable law shall not debar the application of provisions of Community law where the other elements of the situation were located in one of the Member States of the European Community at the time when the loss was sustained.

3. The parties' choice of the applicable law shall not debar the application of provisions of Community law ***which cannot be excluded by agreement***, where the other elements of the situation were located in one of the Member States of the European Community at the time when the loss was sustained. ***Where directives are involved, the applicable national law shall be determined pursuant to Articles 3 to 10.***

Or. es

Justification

This amendment incorporates a reference to Article 5, on the grounds that competition law and intellectual property law are binding in nature and are not determined by agreement.

It further introduces the possibility of ex ante choice in the case of relations between professionals, since where interests exist justifying a given choice there is no reason not to protect those interests.

Finally, two crucial elements are added: the condition that the provisions applying must be binding, and the determination of the applicable national law in cases where the parties have failed to comply with a directive.

Amendment by Katalin Lévai

Amendment 96 Article 10, paragraph 1

1. ***The parties may agree, by an agreement entered into after their dispute arose, to submit non-contractual obligations other than the obligations to which Article 8 applies to the law of their choice. The choice must be expressed or demonstrated with reasonable certainty by the circumstances of the case. It may not affect the rights of third parties.***

1. ***Without prejudice to Articles 5 and 8, the parties may agree to submit non-contractual obligations to the law of their choice. Where a consumer or a worker is involved, the choice may only be made after the dispute arose. The choice must be expressed or demonstrated with reasonable certainty by the circumstances of the case. The choice shall not prejudice the rights of third parties.***

Justification

The text added - new second sentence - affords a greater degree of protection for workers and consumers, who, within a legal relationship, are typically in a 'weaker' position than the other party (employers or service providers). The rule allowing choice of law only after a dispute has arisen is intended to ensure that the 'weaker' party cannot be compelled before the event, e.g. in an employment contract or a consumer contract, to accept an unfavourable choice-of-law clause for any claims for damages.

Reference should be made to the existence of other instruments of Community law which provides similar safeguards in private international law for the party in the 'weaker' position, e.g. Regulation ((EC) No 44/2001 (on agreements on jurisdiction)).

The other changes to this provision are technical or linguistic in nature.

Amendment by Katalin Lévai

Amendment 97

Article 10, paragraph 2

2. *If* all the **other** elements **of** the situation at the time when the **loss is sustained** are located in a country other than the country whose law has been chosen, the choice of the parties shall be without prejudice to the application of **rules** of the law of that country which cannot be derogated from by contract.

2. *Where* all the elements **relevant to** the situation at the time when the **event and the damage occur** are located in a country other than the country whose law has been chosen, the choice of the parties shall be without prejudice to the application of **provisions** of the law of that country which cannot be derogated from by contract.

Or. en

Justification

Technical, grammatical and terminological correction and distinction in connection with the location and the time when the event and the damage occurs.

Amendment by Katalin Lévai

Amendment 98

Article 10, paragraph 3

3. *The parties' choice of the applicable law shall not debar the application of provisions of Community law* where the **other** elements **of** the situation **were** located

3. Where **all** the elements **relevant to** the situation **at the time when the damage occurs are** located in one **or more** of the Member States of the European Community

in one of the Member States of the European Community *at the time when the loss was sustained.*

the parties' choice of the applicable law other than that of a Member State shall not debar the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by contract.

Or. en

Justification

Technical, grammatical and terminological correction and distinction in connection with the location and the time when the event and the damage occurs.

Amendment by Katalin Lévai

Amendment 99
Article 11, point a)

a) the conditions and extent of liability, including the determination of persons who *are* liable for acts performed by them;

a) the conditions and extent of liability, including the determination of persons who *can be held* liable for acts performed by them;

Or. en

Justification

Technical, grammatical and terminological correction.

Amendment by Katalin Lévai

Amendment 100
Article 11, point c)

c) the existence *and kinds of injury or damage for which compensation may be due*;

c) the existence, *the nature and the assessment of damages or the redress sought*;

Or. en

Justification

Technical, grammatical and terminological correction and distinction.

Amendment by Katalin Lévai

Amendment 101
Article 11, point f)

f) the question whether a right *to compensation* may be *assigned* or *inherited*;

f) the question whether a right *to claim damages or redress* may be *transferred, including by assignment* or *inheritance*;

Or. en

Justification

Technical, grammatical and terminological correction and distinction.

Amendment by Arlene McCarthy

Amendment 102
Article 12, par. 1

1. Where the law of a specific country is applicable by virtue of this Regulation, effect may be given to the mandatory rules of another country with which the situation is closely connected, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the non-contractual obligation. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application. ***deleted***

Or. en

Justification

The application of the mandatory rules of "another country with which the situation is closely connected" is inherently uncertain and therefore liable to produce additional arguments between the parties, thereby making the settlement of cases out of court more difficult.

Amendment by Klaus-Heiner Lehne, Rainer Wieland and Hans-Peter Mayer

Amendment 103
Article 13

Whatever may be the applicable law, in determining liability account shall be taken of the rules of safety and conduct which were in force at the place and time of the event giving rise to the damage.

Whatever may be the applicable law, in determining liability account shall be taken, ***in so far as is appropriate***, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the damage.

Or. de

Justification

The restriction allows for the fact that taking account of local rules of safety and conduct is a factor in connection with traffic accidents, for instance, but not in connection with violations of fair competition or of rights relating to the personality.

Amendment by Francesco Enrico Speroni

Amendment 104
Article 19, paragraph 1

1. For companies or firms and other bodies or incorporate or unincorporate, the ***principal establishment*** shall be considered to be the ***habitual residence***. However, where the event giving rise to the damage occurs or the damage arises in the course of operation of a subsidiary, a branch or any other establishment, the establishment shall take the place of the habitual residence.

1. For companies or firms and other bodies or incorporate or unincorporate, the ***habitual residence*** shall be considered to be the ***principal establishment***. However, where the event giving rise to the damage occurs or the damage arises in the course of operation of a subsidiary, a branch or any other establishment, the establishment shall take the place of the habitual residence.

Or. it

Justification

This distinction is necessary, as in some legal systems the concept of 'residence' is unknown except when applied to natural persons.

Amendment by Francesco Enrico Speroni

Amendment 105
Article 19, paragraph 2

2. Where the event giving rise to the damage occurs or the damage arises in the course of the business activity of a natural person, that natural person's establishment shall take the place of the habitual residence.

2. Where the event giving rise to the damage occurs or the damage arises in the course of the business activity of a natural person, that natural person's **actual place of** establishment shall take the place of the habitual residence. **Where the activity in question is peripatetic or domiciliary, that natural person's officially registered address shall take the place of the habitual residence.**

Or. it

Justification

A person's business activities are not always carried out at that person's principal establishment (as in the case of house-painters or itinerant salesmen).

Amendment by Manuel Medina Ortega

Amendment 106
Article 22

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.

1. 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.

2. Where, under this Regulation, the law specified as applicable is that of a Member State, the public policy exception may only be applied at the request of one of the parties.

Or. es

Justification

In line with Regulation 44/2001 (Brussels I), which forbids the automatic application of such grounds for non-recognition, it appears undesirable that the public policy exception should be applied automatically by a judicial body to the applicable law.

Amendment by Arlene McCarthy

Amendment 107
Article 22

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.

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. ***Such incompatibility may exist, for instance, if the application of the designated law would have the effect of causing excessive non-compensatory damages to be awarded.***

Or. en

Justification

This provision further elaborates the meaning of public policy in terms of laws which have "the effect of causing non-compensatory damages, such as exemplary or punitive damages". This could undermine awards of damages which, while not punitive, go beyond purely compensatory damages, such as an account of profits or damages based on the gain that the wrongdoer has made out of his wrongdoing rather than on the loss caused to the claimant. To define this principle in any detailed way might compromise its role as a flexible fall-back provision for national courts to use only in exceptional cases.

Amendment by Katalin Lévai

Amendment 108
Article 22

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.

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. ***Such incompatibility may exist, for instance, if the application of the designated law would have the effect of causing excessive non-compensatory damages to be awarded.***

Or. xm

Justification

This provision further elaborates the meaning of public policy in terms of laws which have "the effect of causing non-compensatory damages, such as exemplary or punitive damages". This could undermine awards of damages which, while not punitive, go beyond purely compensatory damages, such as an account of profits or damages based on the gain that the wrongdoer has made out of his wrongdoing rather than on the loss caused to the claimant. To define this principle in any detailed way might compromise its role as a flexible fall-back provision for national courts to use only in exceptional cases.

Amendment by Francesco Enrico Speroni

Amendment 109

Article 23, paragraph 1, indent 1

- in relation to particular matters, lay down choice-of-law rules relating to non-contractual obligations or

- in relation to particular matters, ***including e-commerce***, lay down choice-of-law rules relating to non-contractual obligations or

Or. it

Amendment by Katalin Lévai

Amendment 110

Article 23, paragraph 2

2. This regulation shall not prejudice the application of Community instruments which, in relation to particular matters and in areas coordinated by such instruments, subject the supply of services or goods to the laws of the Member State where the service-provider is established and, in the area coordinated, allow restrictions on freedom to provide services or goods originating in another Member State only in limited circumstances.

deleted

Or. xm

Justification

Article 23(2) specifically concerns the proposal for a directive on services in the internal

market, which is characterised by the 'country-of-origin principle'. It would not be welcome if the directive had precedence over the Rome II regulation. If it did, the 'country-of-origin principle' would be the connecting mechanism, under conflict-of-laws rules, also governing non-contractual obligations for undertakings. Accordingly, claims for damages against a service provider for injury sustained as a result of his business activity could then be asserted only on the basis of the law of the state in which he is established. Such an outcome would be utterly incompatible with the connecting mechanisms, under private international law, provided for in the Rome II regulation.

To all intents and purposes, that would restrict the personal scope of the Rome II regulation to non-contractual obligations of natural persons and civil organisations (non-profit organisations).

Amendment by Manuel Medina Ortega

Amendment 111
Article 24

Article 24

Deleted

Non-compensatory damages

The application of a provision of the law designated by this Regulation which has the effect of causing non-compensatory damages, such as exemplary or punitive damages, to be awarded shall be contrary to Community public policy.

Or. es

Justification

To consider non-compensatory damages as contrary to Community public policy in all cases would amount to introducing a material rule prohibiting them, which would not be compatible with Article 65 of the Treaty. At all events, protection against non-compensatory damages and abusive compensation is ensured by the public policy exception of Article 22.

Amendment by Arlene McCarthy

Amendment 112
Article 25 Title

Relationship with ***existing*** international conventions

Relationship with international conventions

Justification

The regulation should not prejudice the application of both existing and future international conventions. There are often conflict-of-laws rules in international conventions that are not entirely dedicated to that field.

Amendment by Francesco Enrico Speroni

Amendment 113

Article 25

This Regulation shall not prejudice the application of international conventions to which the Member States are parties **when** this Regulation **is adopted** and which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

This Regulation shall not prejudice the application of international conventions to which the Member States are parties **on the date on which** this Regulation **enters into force** and which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

Or. it

Amendment by Katalin Lévai and Maria Berger

Amendment 114

Article 25 , paragraph 1 a (new)

If all the other elements of the situation at the time when the loss is sustained are located in one or more Member States of the European Community, the rules of this Regulation shall take precedence over the rules of the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

Or. de

Justification

To date, only a few Member States have ratified the Hague Convention referred to. In this connection, the regulation should make it clear that the Hague Convention should be secondary to Rome II in terms of applicability.

Amendment by Katalin Lévai

Amendment 115
Article 25, paragraph 1 a (new)

1a). However, this Regulation shall take precedence over the following conventions concluded between the Member States in so far as they concern matters governed by this Regulation.

Or. xm

Justification

There are bilateral agreements on mutual judicial assistance, under civil law, between a number of new Member States (Poland, Hungary, Czech Republic and Slovakia) which contain inter alia conflict-of-laws rules on non-contractual obligations. The relevant provisions in those mutual judicial assistance agreements should be superseded by the uniform European conflict-of-laws rules in the Rome II regulation.

As regards substance, this provision is comparable to Article 69 of Regulation (EC) No 44/2001.

Amendment by Francesco Enrico Speroni

Amendment 116
Article 26, paragraph 1

1. The Member States shall notify the Commission, no later than 30 June 2004, of the list of conventions referred to in Article 25. After that date, the Member States ***shall notify the Commission of all denunciations of such conventions.***

1. The Member States shall notify the Commission, no later than 30 June 2004, of the list of conventions referred to in Article 25. After that date, the Member States ***may not enter into new conventions or sign up to changes to existing conventions in the field covered by this Regulation.***

Justification

This relates to Article 25, which does not make it clear whether Member States may enter into new conventions after the entry into force of the regulation.

Amendment by Othmar Karas

Amendment 117
Article 26 a (new)

Article 26 a
Revision

Not later than 31 December 2006, 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 and, if necessary, make further proposals to adapt it.

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

The report shall also consider whether Community legislation specifically dealing with the law applicable to traffic accidents ought to be proposed, including changes to the rules relating to the quantum of any damages awarded. The Commission shall consult with interested parties.

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

Or. en

Justification

Questions linked to liability and to the quantification of damage allocated to road traffic victim aspects will, where appropriate, have to be covered, by specific legislation in close cooperation with the principal parties concerned. A report by the Commission, including consideration of the issue of damages is both desirable and necessary.

Amendment by Klaus-Heiner Lehne, Rainer Wieland and Hans-Peter Mayer

Amendment 118
Article 26 a (new)

Article 26 a

Review

Not later than ...¹, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee, in respect of paragraphs 1 and 2, reports on the application of this Regulation and, if necessary, make further proposals to adapt it:

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

2. It shall also consider whether Community legislation specifically dealing with the law applicable to traffic accidents ought to be proposed. The report shall include an analytical study of the extent to which courts in the Member States apply foreign law in practice, including recommendations as to the desirability of a common approach to the application of foreign law.

2. In a communications environment operating increasingly on a continent-wide basis, the various forms of law relating to the personality and historically established press traditions in the European Union point to the need for more uniform prerequisites and rules for dispute

resolution. The very nature, which merits safeguarding, of press freedom and its role in society would suggest, however, that in the process priority should go to media which deal responsibly with rights relating to the personality and are prepared to establish autonomously, and on the basis of consensus, a self-obligating European Media Code and/or a European Media Council which can provide consolidating decision-taking guidelines for the relevant courts, too. The Commission is called on to consider what scope there is for providing support for such a process and to present recommendations, in a report, on what form more far-reaching steps should take.

¹ Three years after the date of adoption of this Regulation.

Or. de

Justification

A review clause would appear necessary and desirable. Paragraph 2 is self-explanatory.

Amendment by Arlene McCarthy

Amendment 119
Article 26 a (new)

Not later than ...¹, 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 and, if necessary, make further proposals to adapt it.

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

¹ Three years after the date of adoption of

this Regulation.

Or. en

Justification

It is essential that a proper general review be carried out and that its findings be used as a basis for such amendments to the regulation as appear necessary. This singles out particularly the issue of damages "including the possibility of awarding the exemplary or punitive damages in certain jurisdictions". This is inappropriate in the context of a choice of law instrument. It is inappropriate to focus on the possibility of Community legislation on the law applicable to traffic accidents and to have separate Community rules on this, while ignoring other personal injury related accidents.

Amendment by Giuseppe Gargani

Amendment 120

Recital 5 a (new)

(5a) The concern for consistency in Community law requires that this Regulation be without prejudice to provisions relating to or having an effect on the applicable law, contained in instruments of secondary legislation other than this Regulation, such as conflict rules in specific matters, overriding mandatory rules of Community origin, and the specific principles of the internal market. As a result, this Regulation should promote the proper functioning of the internal market, in particular the free movement of goods and services. The Regulation should not apply to activities or matters covered by internal market legislative instruments which subject the supply of services to the laws of the Member State where the service provider is established and prohibit or limit restrictions on the freedom to provide services.

Or. en

Justification

In order to ensure that this regulation does not hamper the proper functioning of the internal market, it is of utmost importance to preserve a clear carve-out for instruments containing

country of origin provision.

For the sake of clarity and legal certainty, recital 5 and Article 1(d) set out in the proposed draft report need to be reworded so that they reflect the idea that private international law rules shall not apply in addition to the country of origin principle.

Amendment by Malcolm Harbour

Amendment 121

Recital 5 a (new)

(5a) The concern for consistency in Community law requires that this Regulation be without prejudice to provisions relating to or having an effect on the applicable law, contained in instruments of secondary legislation other than this Regulation, such as conflict rules in specific matters, overriding mandatory rules of Community origin, and the specific principles of the internal market. As a result, this Regulation should promote the proper functioning of the internal market, in particular the free movement of goods and services. The Regulation should not apply to activities or matters covered by internal market legislative instruments which subject the supply of services to the laws of the Member State where the service provider is established and prohibit or limit restrictions on the freedom to provide services.

Or. en

Justification

For the sake of clarity and legal certainty recital 5 and Article 1(d) set out in the proposed draft report need to be reworded so that they reflect the idea that private international law rules shall not apply in addition to the country of origin principle.

Amendment by Piia-Noora Kauppi

Amendment 122

Recital 5 a (new)

(5a) The concern for consistency in Community law requires that this Regulation be without prejudice to provisions relating to or having an effect on the applicable law, contained in instruments of secondary legislation other than this Regulation, such as conflict rules in specific matters, overriding mandatory rules of Community origin, and the specific principles of the internal market. As a result, this Regulation should promote the proper functioning of the internal market, in particular the free movement of goods and services.

The Regulation should not apply to activities or matters covered by country of origin clauses in internal market legislative instruments which subject the supply of goods or services to the laws of the Member State where the provider is established and prohibit or limit restrictions on the freedom to the provision of goods or services.

Or. en

Justification

It should be clarified that a future Regulation on Rome II should not prejudice the application of EU legislation containing country of origin provisions.

Amendment by Klaus-Heiner Lehne, Rainer Wieland and Hans-Peter Mayer

Amendment 123

Recital 7

(7) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries is handled differently. This situation engenders uncertainty in the law.

(7) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries is handled differently. This situation engenders uncertainty in the law.

It is necessary to have conflict rules which are as uniform as possible throughout the Member States in order to minimise

uncertainty in the law. But the need for legal certainty must always be subordinate to the overriding need to do justice in individual cases and consequently the courts must be able to exercise discretion. Furthermore, it is necessary to respect the intentions of the parties where they have made an express choice as to the law applicable to an issue in tort or delict or where such a choice may reasonably be inferred by the court.

Or. de

Justification

*In this amendment, the intention behind the rapporteur's Amendment 3 is considered complementary to what the Commission has proposed, on the grounds, as Mrs Wallis states, that whereas to select the *lex loci delicti commissi* as the basic solution has its attractions, more flexibility needs to be built into the rules so as to allow the courts to do justice in individual cases; moreover, it is important to respect party autonomy.*

Amendment by Monica Frassoni

Amendment 124

Recital 12

(12) In view of the Charter of Fundamental Rights of the European Union and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the conflict must strike a reasonable balance as regards violations of privacy and rights in the personality. Respect for the fundamental principles that apply in the Member States as regards freedom of the press must be secured by a specific safeguard clause.

(12) A special rule is required for violations of privacy and rights relating to the personality committed by a publisher or a broadcaster, having regard to the fundamental principle of freedom of the media. The country for which the publication or broadcasting service is mainly intended should be determined by factors such as the language of publication or broadcast, the volume of sales or the audience size. In cases where it is not possible to determine the country for which the publication or broadcasting service is mainly intended because of its international character, the law of the country in which the editorial decision is taken shall apply.

Or. en

Justification

This Amendment clarifies that only in cases where it is not possible to determine the country for which the publication or broadcasting service is mainly intended because of its international character, the law of the country in which the editorial decision is taken shall apply.

Amendment by Klaus-Heiner Lehne, Rainer Wieland and Hans-Peter Mayer

Amendment 125
Recital 12

(12) In view of the Charter of Fundamental Rights of the European Union and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the conflict must strike a reasonable balance as regards violations of privacy and rights in the personality. Respect for the fundamental principles that apply in the Member States as regards freedom of the press must be secured by a specific safeguard clause.

(12) In view of the Charter of Fundamental Rights of the European Union and the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the conflict must strike a reasonable balance as regards violations of privacy and rights in the personality. Respect for the fundamental principles that apply in the Member States as regards freedom of the press must be secured by a specific safeguard clause.

In this connection it would appear appropriate, by means of a differentiated assessment model, to take account of the motives, not least economic motives, which become apparent as press freedom is exercised, in the light of the different forms taken by law relating to the personality in the European Union and established print media traditions.

Or. de

Justification

See justifications for amendment to Article 6.

Amendment by Klaus-Heiner Lehne, Rainer Wieland and Hans-Peter Mayer

Amendment 126
Recital 12 a (new)

(12a) In a communications environment operating increasingly on a continent-wide basis, the various forms of law relating to the personality and historically established press traditions in the European Union suggest that, in this area too, more uniform prerequisites and rules for dispute resolution should be sought. The very nature, which merits safeguarding, of press freedom and its role in society would suggest, however, that in the process priority should go to media which deal responsibly with rights relating to the personality and are prepared to establish autonomously, and on the basis of consensus, a self-obligating European Media Code and/or a European Media Council which can provide consolidating decision-taking guidelines for the relevant courts, too. The Commission is called on to provide support for such a process.

Or. de

Amendment by Jonas Sjöstedt, Daniel Stroz

Amendment 127

Recital 13

(13) Regarding *violations of the environment*, Article 174 of the Treaty, which provides that there must a high level of protection based on the precautionary principle and the principle that preventive action must be taken, principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of principle of discriminating in favour of the person sustaining the damage.

(13) Regarding *environmental damage*, Article 174 of the Treaty, which provides that there must a high level of protection based on the precautionary principle and the principle that preventive action must be taken, principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of principle of discriminating in favour of the person sustaining the damage.

Or. en

Justification

Directive 2004/35/EC, on environmental liability with regard to the prevention and remedying of environmental damage, provides clear and harmonised definitions of the

environmental damage and related terms.

Amendment by Klaus-Heiner Lehne, Rainer Wieland and Hans-Peter Mayer

Amendment 128

Recital 18

(18) The concern to strike a reasonable balance between the parties means that account must be taken of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligations is governed by another law.

(18) The concern to strike a reasonable balance between the parties means that, ***in so far as is appropriate***, account must be taken of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligations is governed by another law. ***This shall not apply to violations of law relating to the personality or of fair competition.***

Or. de

Justification

It makes sense to take account of local rules of safety and conduct in connection with traffic accidents, for instance, but not with competition violations or violations of law relating to the personality. In those areas, it is often difficult to establish which local rules of conduct should be taken into account.

The reference to fair competition can be omitted if the rapporteur's Amendment 9 is adopted.