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THE EUROPEAN UNION**

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NOTE

from : General Secretariat of the Council
to : delegations
Subject : Proposal for a Regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)

Delegations will find attached a note from the Luxembourg delegation on the above subject, which appears as an "Other business" item on the agenda for the Competitiveness Council meeting on 21 and 22 May 2007.

Competitiveness Council meeting on 21 and 22 May 2007

Note from the Luxembourg delegation

Proposal for a Regulation on the law applicable to contractual obligations ("Rome I")

The Luxembourg Government is very concerned about the negative impact on competitiveness of the instruments of private international law which are currently being converted into Community instruments. In particular, it would like to draw the attention of the Competitiveness Council to the proposal for a Regulation on the law applicable to contractual obligations ("Rome I", 6935/07), which is currently under discussion in the Justice and Home Affairs Council.

Article 5 of the proposal has the effect, in certain cases, of depriving the parties of the freedom to choose the law applicable to business-to-consumer cross-border contracts. This changes the current situation under the Rome Convention, which lays down different protective rules and reflects a fair balance between the needs of businesses and those of consumers. This substantial change would have warranted an impact assessment by the Commission. However, the economic impact of this proposal has not been evaluated. Its consequences for the internal market and for consumers have not been analysed.

The proposal will oblige businesses operating in the internal market to systematically adjust their contracts for 27 different legal systems and to evaluate all the related obligations. It makes the applicable law depend exclusively on the purchaser. The legal (and therefore economic) risks will increase massively and very few companies will be able or willing to bear those risks.

European businesses have, in large numbers, expressed their strong concern to the Commission, to the European Parliament and to Governments. Consumers' associations, particularly in the smaller Member States, are also worried.

The internal market will not be a reality for businesses or consumers:

- For businesses, the proposed system encourages the supply of goods and services to become "territorial" and makes trading within the internal market much more difficult. It risks dissuading SMEs, in particular, from crossing borders. In a very concrete way, and on a daily basis, it will hinder the capability of our businesses to develop and to offer their goods and services in the internal market. This new system is a step backwards in the integration of markets.
- The cost of these new obligations will have to be recouped from the price of goods and services - to the detriment of consumers. Furthermore, the proposed system risks accentuating a problem which is already arising: that of access to supply. Complaints are increasing from consumers who have been refused such access, particularly over the internet. The proposal will further fragment markets, discriminate against consumers on the basis of their place of residence and cut them off from supply. Furthermore, the proposal discriminates in particular against consumers in the small Member States: what business will take on the costs of compliance for the sake of access to a small market?

With a view to the Justice and Home Affairs Council meeting on 12 and 13 June 2007, it would be appropriate for the authorities concerned in all the Member States to be made aware of the negative consequences of this proposal for the internal market, for businesses and for European consumers. No decision should be taken which prejudices competition. In this context the Luxembourg delegation would recall the instruction given by the European Council in March 2003 that *"the Competitiveness Council should be effectively consulted within the Council's decision-making processes on proposals considered likely to have substantial effects on competitiveness"*.

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