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NOTE

from : German Presidency and incoming Portuguese Presidency
to : Committee on Civil Law Matters (Rome I)

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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 the text as drafted by the German Presidency and the incoming Portuguese Presidency on the basis of the meetings of the Committee on Civil Law Matters (Rome I) during the first semester 2007 and the comments made by delegations.

For a better readability, the text of the compromise package agreed by the Council in April 2007 (document 8022/07 REV 1 JUSTCIV 73 CODEC 306 ADD 1) has been included in italics.

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. *The Regulation shall not apply to:*
 - (a) *questions involving the status or legal capacity of natural persons, without prejudice to Article 12;*

 - (b) *obligations **arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects**, including maintenance obligations;¹*

 - (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;**²*

¹ *A new recital relating to paragraphs b and c will read as follows: "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 where the court is seised."*

² *See footnote 1.*

- (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;*¹
- (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 (...);*
- (f1) *the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporated, in relation to a third party;***
- (g) *the constitution of trusts and the relationship between settlers, trustees and beneficiaries;*
- (h) *evidence and procedure, without prejudice to Article 17;*
- (i) *obligations arising out of **dealings prior to the conclusion of a contract.***²

3. *In this Regulation, the term “Member State” shall mean Member States with the exception of Denmark (...) and the United Kingdom. **However, in Article 3(5) the term shall mean all the Member States.***

¹ *If necessary, a recital could give clarification concerning bills of lading.*

² *A recital shall explain that obligations arising out of dealings prior to the conclusion of the contract are covered by Article 12 of the draft Rome II Regulation (PE-CONS 3619/07) and therefore they are to be excluded from the scope of this Regulation.*

Article 2 – Universal application

*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. (...) ¹ By their choice the parties can select the law applicable to the whole or only a part of the contract.*
2. *(...)*
3. *The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 10 or adversely affect the rights of third parties.*

¹ *A recital shall clarify that 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 is a factor to be taken into account in determining whether a choice of law was clearly demonstrated.*

4. *(...) Where all other elements relevant to the situation at the time of the **choice are located in a country other than the 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.**^{1 2}*
5. *Where (...) all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties' choice of the law applicable 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.²*
6. *The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 9, 10 and 12.*

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 Article[s 4a to] 6, the law governing the contract shall be determined as follows:***
 - (a) *a contract of sale **of goods** shall be governed by the law of the country **where** the seller has his habitual residence;*

¹ *This rule shall be applicable whether or not the choice of law by the parties was accompanied by the choice of a foreign court or tribunal; a recital could indicate that no substantial change in relation to Article 3(3) of the Rome Convention is intended, but that the text has been aligned as far as possible on Article 14 of the draft Rome II Regulation (PE-CONS 3619/07).*

² *It is understood that once the discussions on Article 8, which is not part of the compromise, are finalised, a recital will address the relation between Article 3(4) and (5) and Article 8.*

- (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;*¹
- (c) (...);²
- (d) *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;*
- (e) *notwithstanding point (d), a **tenancy of immovable property concluded for temporary private use** for a period of no more than six consecutive months shall be governed by the law of the country **where** the **landlord** has his habitual residence, provided **that** the tenant is a natural person and has his habitual residence in the same country;*
- (f) (...)
- (g) *a franchise contract shall be governed by the law of the country **where** the franchisee has his habitual residence;*
- (h) *a distribution contract shall be governed by the law of the country **where** the distributor has his habitual residence;*
- (i) (...)
- (j) *a contract of 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;*

¹ *A recital should indicate that the concept “provision of services” should be interpreted in the same way as when applying Article 5 (1)(b) of the Brussels I-Regulation in so far as services are covered by that Regulation.*

² *The questions concerning contracts of carriage did not form part of the compromise reached in April 2007.*

(j1) [a contract concluded within a multilateral system which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments, as defined by Article 4(1)(17) of Directive 2004/39/EC, in accordance with non-discretionary rules and governed by a single law, shall be governed by that law].¹

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 j1) of paragraph 1, the contract shall be governed by the law of the country where the party who is required to effect the performance 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.²*
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.³*

¹ This provision did not form part of the compromise reached in April 2007.

² *A recital shall explain the functioning of this paragraph and indicate that, in order to determine whether the contract is manifestly more closely connected with another country pursuant to Article 4, it has to be taken into account whether the contract in question has a very close relationship to another contract or contracts.*

³ *A recital shall indicate that paragraph 4 applies where the law applicable cannot be determined pursuant to paragraphs 1 or 2, because the contract is not covered by paragraph 1 or the elements of the contract would be covered by more than one of the points (a) to (j1) of paragraph 1, and, in either case, the characteristic performance cannot be determined pursuant to paragraph 2. A recital shall also indicate that in order to determine with which country the contract is most closely connected, it has to be taken into account whether the contract in question has a very close relationship to another contract or contracts.*

Article 4a
Contracts of carriage

1. To the extent that the law applicable to the contract for the carriage of goods has not been chosen by the parties in accordance with Article 3, the law applicable 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 these requirements are not met, the law of the country where the place of delivery as agreed by the parties is situated shall apply.¹

2. OPTION 1:

To the extent that the law applicable to the contract for the carriage of passengers has not been chosen by the parties in accordance with Article 3, a contract for the carriage of passengers shall be governed by the law of the country where the carrier has his habitual residence.

OPTION 2:

To the extent that the law applicable to the contract for the carriage of passengers has not been chosen by the parties in accordance with Article 3, the contract shall be governed by the law of the country where the carrier has his habitual residence, provided that the place of departure or the place of destination is also situated in that country. If these requirements are not met, the contract shall be governed by the law of the country with which it is most closely connected.²

¹ A recital could clarify that no change in substance with respect to Article 4(4), third sentence, of the 1980 Rome Convention is intended. That provision of the Convention reads as follows: "In applying this paragraph [Article 4(4) of the Convention] single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods".

² If this option is chosen, paragraph 3 would need to be reformulated.

OPTION 3:

A contract for the carriage of passengers shall be governed by 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 contract for the carriage of passengers shall be governed by the law of the place where the carrier has his habitual residence.

The parties may choose as the law applicable to the contract in accordance with Article 3¹:

- (a) the law of the country where both the carrier and the passenger have their habitual residence;**
 - (b) the law of the country where the place of departure is situated;**
 - (c) the law of the country where the place of destination is situated;**
 - (d) the law of the country where the passenger has his habitual residence;**
 - (e) the law of the country where the carrier has his habitual residence, provided that either the place of departure or the place of destination is situated in that country.**
- 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.**

¹ **The Committee discussed the necessity to have a limited choice-of-law clause for contracts for the carriage of passengers.**

Article 5 – Consumer contracts

1. **A contract concluded by a natural person (...) for a purpose which can be regarded as being outside his trade or profession ("the consumer")¹, 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 or her habitual residence provided that:**

(a) the professional pursues his commercial or professional activities in the country where the consumer has his habitual residence or,

(b) by any means, directs such activities² to that country or to several countries including that country,

and the contract falls within the scope of such activities.

The law applicable pursuant to this paragraph may not be derogated from by a choice of law pursuant to Article 3.

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

2. (...)

¹ **It has been suggested that a recital should indicate that consumers who “opt-up” to professional status in accordance with Directive 2004/39/EC should not be treated as consumers when concluding contracts involving an investment service, transaction or type of transaction or product for which they are treated as professional clients.**

² **It should be discussed whether Recital 10 of the Commission’s proposal sufficiently clarifies what is meant by “directing activities”.**

3. Paragraph 1 shall not apply to:

- (a) [a contract for the supply of services where the services are to be supplied to the consumer exclusively in a country other than that in which he has his habitual residence;]
- (b) **a contract** of carriage other than **a contract** relating to package travel within the meaning of Directive 90/314/EEC of 13 June 1990;
- (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 of 26 October 1994;
- (d) **[the following contracts:**
 - (i) **rights and obligations which constitute a financial instrument, as defined by Article 4(1)(17) of Directive 2004/39/EC;**¹
 - (ii) **a contract to subscribe for or purchase a new issue of transferable securities, as defined by Article 4(1)(18) of Directive 2004/39/EC, or rights and obligations to subscribe for or redeem units in collective investment undertakings;**
 - (iii) **a contract concluded within the type of system falling within the scope of Article 4(1)(j1) of this Regulation.**²

¹ **The Commission proposed to discuss a recital indicating which aspects would be comprised by the terms “rights and obligations” in the case of units in a collective investment undertaking.**

² **The Committee discussed whether a recital is needed to clarify the relationship between this Regulation and Directive 98/26/EC, in particular in the light of Article 22 of this Regulation.**

[Article 5 a – Insurance contracts¹

1. **An insurance contract covering a large risk within the meaning of paragraph 1a and a reinsurance contract shall be governed by the law of the country in which the insurer or re-insurer has his habitual residence, unless the applicable law has been chosen in accordance with Article 3.**

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

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

¹ **Note for the translators: Please align as far as possible on the text of Article 32 of Directive 2002/83/EC, Article 5(d) of Directive 73/239/EEC and Articles 2, 7 and 8 of Directive 88/357/EEC, as amended, which have served as a model for large parts of Article 5a.**

² **OJ L 228, p. 3, as last amended by Directive 2005/68/EC (OJ L 323, p. 1).**

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

- 3. An insurance contract which is not subject to paragraphs 1 or 2 shall be governed by the law of the country where the risk is situated at the time of the conclusion of the contract.**

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

- (a) the law of any country where the risk is situated at the time of the conclusion of the contract;²**
- (b) the law of the country where the policy holder has his habitual residence;**

¹ **The second subparagraph takes up the concerns of Cyprus and other delegations especially with respect to specific insurance contracts covering large risks (maritime sector in particular). It also aims at clarifying the relationship between paragraphs 1 and 2. However, as in Directive 88/357/EEC, it should be specified that, whatever the law applicable to the contract, the content of the compulsory insurance must meet the conditions set out by the law of the country whose law imposes the obligation to take out insurance (see in particular Article 8(2) and (3) of that directive, which are worded: “(2) When a Member State imposes an obligation to take out insurance, the contract shall not satisfy that obligation unless it is in accordance with the specific provisions relating to that insurance laid down by that Member State. (3) When, in the case of compulsory insurance, 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.”)**

² **A recital could indicate that this provision covers both cases where the insurance contract covers a risk situated in only one country and cases where it covers risks situated in more than one country.**

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

[(d) for an insurance contract limited to events occurring in one country, the law of that country].¹

3a. For the purposes of (...) paragraph 2 and of paragraph 3, first subparagraph, where the insurance contract covers risks situated in more than one country, the contract shall be considered as constituting several contracts each relating to only one country.²

4. (...)³

5. The country in which the risk is situated is

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

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

¹ **The Committee should consider whether it is necessary to specify in subparagraph (d) that it only applies when the events occur in a country other than that where the risk is situated.**

² **See Article 7(2) and Article 8(4)(a) of Directive 88/357/EEC.**

³ **See paragraph 1a.**

- c) **for insurance of travel or holiday risks in insurance contracts with an effective term of a maximum of four months, the country in which the policy holder took out the policy;**
- d) **in all other cases, the country in which the policy holder (...) has his habitual residence.]**

Article 6 – 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 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, 2a and 3.¹***
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 (...).²***

¹ *A recital shall indicate that this paragraph should ensure that the employee shall not be deprived of the protection of provisions which cannot be derogated from or which only can be derogated from to his advantage.*

² *A recital will read as follows: "Work carried out in another country shall be regarded as temporary if the employee is expected to resume working in the country of origin after carrying out his tasks abroad. The conclusion of a new contract of employment with the original employer or an employer belonging to the same group of companies as the original employer does not preclude the employee from being regarded as carrying out his work in another country temporarily."*

- 2a. *Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which he was engaged is situated.*
3. *Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 2a, the law of that other country shall apply.*

Article 7 – Contracts concluded by an agent

(deleted)

Article 8 – Overriding mandatory provisions¹

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
2. Nothing in this Regulation shall restrict the application of the **overriding mandatory provisions** of the law of the forum.

¹ **Note for the French translation: Please use the term "Lois de police".**

² **A new recital shall read as follows: "The understanding of overriding mandatory provisions in this Regulation should correspond to the understanding of this term in the draft Rome II Regulation (PE-CONS 3619/07) (see in particular Article 16 and Recital 29 of that Regulation)." It could be added that "overriding mandatory provisions" are different from the provisions referred to e. g. in Article 3(4) and are construed more restrictively.**

- [3. Effect may be given to the **overriding** mandatory **provisions** of the law of **the country where [the obligations arising out of] the contract has to be or has been [have to be or have been] performed [, or of the country where the parties have their habitual residence], insofar as these overriding mandatory provisions render the [performance of the] contract unlawful.**¹ In considering whether to give effect to these **provisions regard shall be had** to their nature and purpose (...) and to the consequences of their application or non-application (...).]

Article 9 – 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 **where** 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 the preceding paragraph.*

Article 10 – 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.***

¹ It could be examined whether the words “and if and insofar as under the law of that country those provisions must be applied to the situation at hand regardless of the law applicable to the contract” should be inserted at this place. It should be examined to what extent they could be covered by the last sentence of paragraph 3 in combination with a recital.

- 1a.** *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.*
2. *A unilateral act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which governs or would govern the contract in substance under this Regulation or of the law of the country where the act **was done** or the law of the country where the person who **effected** it had his habitual residence at that time.*
3. *Paragraphs 1, **1a** and 2 of this Article shall not apply to contracts that fall within the scope of Article 5 **paragraph 1**.¹ The form of such contracts shall be governed by the law of the country **where** the consumer has his habitual residence.*
4. *Notwithstanding paragraphs 1 to 3 of this Article, a contract the subject matter of which is a right **in rem** in immovable property or a **tenancy of** immovable property shall be subject to the (...) requirements of form of the law of the country where the property is situated if by that law those requirements are **imposed irrespective of the country where the contract is concluded and irrespective of the law governing the contract, and which cannot be derogated from by agreement.***

¹ Depending on the wording of Article 5, which had not been part of the compromise package, a technical amendment might be necessary in order to give the correct reference.

Article 11 – 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 where performance takes place.

Article 12 – 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 this incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.

Article 13 – Voluntary assignment [and contractual subrogation]¹

1. The **relationship between**² assignor and assignee under a voluntary assignment or contractual subrogation of a **claim**³ against another person (“**the debtor**”) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.

OPTION 1:

2. The law governing the **assigned or subrogated claim** shall determine **the following matters:**
 - (a) **the assignability of the claim, including** the effectiveness **as against the assignee** of contractual **and legal** limitations on assignment **or subrogation** as between the assignee and the debtor;
 - (b) the relationship between the assignee and the debtor;
 - (c) the conditions under which the assignment or subrogation can be invoked against the debtor;
 - (d) whether the debtor’s obligations have been discharged; **and**
 - (e) **whether the assignee is entitled to the claim, including the proceeds thereof, as against other assignees of the same claim, creditors of the assignor and other third parties.**

¹ It should be considered independently in relation to each language version, whether it is necessary to expressly mention the concept of “contractual subrogation” in this context.

² A recital should explain the purpose of the changed wording: The term “relationship” at this place should clarify that Article 13(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 recital should also clarify that the term “relationship” should not be understood as relating to any relationship between assignor and assignee that might exist. In particular, it is not meant to 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.

³ Article 12 of the Rome Convention uses the term “right”.

3. (...)

OPTION 2:

2. The law governing **the assigned or subrogated claim** shall determine the effectiveness of contractual **and legal** limitations on assignment **or subrogation** as between the assignee and the debtor, 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 question of **effectiveness of** the assignment or subrogation (...) against third parties **and priority of the assigned or subrogated claim over a right of another person** shall be governed by the law of the country where the assignor or the author of the subrogation has his habitual residence. (...) **For the purposes of this paragraph and notwithstanding Article 18(1), the habitual residence of a company or other body, incorporate or unincorporated, shall be its place of business or, if it has a place of business in more than one country, the place of its central administration.**¹

Article 14 – 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.

¹ In case paragraph 3 is retained (as in this option), it should be reflected whether the scope of this paragraph should be more restricted (as is the UNCITRAL Convention's scope in this respect, see, in particular, Article 4(2) of that Convention). Hence, for instance, funds held in an account (bank deposits etc.) and claims related to contracts concluded at a financial market could be excluded.

Article 15 – Multiple debtors

*If a creditor has a claim **against** several debtors who are (...) liable **for the same claim**, and one of the debtors has **already** satisfied the **claim in whole or in part**, the law **governing the debtor's obligation** towards the creditor **also** governs **the debtor's right to claim recourse from the other debtors**. **The other debtors can rely on the defences they had against the creditor to the extent allowed by the law governing their obligations towards the creditor.***

Article 16 – Set-off¹

*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 17 – 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 recognized by the law of the forum or by any of the laws referred to in Article 10 under which that contract or act is formally valid, provided that such mode of proof can be administered by the forum.*

¹ *A new recital shall clarify the meaning of set-off covered by this provision and the functioning of the rule.*

Chapter III – Other provisions

Article 18 – (...) 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 or her business activity shall be his or her principal place of business.

- 1a. Where the contract is concluded in the course of operation of a (...) branch, **agency** or any other establishment or if, under the contract, performance is the responsibility of such an establishment, **the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.**
2. (...) ¹
3. **When determining the habitual residence the relevant point of time shall be the time of the conclusion of the contract.**

Article 19 – 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.

¹ See second subparagraph of paragraph 1.

Article 20 – 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 21 – 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 22 – Relationship with other provisions of Community law

This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.¹

(...)

¹ **It needs to be clarified whether an amendment of this provision might be necessary if a new Article 5a is included.**

Article 22 A – Relationship with the Rome Convention¹

- 1. This Regulation shall replace the Rome Convention in the Member States, except as regards the territories of the Member States which fall within the territorial scope of that Convention and to which this Regulation does not apply pursuant to Article 299 of the Treaty.**
- 2. Insofar as this Regulation replaces the provisions of the Rome Convention, any reference to the Convention shall be understood as a reference to this Regulation.**

Article 23 – Relationship with existing international conventions²

- 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-law 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 insofar as such conventions concern matters governed by this Regulation.**

¹ **Note for the translation: Align as far as possible on the text of Article 68 of Regulation 44/2001.**

² **Article 23 was modified with a view to retaining the same wording as Article 28 of the draft Rome II Regulation (see PE-CONS 3619/07).**

Chapter IV – Final provisions

Article 24 – List of conventions

1. By ...¹, Member States shall notify the Commission of the conventions referred to in Article 23(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. The Commission shall publish in the *Official Journal of the European Union* within six months of receipt:
 - (i) a list of the conventions referred to in paragraph 1;

 - (ii) the denunciations referred to in paragraph 1.

Article 25 – Application in time

This Regulation shall apply to contracts concluded after its entry into force.

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

Article 26 – Date of application

This Regulation shall apply from ...¹, **except for Article 24, which shall apply from ...**²

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President

¹ **18 months after the date of adoption of this Regulation.**

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