

Conclusions of the European Group for Private International Law on the proposal for a Parliament and Council Directive on the sale of consumer goods and associated guarantees, presented by the Commission on 23 August 1996.

During its meeting at The Hague, on 26 and 28 September 1997, the European Group for Private International Law studied the proposal for a Directive on the sale of consumer goods and associated guarantees presented by the Commission.

The proposal, which aims at “the creation of a common minimum corpus of consumer law, valid no matter where the goods are purchased within the Community” and having considered that “consumer protection resulting from the Directive should not be reduced on the grounds that the law of a non-member country is applicable to the contract” provides, in Article 6, paragraph 2, that “Member States shall take the necessary measures to ensure that, irrespective of the law applicable to the contract, and when the contract has a close connection with the territory of the Member States, consumers are not deprived of the protection of this Directive”.

The Group notes that the conflict rule stated in the proposal perceptibly differs from the provision of Article 5 of the Rome Convention which aims at consumer protection, among others, in contracts for the supply of goods, which is the scope aimed at by the proposed Directive as well. The proposed rule diverges from Article 5 in providing that provisions protective of the consumer shall prevail, should the occasion arise, not only over the law chosen by the parties but also over the law applicable in default of parties choice, subject to the condition that the contract has a close connection with the territory of the Member States.

The Group observes that this solution is legitimate when all the elements of the situation – except for the choice of the law of a third country, accompanied by the choice of the tribunal of a third country – are localised, at the time of the choice, in the territory of the Member States. It is then a matter, through a legitimate extension of Article 3, paragraph 3 of the Rome Convention, of considering the entire territory of the Member States as a unified, or at least harmonised, legal area. In addition, it would be necessary to specify – what the Directive fails to do – that in case of a choice of the less favourable law of a third country, the applicable law would be that of the Member State in which the consumer is habitually resident.

On the other hand, when the elements of the situation are spread among the territories of Members States and third countries, the proposed rule diverges without ground from Article 5 of the Rome Convention, which limits the protection to cases and conditions it enumerates and provides all the desirable specifications in case of invalid choice. The Group considers that in this situation, the protection should be exercised in the framework provided for by Article 5.

The Group suggests accordingly that the Commission should re-examine the Directive proposal in regard of these conclusions (it refers in the context to the conclusions concerning the interaction of Community law and the Brussels and Rome Conventions, adopted at its Barcelona meeting, on 1 October 1994). It underlines the interest of contemplating the modification of Article 5 of the Rome Convention itself in order to enlarge the consumer protection, for instance when the situation is localised within the Community.