

Proposal to amend Articles 3, 5 and 7 of the Rome Convention of 19 June 1980, and Article 15 of the proposed Regulation on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels I)

I. If the Rome Convention on the law applicable to contractual obligations of 19 June 1980 is re-implemented in Community legislation, Article 3(3) of the Convention should be supplemented by a new paragraph worded as follows:

“The fact that the parties have chosen the law of a non-Member State, whether or not accompanied by the choice of a tribunal of a non-Member State, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one or more of the Member States, prejudice the application of the mandatory rules which are contained in or originate in acts of the institutions of the European Community and which are applicable in a Member State whose law would be applicable in the absence of a choice-of-law by the parties.”

II. Article 5 of the Rome Convention shall be replaced by the following text:

“1. This Article applies to a contract the object of which is the supply of property, whether movable or immovable, or of services to a person (the consumer) for a purpose which can be regarded as being outside his trade or profession, by a person who is acting in the course of his trade or profession (the supplier).

2. The law applicable by virtue of Articles 3, 4 and 9 cannot deprive the consumer of the protection afforded to him by the mandatory rules of the law of the country in which he has his habitual residence at the time of the conclusion of the contract, unless the supplier can establish that he was not aware of the country in which the consumer had his habitual residence, as a result of the conduct of the consumer.

The preceding paragraph does not apply:

(a) when the consumer travels to the supplier’s country and there concludes the contract, or

(b) when property or services were or ought to have been supplied in the country in which the place of business through which such supply was or ought to have been effected was situated,

unless, in either case, the consumer was induced by the supplier to travel to the aforementioned country to conclude the contract.”

III. If the Rome Convention is re-implemented in Community legislation, Article 7 of the Convention should be supplemented by a third paragraph worded as follows:

“3. Effect may only be given to the mandatory rules of a Member State to the extent that their application does not constitute an unjustified restriction on the principles of freedom of movement provided for in the treaty.”

IV. Sub-paragraph 3 of the first paragraph of Article 15 of the proposal for a Council Regulation on jurisdiction and the enforcement of judgments in civil and commercial matters (the regulation known as Brussels I) should be replaced by the following text:

“(3) in all other cases, when the contract has been concluded with a person (‘the supplier’) in the course of that person’s trade or profession unless the supplier can establish that he was not aware of the country in which the consumer was domiciled, as a result of the conduct of the consumer; this provision does not apply, however:

(a) when the consumer travels to the supplier's country and there concludes the contract, or

(b) when property or services were or ought to have been supplied in the country in which the place of business through which such supply was or ought to have been effected was situated,

unless, in either case, the consumer was induced by the supplier to travel to the aforementioned country to conclude the contract."

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