

## PROPOSAL FOR THE AMENDMENT OF ARTICLES 6 AND 9 OF THE ROME CONVENTION OF 19 JUNE 1980 ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS

In the context of the reformulation of the Rome Convention on the law applicable to contractual obligations of 19 June 1980 in a Community legislative act,

I. Article 6 (2) (a) of the Convention is replaced by the following text:

“2. Notwithstanding the provisions of Article 4, a contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract. The place where the work is habitually carried out is not to be regarded as having changed if the employee is posted for a limited period to work in another country. The conclusion of a contract of employment with an employer belonging to the same group as the original employer shall not exclude a finding that such a posting has taken place.”

II. Article 6 of the Convention is supplemented by an additional paragraph, paragraph 3, as follows:

“3. The foregoing provisions are without prejudice to the application of the mandatory rules of the law of the country to which the employee is posted as provided for by Directive 96/71 of 16 December, 1996, concerning the posting of workers in the framework of the provision of services.”

III. Article 9 of the Convention is amended as follows:

Paragraphs 1 and 2 are replaced by the following paragraph:

“1. A contract is formally valid if it satisfies the formal requirements of the law which governs it under [this convention] or of the law of the country where either of the parties is present at the time of the conclusion of the contract or of the law of the country in which either party is habitually resident at that time.”

Paragraph 3 becomes paragraph 2 and the expression “paragraphs 1 and 2” is replaced by the expression “paragraph 1.”

Paragraph 4 becomes paragraph 3 as follows:

“3. An 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 under [this Convention] governs or would govern the contract or of the law of the country in which the act was done or of the law of the country in which the person who effected the act was habitually resident.”

Paragraph 5 is removed.

Paragraph 6 becomes paragraph 4 and the expression “Notwithstanding paragraphs 1 to 4” is replaced by the expression “Notwithstanding paragraphs 1 to 3.”