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EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE  
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES  
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

## **Towards a comprehensive EU contract law: the Regulation on the law applicable to contractual obligations (Rome I)**

### **The law applicable to consumer contracts should not jeopardize the internal market and be a burden for SMEs**

#### **1. Introduction**

The European Commission published in December 2005, a **Proposal for a Regulation on the Law applicable to contractual obligations COM (2005) 650 final**. The last months, intensive discussions have taken place within the EP's Legal Affairs Committee and the Justice and Home Affairs Council. Ahead of the vote in the EP's Committee, due to take place at the beginning of June, UEAPME, the European craft and SME employers' organisation, would like to express its view on the Rome I proposal and particularly on its article 5.

UEAPME fully supports:

- the conversion of the Rome Convention of 1980 into a Community Regulation (Rome I) and,
- the harmonisation of the conflict-of-laws rules relating to contractual obligations.

However, UEAPME disagrees with the wording of article 5 of the proposed Regulation and believes that the *principle of freedom to choose the applicable law* should also govern consumer contracts.

#### **2. Comments on Article 5 – Consumer contracts**

##### ***“Principle of freedom of choice” versus “Principle of the consumer country principle”***

UEAPME's member organisations claim for the complete withdrawal from the proposal of the strict *consumer country principle*. (article 5.1 *“Consumer contracts within the meaning and in the conditions provided for by paragraph 2 shall be governed by the law of the Member State in which the consumer has his habitual residence”*).

Indeed, Article 5 of the proposal as it stands now would:

- Make cross border trade much more difficult and endanger the functioning of the internal market. Suppliers would need to adapt their contracts to 27 national legal systems in the EU, depending on the consumer's country of residence.

- Increase the costs of SMEs wishing to sell in other EU countries since it would result in higher legal costs (in order to adapt the terms of contract to 27 national legislations). These costs would finally be borne by the consumers.
- Limit the scope of SMEs' sales. Small business would opt for targeting just some countries, perhaps the bigger ones with more investment return potential.
- Hinder competition within Europe, since domestic suppliers would be indirectly protected against foreign companies offering the same goods or services.

Another reason that brings UEAPME to claim for the deletion of the strict *consumer country principle* is the current level of consumer protection. Since the Rome Convention was adopted in 1980, several directives in the field of consumer contract law<sup>1</sup> have been implemented in the Member States, providing a high level of consumer protection.

Moreover, art. 5.2 refers to 5.1 and states that “*It shall apply on condition that the contract has been concluded with a person who pursues a trade or profession in the Member State in which the consumer has his habitual residence*”.

- This paragraph is particularly important with regards to internet trading, which is rapidly increasing and becoming widely used.
- Businesses operating online or merely having a website advertising their products or services would -according to the wording of this paragraph- be pursuing a trade or profession in another Member State. As a consequence, they would be automatically exposed to 27 different contractual legislations.

UEAPME demands the introduction of a provision clearly stating that the professional has specifically targeted the consumer (by a specific invitation addressed to the consumer, by advertising or by taking all steps necessary towards the conclusion of the contract).

### **3. Rome I and the Review of the EU Consumer Acquis**

The Rome I proposal must be analysed within the framework of the current revision of the EU Consumer Acquis. It must be noted that the revision of the Consumer Acquis deals with some aspects of contractual obligations in consumer contracts.

The Commission's ongoing consultation refers to the degree of harmonisation of the directives under review (mentioned in footnote 1) and puts forward two options (full harmonisation and minimum harmonisation). Neither on the first, nor on the second option, does the Commission mention the possibility to apply the *consumer country principle* of article 5 of the Rome I proposal. Instead, it offers the possibility to apply the *country of origin principle* to those aspects which would not have been fully harmonised.

UEAPME strongly demands the Commission to be consistent with its different proposals on EU consumer contract law. Likewise, UEAPME demands the European Parliament and

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<sup>1</sup> The Directive on Sale of Consumer Goods and Guarantees, the Unfair Contract Terms Directive, the Distance Selling Directive, the Doorstep Selling Directive, the Directive on Injunctions, the Price Indication Directive, the Package Travel Directive, the Timeshare Directive.

Council not to undermine the functioning of the internal market with the acceptance of the *consumer country principle*.

#### **4. Better regulation principle**

The Rome I proposal as presented by the Commission has not been subject to an impact assessment, let alone an impact assessment for SMEs. It therefore violates the better regulation principle. Even though the proposal does not introduce a completely new set of rules, the Commission is committed to analyzing the economic, social and environment impacts of its proposals and it has not done so with the Rome I. UEAPME calls upon the European Parliament and JHA Council not to support the Rome I Proposal.

#### **5. Conclusion**

As stated above, UEAPME *is in favour of the full application of the principle of freedom* of choice for all contracts including consumer contracts.

In this line, UEAPME likewise *rejects the application of the consumer country principle* in those cases the parties to the contract have chosen the applicable law and this one offers less protection to the consumer than the law of the Member State in which the consumer has its residence.

Therefore UEAPME is of the opinion that the Rome I Regulation *must not simply apply a limited principle of choice of law* as the Rome Convention does. The solution of the Rome Convention cannot be applied now. At this moment, European Crafts and SMEs want to go a step further and demand the creation of a minimum Community standard of consumer protection, which would harmonise the level of consumer protection in all Member States.

This would create a certain level of harmonisation of the different national legislations on consumer protection. As a consequence, the parties to a contract would be able to freely choose the law applicable to their contracts without the uncertainty that the law of the country of residence of the consumer might apply when providing more protection for the consumer. With this solution, legal certainty for both SMEs and consumers would definitely be enhanced.

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