

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on Employment and Social Affairs*

**2005/0261(COD)**

14.9.2006

## **OPINION**

of the Committee on Employment and Social Affairs

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council  
on the law applicable to contractual obligations (Rome I)  
(COM(2005)0650 – C6-0441/2005 – 2005/0261(COD))

Draftsman: Jan Andersson

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## SHORT JUSTIFICATION

The aim of the Commission's proposal is not to establish a new set of legal rules, but to convert an existing convention, the Rome I Convention of 1980 (the Convention), into a Community instrument. However, the Commission has also tried to modernise certain provisions in the Convention, in particular those relating to contract of employment.

The proposal has been preceded by consultations of the Member States and the civil society, in particular through a Green paper and a public hearing.<sup>1</sup> The green paper received about 80 replies from governments, universities, practitioners etc.<sup>2</sup> The European Community has legal competence to adopt Community instruments concerning Conflict-of-laws rules (or private international law) under Article 61(c) EC Treaty.

The proposal was presented by the Commission, December 15th 2005. The Committee on Legal Affairs has been appointed the responsible Committee in the European Parliament.

The Committee on Employment and Social Affairs has decided to give a draft opinion on the proposal for the responsible committee due to the close connection between the Directive 96/71/EC, concerning the posting of workers in the framework of the provision of services, and the proposal. The proposal also covers important changes in the rules of applicable law to the contract of employment.

This draft opinion addresses inconsistencies and legal technical elements that can be clarified in order to improve the Regulation. The overall ambition is to provide greater legal certainty for the law applicable to employment contracts.

## AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

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Text proposed by the Commission

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Amendments by Parliament

Amendment 1  
Recital 11

(11) Regarding individual employment contracts, the conflict rule should make it possible to identify the centre of gravity of the employment relationship, looking

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<sup>1</sup> COM(2002)0654 Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernisation.

<sup>2</sup> All contributions are published on DG Justice and Home affairs web page;

[http://europa.eu.int/comm/justice\\_home/news/consulting\\_public/rome\\_i/news\\_summary\\_rome1\\_en.htm](http://europa.eu.int/comm/justice_home/news/consulting_public/rome_i/news_summary_rome1_en.htm)

beyond appearances. This **rule does not prejudice** the application of the mandatory rules of the country to which a worker is posted in accordance with Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

beyond appearances. This **Regulation is without prejudice to** the application of the mandatory rules of the country to which a worker is posted in accordance with Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

#### *Justification*

*The relationship and reference to Directive 96/71/EC in the Regulation must be clear. The rule laid down in the first sentence is not the only element for which the regulation should be without prejudice to the Posting Directive. The wording "prejudge" also seem ambiguous and is changed to "without prejudice". The amendment gives clarification and consistency in relation to Directive 96/71/EC.*

#### Amendment 2 Recital 11 a (new)

***(11a) Directive 96/71/EC lays down minimum rules for the protection of workers applicable to posted workers on the territory of a Member State other than the State in which they normally work and does not prevent Member States from imposing other terms and conditions of employment laid down in collective agreements, nor from imposing other employment conditions where these are public policy provisions.***

<sup>1</sup> OJ L 18, 21.1.97, p. 1.

#### *Justification*

*This new recital clarifies the specific nature of the rules set out in Directive 96/71/EC which does not prevent Member States from adopting more protective measures at national level for instance by imposing other employment conditions in case of public policy provisions.*

#### Amendment 3 Article 6, paragraph 1

1. Notwithstanding the provisions of Article 3, in **a** contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded him by the mandatory rules of the law which would be applicable

1. Notwithstanding the provisions of Article 3, in **an individual** contract of employment a choice of law made by the parties shall not have the result of depriving the employee of the protection afforded him by the mandatory rules of the law which would be

under this Article in the absence of choice.

applicable under this Article in the absence of choice.

#### *Justification*

*The heading to Article 6 refers to “Individual Employment Contracts”, while the text in Article 6 speaks about “a contract of employment”. This discrepancy was also present in the Convention. This discrepancy is somewhat ambiguous. “Contract of employment” seems to be a wider notion, potentially including collective agreements in some Member States, while the wording “individual employment contract” would rule out the application of article 6 on collective agreements. The wording “individual contract of employment” is added for reason of consistency.*

#### Amendment 4 Article 6, paragraph 2

2. *A* contract of employment shall, in the absence of choice in accordance with Article 3, be governed:

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

#### *Justification*

*The wording “notwithstanding the provisions of Article 4” appearing in the Convention has been deleted by the Commission. This text is reintroduced due to clarity and consistency.*

#### Amendment 5 Article 6, paragraph 2, point (a)

(a) by the law of the country in ***or from*** which the employee habitually carries out his work in performance of the contract. The place of performance shall not be deemed to have changed if he is temporarily employed in another country. 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***

(a) by the law of the country in which the employee habitually carries out his work in performance of the contract. The place of performance shall not be deemed to have changed if he is temporarily employed in another country. ***However, his employment and pay conditions shall be subject to the law of the country in which he is temporarily employed.*** 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 ***specific*** tasks abroad.

***another country temporarily;***

*Justification*

*The text "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" did not appear in the Convention. It carries a risk of a broad interpretation of "tasks". What if the task of the worker is, e.g. to represent the employer established in Member State X for his activities in Member State Y? When is such a task "carried out"? It could potentially be a very long period. The inclusion of "specific" points out that the temporary activity in another country should be interpreted narrowly.*

*The text did not appear in the Convention. In a conflict between the local employer and the employee the only relevant place of work must be in the country of posting. Another law might be applied, but only through the escape clause of Section 3. This new addition extends and thereby obscures the meaning of the place of work as the regular connecting factor. Moreover, this rule could also stimulate that employment contracts are signed only as cover for the real contract. This rule should therefore be deleted.*

*The terms 'from which' are highly ambiguous. The amendment aims to prevent regular posting from a Member State where employment law is less developed than in the country of posting.*

Amendment 6

Article 6, paragraph 2, point (a a) (new)

***(aa) if the employee does not habitually carry out his work in any one country, by the law of the country from which the employee habitually carries out his work in performance of the contract;***

Amendment 7

Article 6, paragraph 2, subparagraph 2 (new)

***unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country.***

Amendment 8

Article 6, paragraph 3

***3. The law designated by paragraph 2 may be excluded where it appears from the*** ***deleted***

***circumstances as a whole that the contract is more closely connected with another country, in which case the contract shall be governed by the law of that country***

*Justification*

*This flexibility clause should be reserved for exceptional cases, such as that of employees required, for instance, to work in aircraft, on ships or on oil rigs. For this reason it is preferable to include the clause in the paragraph dealing specifically with that issue.*

Amendment 9  
Article 8, paragraph 1

1. Mandatory rules are rules the respect for which is regarded as ***crucial*** by a country for safeguarding 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.

1. ***For the purposes of this Article***, mandatory rules are rules the respect for which is regarded as ***necessary*** by a country ***for protecting workers or*** for safeguarding 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.

*Justification*

*The text “for the purpose of this article” is added for the sake of clarity and consistency. Mandatory requirements occur in different articles of the Regulation, but also with different meanings. It is therefore important to settle that the definition of mandatory rules in Article 8 is only for the purpose of that specific article to contract of employment.*

*The word “crucial” is replaced by “necessary”. The Posting of workers Directive (POW) is based on the possibility for the host MS to derogate from the law of the MS of origin in case of posting. A narrow definition of what can be considered the “hard core” provision of the labour law of the host MS, which could be applied in case of posting, could undermine the list of art. 3(1) POW or prevent its extension to other fields of labour protection. The definition of mandatory rules also risks to undermine the application by MS of terms and conditions of employment on matters other than those referred to in art. 3(1) in the case of “public policy provisions”.*

*The notion of mandatory rules cannot be defined/interpreted in a restrictive manner; it should at least concern rules that are crucial for the protection of workers.*

## PROCEDURE

<b>Title</b>	Proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)
<b>References</b>	COM(2005)0650 – C6-0441/2005 – 2005/0261(COD)
<b>Committee responsible</b>	JURI
<b>Opinion by</b> Date announced in plenary	EMPL 16.2.2006
<b>Enhanced cooperation – date announced in plenary</b>	
<b>Drafts(wo)man</b> Date appointed	Jan Andersson 19.4.2006
<b>Previous drafts(wo)man</b>	
<b>Discussed in committee</b>	22.6.2006      12.9.2006
<b>Date adopted</b>	13.9.2006
<b>Result of final vote</b>	+:    26 -:    12 0:    0
<b>Members present for the final vote</b>	Jan Andersson, Jean-Luc Bennahmias, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Bairbre de Brún, Derek Roland Clark, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Karin Jöns, Jan Jerzy Kułakowski, Sepp Kusstatscher, Jean Lambert, Raymond Langendries, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Jan Tadeusz Masiel, Maria Matsouka, Ria Oomen-Ruijten, Pier Antonio Panzeri, Jacek Protasiewicz, José Albino Silva Peneda, Jean Spautz, Anne Van Lancker, Gabriele Zimmer
<b>Substitute(s) present for the final vote</b>	Françoise Castex, Richard Howitt, Jamila Madeira, Dimitrios Papadimoulis, Leopold Józef Rutowicz, Gabriele Stauner, Patrizia Toia
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	
<b>Comments (available in one language only)</b>	...