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"ROME I"

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POSSIBLE EXTENSION OF SCOPE
TO INSURANCE CONTRACTS

1. With its proposal for a "Regulation on the law applicable to contractual obligations", as adopted in December 2005 (COM(2005)650), the Commission set out to turn the 1980 Rome Convention into a binding Community instrument.

Like Article 20 of the Convention, Article 22 of the proposed Regulation would, if enacted, have the effect that the provisions of "Rome I" on applicable contract law would apply only to re-insurance contracts as well as to insurance contracts covering risks located outside the territory of the European Union.

However, insurance contracts covering risks (or "commitments" in the case of life-insurance) located inside the territory of the Union would remain subject to the pertinent provisions on applicable law of the Insurance Directives which are currently in force.

2. In the discussions that have so far been held in both Council (Civil Law Committee) and Parliament (Committee on Legal Affairs), opinions were expressed in favour of including *all* insurance contracts in one single instrument, i.e. in "Rome I", in the future, given the perceived lack of transparency of the present regime, which is seen to be (too) complex whilst at the same time hampering a truly unified regime, due to a large margin for transposition by Member States.

To this end, the rapporteur of the Legal Affairs Committee has proposed i.a. an amendment, that would result, in the absence of a choice of the applicable law by the parties, in the application of the law of the country where the insured risk is situated, without any further exceptions.

Whilst this amendment may seem to be a relevant simplification of the otherwise rather complex "applicable law"-rules of the Insurance Directives, it nevertheless only addresses (by virtue of its wording) non-life risks and does not take into account the special circumstances and conditions, which – as under the Insurance Directives – enable or even require the application of a law other than that of the country where the insured risk is situated.

3. Consequently, the Commission services have considered exploring other possibilities of how to include insurance contracts in Rome I on a more comprehensive basis than is currently the case. As a result, other proposals have been brought up, striving to reconcile simplification on the one hand with freedom of choice and complexity on the other. Some of these proposals enter into considerable detail, partly with the aim of better aligning the rules on law applicable to insurance contracts to currently existing rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as set out by Council regulation (EC) No 44/2001 ("Brussels I"), which contains a specific chapter on insurance contracts.

In either case, however, with or without the proposed extension of the scope of "Rome I", a trade-off between simplification, freedom of choice and complexity seems inevitable.

Thus, the question arises, whether in the light of the current discussion an inclusion of *all* insurance contracts in "Rome I" would indeed yield enough added value to justify changing the current regime under the Insurance Directives.

4. Furthermore, it has to be taken into account that, even if extended to insurance contracts, "Rome I" will definitely not apply in Denmark, nor perhaps in the UK and Ireland, nor in the EEA-countries. This is due to the fact that these countries are not bound by instruments adopted on the basis of Article 65 EC-Treaty, which is the legal basis for the "Rome I"-proposal. However, UK and Ireland may still opt-in under the pertinent Protocol to the Treaty.

As a consequence, the Insurance Directives would still remain applicable in all or most of the afore mentioned countries, whereas "Rome I" would apply only in the remaining EU-Member States, thus creating different regimes within the Single Market. The Commission services are about to explore a possible solution to this problem, which is clearly a pre-condition for a change of the current regime by "Rome I".

5. Given that relevant decisions in this important matter might be taken in the relatively near future, EIOPC members might wish to reflect, as a matter of urgency and in close co-ordination with their colleagues in the Ministries of Justice, on the route to be taken on this issue.

Member States are invited to make known their views on this subject.

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