

New Draft Report of European Parliament on Future Choice of Law Rule for Privacy and Personality Rights

The Committee on Legal Affairs of the European Parliament has issued a new Draft Report with recommendations to the Commission on the amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II). The new report takes into account the recent *E-Date Advertising* judgment of the European Court of Justice.

The Draft Report proposes to add the following provision to the Rome II Regulation:

Article 5a – Privacy and rights relating to personality

(1) Without prejudice to Article 4(2) and (3), the law applicable to a non-contractual obligation arising out of violations of privacy and rights relating to personality, including defamation, shall be the law of the country in which the rights of the person seeking compensation for damage are, or are likely to be, directly and substantially affected.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably have foreseen substantial consequences of his or her act occurring in the country designated by the first sentence.

(2) When the rights of the person seeking compensation for damage are, or are likely to be, affected in more than one country, and that person sues in the court of the domicile of the defendant, the claimant may instead choose to base his or her claim on the law of the court seised.

(3) The law applicable to the right of reply or equivalent measures shall be the law of the country in which the broadcaster or publisher has its habitual residence.

(4) The law applicable under this Article may be derogated from by an agreement pursuant to Article 14.

Many thanks to Jan von Hein for the tip-off.