

# Rome I: German Position on the Applicable Law on Contracts governing Hotel and Restaurant Services

Following our previous post on new Council documents concerning Rome I, here some new information on Art. 5 of the Proposal:

As stated on the website of the German Hotel and Restaurant Association (*Deutscher Hotel- und Gaststättenverband, DEHOGA Bundesverband*), the German government changed its position with regard to the applicable law on contracts governing hotel and restaurant services and supports now this branch of industry with regard to its conception that those contracts should not be governed by the law of the hotel guest's habitual residence, but rather by the law of the country where the service is provided.

According to Art. 5 (1) of the Commission's Rome I Proposal, consumer contracts in terms of Art. 5 (2) are governed by the law of the Member State in which the consumer has his habitual residence. However, Art. 5 (3) (a) of the Proposal provides for an exception for contracts for the supply of services where the services are to be supplied to the consumer exclusively in a country other than in which he has his habitual residence. Thus, contracts governing hotel and restaurant services are widely excluded from the application of the law of the guest's habitual residence.

However, amendments proposed by the Committee on Legal Affairs of the European Parliament suggest the deletion of Art. 5 (3) (a) which would lead, with regard to service contracts covered by Art. 5, to the application of the law of the consumer's, i.e. the guest's, habitual residence for contracts involving a guest of a Member State other than the one where the service is provided. See Amendment 62 by *Jean-Paul Gauzès* and Amendment 63 by *Diana Wallis* which can be found here. Further, see also the text of Rome I as drafted by the Council Presidency (Note of 12 October 2006) as well as the text drafted by the Finnish and the German Presidency (Note of 12 December 2006) which do not include Art. 5 (3)

anymore .

This development has been observed critically by the German Hotel Association (*Hotelverband Deutschland, IHA*) and the German Hotel and Restaurant Association which feared serious disadvantages in particular for medium-sized businesses in case the law of the guest's habitual residence should be applied.

Now, as stated in the press release, these associations succeeded in convincing German Federal Minister of Justice *Brigitte Zypries* as well as Federal Minister of Economics and Technology *Michael Glos* of their position to apply the law of the country where the services are provided.

See in this context the Summary of Discussions of the Council Committee on Civil Law Matters (Rome I) of 16 February 2007, which contains with regard to Art. 5 (3) (a) the following statement:

*Several delegations were against the deletion of Article 5(3)(a) of the Commission proposal. The Presidency noted that there was some support for the reintroduction of that provision into the text of the draft Regulation.*

Similar also Council document No. 6935/07 of 2 March 2007 where the German Presidency states that several delegations support the idea to reintroduce Art. 5 (3) (a) of the Commission's Proposal.

The **full press release** can be found on the website of the German Hotel and Restaurant Association.

*Many thanks again to Dr. Jan von Hein, MPI Hamburg for the tip-off and to Giorgio Buono for valuable information on the relevant documents.*