

Proposed ROME I REGULATION **FAQs on the concerns of online businesses**

What is Rome I?

Rome I is the European Commission's proposal for a Regulation on the law applicable to contractual obligations in civil and commercial matters.ⁱ

The Regulation would update the Rome Convention 1980ⁱⁱ and aims to promote compatibility between conflict-of-laws rules for achieving the objective of mutual recognition of judicial decisions acknowledged in the Vienna Action Plan.ⁱⁱⁱ

Why are online traders concerned about the proposed Regulation?

The Commission's proposal raises serious concerns about the future viability of businesses trading online. Under the current rule set down in the Rome Convention the law in the consumer's country of habitual residence applies if in that country the conclusion of the contract was preceded by a specific invitation addressed to the consumer or by advertising, and that the consumer had taken in his country of habitual residence all the steps necessary on his part for the conclusion of the contract.

The new proposal claims to apply the law of the consumer's country of habitual residence when a website is *targeted* towards consumers in another Member State. That would be similar to the current rule set down in the Rome Convention. However the reality is that the targeting test in the new proposal is so loosely drafted that it will impose the law of the consumer's country of habitual residence in far more cases than under the Rome Convention. The proposal even suggests that the mere fact of contracting with a consumer is evidence of targeting that consumer's home country. That would effectively impose the law of the consumer's country of habitual residence in **ALL** business to consumer contracts, even where the website was not in fact targeted at a given consumer."

The 'targeting' test is therefore a crucial issue in this debate?

Yes, it is. An online trader is given legal certainty by targeting his website towards a consumer in another Member State. Without a properly crafted targeting test, the trader will need to embark upon an onerous and costly legal compliance study of each Member State before allowing any transactions to take place with a consumer. "

Surely the Commission has assessed the impact of its proposal across the European Community?

The Commission does not believe that the new proposal significantly alters the rules under the Rome Convention, and has not therefore carried out a regulatory impact assessment. Online traders disagree with the Commission's strategy since, for example, the loose nature of the targeting test in the proposal radically alters the current rule.

Will the proposal deter businesses from embracing cross-border e-commerce?

We simply don't know, but online traders are already nervous about their liability across 27 different legal systems. This has provoked further legal uncertainty. Small

and medium-sized businesses will be hit particularly hard since they may not have the management and financial resources to undertake compliance studies.

Won't consumers be deterred from buying abroad if they are not adequately protected?

All consumers in the European Union are protected by a multitude of EU consumer protection laws. There is not a single EU Member State without a high level of consumer protection. Where gaps in laws do exist, this is an enforcement problem - not an absence of regulation.

What is the likely outcome if the proposal is not amended?

Compliance costs will increase and be too high for many businesses to meet and the consumer will ultimately lose out. If we move closer to the law of the country of a consumer's habitual residence applying in **ALL** cases, online traders will deny consumers access to goods and services that the consumer has proactively sought to access (for example, because of wider choice, cheaper prices, better value and higher quality). Consumers will be denied the ability to shop around and choose products and services on the best terms, and this is likely to allow e-commerce to stagnate across the internal market. "

What solution are online traders suggesting?

We are calling for a return to the balance of interests represented in the Rome Convention which has worked adequately well since 1980. Business is not about wanting legislation to be passed on its own terms. We understand well the importance of good consumer protection legislation to promote trust and confidence for e-business. The Commission's proposal, however, does nothing to enhance consumer protection but does undermine consumer choice.

Do online traders support any amendments tabled by MEPs?

Yes, we do. We strongly support the amendments put forward by Klaus-Heiner Lehne, MEP^{iv} that allows online traders, by means of *positive conduct* to direct their activities to consumers in Member States and that a *contract results* from this positive conduct. This amendment, we believe, establishes a greater balance in line with the 1980 Convention and provides legal certainty for online traders.

Further Information

Please contact Will Roebuck – E-business Regulatory Alliance

Will.roebuck@e-ra.org.uk

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ⁱ Com(2005) 650 final

ⁱⁱ OJ C 027, 26.01.1998 P. 0034-0046 (consolidated version)

ⁱⁱⁱ OJ C 19, 23.1.1999, p 1, point 40 c.

^{iv} PE 374.427v01-00 Amendment No. 34 (Recital 10) and Nos 53, 56, 57, 61 and 67 (Article 5)