

**THE ROME I REGULATION: ENDING THE CONTRADICTIONARY INTERPRETATION BY
NATIONAL COURTS OF ART. 4 (5) ROME CONVENTION?**

SUMMARY

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In the absence of a choice of law the law applicable to a contractual obligation is established on the basis of the closest connection test. Art. 4 (2) – (4) raise presumptions as to what constitutes the closest connection. Art. 4 (5) defeats those presumptions if the contract has a closer connection with another country. That provision has been interpreted differently by courts in different Member States. This paper will analyse the Dutch, German and English interpretations of this provision and will thereby focus on particular situations wherein art. 4 (5) can come into play. A distinction will be drawn between the application of art. 4 (5) to individual contracts and the application to contracts that are functionally linked with other contracts. The national solutions will subsequently be used as starting point to explain the solution adopted in art. 4 Rome I Regulation. The question will be answered to what extent the problems surrounding art. 4 (5) have been solved in Rome I or whether case-law of the European Court of Justice is still necessary.