

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0257/2007

28.6.2007

*****III REPORT**

on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations ("Rome II")
(PE-CONS 3619/2007 – C6-0142/2007 – 2003/0168(COD))

European Parliament delegation to the Conciliation Committee

Delegation chairwoman: Mechtild Rothe
Rapporteur: Diana Wallis

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

CONTENTS

| | Page |
|---|-------------|
| DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION..... | 5 |
| EXPLANATORY STATEMENT..... | 6 |
| PROCEDURE..... | 10 |

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (“Rome II”)
(PE-CONS 3619/2007 – C6-0142/2007 – 2003/0168(COD))**

(Codecision procedure: third reading)

The European Parliament,

- having regard to the joint text approved by the Conciliation Committee (PE-CONS 3619/2007 – C6-0142/2007),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2003)0427)²,
 - having regard to the amended Commission proposal (COM(2006)0083)³,
 - having regard to its position at second reading⁴ on the Council common position⁵,
 - having regard to the Commission's opinion on Parliament's amendments to the common position (COM(2007)0126)¹,
 - having regard to Article 251(5) of the EC Treaty,
 - having regard to Rule 65 of its Rules of Procedure,
 - having regard to the report of its delegation to the Conciliation Committee (A6-0257/2007),
1. Approves the joint text and draws attention to the Council and Commission statements thereon;
 2. Instructs its President to sign the act with the President of the Council pursuant to Article 254(1) of the EC Treaty;
 3. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to have it published in the Official Journal of the European Union;
 4. Instructs its President to forward this legislative resolution to the Council and the Commission.

¹ OJ C 157 E, 6.7.2006, p. 371.

² Not yet published in OJ.

³ Not yet published in OJ.

⁴ *Texts Adopted*, 18.1.2007, P6_TA(2007)0006.

⁵ OJ C 289 E, 28.11.2006, p. 68.

EXPLANATORY STATEMENT

Background

The Regulation on the Law Applicable on Non-Contractual Obligations ("Rome II") seeks to harmonise the Member States' *rules of conflict of laws*, which determine the law applicable to non-contractual obligations (torts or delicts in relation, for instance, with traffic accidents, product liability, unfair competition, environmental damage).

As an instrument of the Private International Law the Regulation does not harmonise the Member States' substantive law, but their conflict of law rules. Conflict of law rules determine the applicable national law on cross-border disputes, but do not decide a case in substance. This technique is particularly advantageous as it secures application of the same national law in similar cases, irrespective of which national court ("forum") deals with the specific case, thus increasing legal certainty for individuals and economic operators involved in cross-border disputes and avoiding "forum shopping", while at the same time preserving the autonomy of national law.

International jurisdiction, recognition and enforcement of judgments are dealt with by the "Brussels I" Regulation, which applies to both contractual and non-contractual obligations. As regards the applicable law, contractual obligations were harmonised by the Rome Convention of 1980, which is to be replaced by the "Rome I" Regulation, currently being negotiated in the Council and Parliament. However, until now there were no EU-wide harmonised rules for determining the law applicable to non-contractual obligations. The "Rome II" Regulation is intended to fill this gap.

The codecision and conciliation procedure

The Commission submitted on 22 July 2003 a proposal for a Regulation on the Law Applicable on Non-Contractual Obligations. Following Parliament's first reading on 6 July 2005 (54 amendments adopted) the Council adopted its common position on 25 September 2006. Parliament then concluded its second reading on 18 January 2007 adopting 19 amendments to the Council's common position. The main issues at stake were: violation of personality rights ("defamation"); road traffic accidents; unfair competition; the definition of "environmental damage"; the relationship with other Community instruments; the treatment of foreign law; the review clause.

The Council informed with letter from 19 April 2007 that it could not accept all of Parliament's amendments and that conciliation was necessary. Conciliation was then formally opened on 15 May 2007.

The Parliament Delegation held its constituent meeting on 15 February 2007 in Strasbourg. Ms Rothe, Vice-President and Chair of the Delegation, Mr Gargani, Chair of the Committee

¹ Not yet published in OJ.

on Legal Affairs and Ms Wallis, rapporteur, were given a mandate by the Delegation to negotiate with the Council.

Three trilogues held between 6 March and 24 April 2007 (6.3.2007, 27.3.2006 and 24.4.2007), followed by subsequent meetings of the EP Delegation (14.3.2007, 28.3.2007 and 26.4.2007), lead to provisional agreement on 5 amendments. The Conciliation Committee met then in the evening of 15 May 2007 in the European Parliament with a view to formally opening the conciliation procedure and possibly reaching agreement on the outstanding issues. After several hours of deliberations an overall agreement was reached at midnight. It was unanimously confirmed by the EP Delegation with 17 votes in favour.

The main points of the agreement reached can be summarised as follows:

Road traffic accidents

The general rule introduced by "Rome II" is the "*lex loci delicti*" whereby the law applicable is the law of the country in which the damage occurs. In the case of cross-border road traffic accidents this broadly accepted rule can lead to unsatisfactory situations due to the widely differing levels of compensation awarded by national courts: when the victim of the accident is resident in another country than the one in which the accident occurred, the amount of the compensation to be awarded will have to be calculated according to the law and standards of the country of the accident and not the country of the residence of the victim, in which however he or she will have to recover from the injuries and possibly also live with the consequences of the accident.

One of the EP Delegation's main priorities was therefore to ensure that the individual victim's actual circumstances are taken into consideration by the court seized when deciding on the level of the compensation to be awarded.

For the short term, the EP Delegation succeeded in including a reference in the recitals of the Regulation whereby judges when quantifying personal injuries will take account of all relevant actual circumstances of the specific victim, including in particular the actual losses and cost of after-care and medical attention.

For the long term, the EP Delegation succeeded in securing a public commitment by the Commission for a detailed study on all options, including insurance aspects, on the specific problems faced by victims of cross-border road traffic accidents. The study will be presented by 2008 the latest and would pave the way for a Green Paper. It is expected that the findings of the study will make the Commission and Member States realise the need for specific legislation in this field.

Unfair competition

On the EP Delegation's insistence the Council agreed to the Commission's proposal for a specific rule on unfair competition that respects the principle of the application of one single national law (an important point for judges and lawyers) while at the same time limiting to a large extent the danger of "forum shopping" (the possibility for plaintiffs to raise their law suit in the Member State of their choice).

Environmental damage

The EP Delegation succeeded in obtaining a definition on "environmental damage" - a term used but not defined in the common position. The definition is in line with other EU instruments, such as the Directive on Environmental Liability.

Violation of personal rights ("defamation")

In view of an overall compromise the EP Delegation had to withdraw its amendments on the inclusion of rules on the violation of personal rights, particularly defamation in the press. Though Parliament managed to overcome the national differences and various conflicts of interests and to adopt its amendments by a large majority, the Member States were unable until the very end to agree on a common approach. The issue however is considered as a "left-over": as part of the review of the Regulation the Commission will draw up a study by 2008 on the situation in this specific field. The findings of the study can serve as a basis for the adoption of relevant rules at a later stage.

Relationship with other Community instruments

On the controversial issue of the relationship between the "Rome II" Regulation and other provisions of Community law it was agreed that the application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments such as the e-Commerce Directive.

Treatment of foreign law

The issue of the treatment of foreign law by national courts - especially how often and how well national courts apply the law of another country - is also settled on the basis of a detailed study to be carried out by the Commission as part of its report on the application of the Regulation. In a public statement, the Commission also declares that it will publish this study at the latest four years after the entry into force of the Regulation and in any event as soon as it is available, as well as its readiness to take appropriate measures if necessary.

Review clause

On the insistence of the EP Delegation the review clause was split into a special section with a shorter timetable by 2008 as regards violation of privacy rights ("defamation") and a general section with the standard timetable whereby the Commission will present a report on the application of the Regulation four years after its entry into force. As part of the general review clause the Commission will also carry out a study on the treatment and application of foreign law by the courts of the Member States and a second study on the effects of Article 28 of the Regulation ("Relationship with existing international conventions") with regard to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

Conclusion

The final text can be regarded as a very satisfactory and well balanced compromise. Given

that many of the European Parliament second reading amendments have been accepted and satisfactory compromises were reached on the others, the outcome of the conciliation procedure can be regarded as successful for the European Parliament. The Parliament Delegation to the Conciliation Committee therefore recommends that the joint text be approved at third reading.

PROCEDURE

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|---|---|
| Title | Joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (ROME II) |
| References | PE-CONS 3619/2007 – C6-0142/2007 – 2003/0168(COD) |
| Delegation chairwoman: Vice-President | Mechtild Rothe |
| Committee responsible Chairman: | JURI Giuseppe Gargani |
| Rapporteur | Diana Wallis |
| Commission proposal | Proposal for a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (ROME II) – COM(2003)0427 – C5-0338/2003 |
| Date of Parliament's first reading – P6 number | 6.7.2005 P6_TA(2005)0284 |
| Amended Commission proposal | COM(2006)00083 |
| Council common position Date announced in plenary | 09751/7/2006 – C6-0317/2006 28.9.2006 |
| Commission position (Article 251(2), subpara 2, indent 3) | COM(2006)0566 |
| Date of Parliament's second reading – P6 number | 18.1.2007 P6-TA(2007)0006 |
| Commission opinion (Article 251(2), subpara 3, point (c)) | COM(2007)0126 |
| Date Council received 2nd reading | 15.2.2007 |
| Date of Council letter on non-approval of Parliament amendments | 19.4.2007 |
| Conciliation Committee meetings | 15.5.2007 |
| Date of vote by Parliament delegation | 15.5.2007 |
| Result of vote | +: 17 -: 0 0: 0 |
| Members present | Janelly Fourtou, Jean-Paul Gauzès, Barbara Kudrycka, Klaus-Heiner Lehne, Toine Manders, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Mechtild Rothe, Aloyzas Sakalas, Diana Wallis, Rainer Wieland |
| Substitute(s) present | Sharon Bowles, Genowefa Grabowska, Marie Panayotopoulos-Cassiotou, Jaroslav Zvěřina, Tadeusz Zwiefka |
| Substitute(s) under Rule 178(2) present | |
| Date of agreement in Conciliation Committee | 15.5.2007 |
| Agreement by exchange of letters | |
| Date on which the co-chairmen established that the joint text had been approved and forwarded it to Parliament and the Council | 25.6.2007 |

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| Date tabled | 28.6.2007 |
| Comments (available in one language only) | |

EXTENSION OF DEADLINES

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|--|-------------------------------------|
| Deadline for second reading by Council | 0.0.0000 |
| Deadline for convening the Committee Requesting institution – date | 0.0.0000 [Council] – 0.0.0000 |
| Deadline for work in the Committee Requesting institution – date | 0.0.0000 [Parliament] – 0.0.0000 |
| Deadline for adopting the act Requesting institution – date | 0.0.0000 [Council] – 0.0.0000 |