

Judicial cooperation in civil and commercial matters: cross-border disputes, non-contractual obligations, Rome II

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The European Parliament approved a conciliation agreement on the proposed regulation on the law applicable on non-contractual obligations ("Rome II"), which aims to facilitate litigation between citizens from different European countries on matters such as traffic accidents, product liability and environmental damage by harmonising Member States' conflict of law rules.

The main points of the agreement 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:** at Parliament'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" (i.e. the possibility for plaintiffs to raise their law suit in the Member State of their choice);

- **environmental damage:** the Parliament succeeded in obtaining a definition of "environmental damage" to be introduced into the regulation. The definition is in line with other EU instruments, such as the Directive on Environmental Liability;

- **defamation by the media:** as part of an overall compromise, Parliament had to withdraw its amendments on the inclusion of rules on the violation of personal rights, particularly defamation in the press. However, it was agreed that, as part of the review of the regulation, the Commission would conduct a study by 2008 on the situation in this specific field;

- **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 the 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:** it was agreed that the treatment of foreign law by national courts would be the subject of a detailed study to be carried out by the Commission as part of its report on the application of the regulation. The Commission pledged to publish the study no later than four years after the regulation's entry into force;

- **review clause:** at Parliament's insistence the review clause was split into two, consisting of a special section with a shorter timetable by 2008 to address the issue of 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.