

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

2003/0168(COD) - 11/07/2007 - Final act

**PURPOSE:** to harmonise the rules on law applicable to non-contractual obligations (Rome II).

**LEGISLATIVE ACT:** Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II).

**BACKGROUND:** within the context of establishing an area of freedom, security and justice the Community has adopted a number of judicial measures concerning co-operation in civil matters that affect cross-border transactions or that distort the good functioning of the internal market. The Treaty on European Union specifies that measures to create an internal area of freedom, security and justice should include making Member States' rules on the conflict of laws and jurisdiction compatible. This is because the EU's internal market requires predictable litigation, certainty as to the law applicable, the free movement of judgments and for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought. Prior to the adoption of this Regulation the Member States had no common rules to designate the applicable law in non-contractual matters, and each court observed its national rules. Accordingly, legal solutions varied widely from one Member State to another, and parties were tempted to refer disputes to the court which applied the most favourable law to them (a practice known as forum shopping). Indeed, the Member States have been trying to harmonise the rules concerning conflicts of laws in matters of tort/delict since 1972.

**CONTENT:** the purpose of this Regulation, therefore, is to lay down a uniform set of rules of law applicable to non-contractual obligations, irrespective of the country of the court in which an action is brought. This should increase certainty as to the applicable law and improve the predictability of legal disputes and the free movement of judgements. As a general rule, the draft Regulation states that the law applicable to a tort/delict is the law of the country where damage occurred. Only in certain limited, duly justified circumstances, the general rule will be derogated from and special rules applied.

The Regulation contains special rules on product liability, unfair competition, environmental damage, infringements of intellectual property and industrial action. The initiative more particularly concerns questions related to civil liability for damage caused to others, particularly in the event of an accident. It applies, for example, to road accidents, defective products and environmental pollution. Expanding trade and travel in the EU will mean that disputes of this nature are bound to become more frequent.

The Regulation, does not deal with the violation of personal privacy or rights. However, under the terms of the conciliation Agreement, the Commission has been asked to review this matter not later than 31 December 2008 and to commission a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, taking into account rules relating to freedom of the press and freedom of expression in the media. Violations of privacy resulting from the handling of personal data will be also dealt with in the Commission's study.

The Rome II rules aim to strike a reasonable balance between the interests of the alleged perpetrator of the damage and the victim. With Rome II, the Community harmonisation of the rules of private international law of civil and commercial obligations is complete. The international jurisdiction of courts and the recognition and enforcement of judgments given in another Member State are already governed by

Council Regulation (EC) No 44/2001 of 22 December 2000, which applies to both contractual and non-contractual obligations. The rules concerning the law applicable to contracts have already been harmonised by the Rome Convention of 1980 on the law applicable to contractual obligations.

APPLY: 11 January 2009. The Regulation will apply only to events giving rise to damage which occurs after its entry into force.