

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

2003/0168(COD) - 22/07/2003 - Legislative proposal

PURPOSE : to present a proposal for a Regulation aimed at harmonising the rules on the law applicable to non-contractual obligations ("Rome II"). **CONTENT** : the purpose of this proposal for a Regulation is to standardise the Member States' rules of conflict of laws regarding non-contractual obligations and thus extended the harmonisation of private international law in relation to civil and commercial obligations which is already well advanced in the Community with the "Brussels I" Regulation and the Rome Convention of 1980. This measure is being taken as part of ongoing efforts by the EU to create a genuine European area of freedom and justice. The goal is to ensure that courts in all the Member States apply the same law to cross-border disputes involving non-contractual obligations, thereby facilitating mutual recognition of court rulings in the European Union. The rules proposed by the Commission strike a reasonable balance between the interests of the parties involved in a cross-border dispute. They also aim at applying a law that reflects the centre of gravity of the situation. There is a substantial difference in scope between the Brussels and Rome conventions. The former covers both contractual and non-contractual obligations whereas the latter covers only contractual obligations the proposed Regulation, commonly known as the "Rome II", will be the natural extension of the unification of the rules of private international law relating to contractual and non-contractual obligations in civil or commercial matters in the Community. The initiative focuses on the question of civil liability for damage caused to others, particularly in case of accidents such as traffic accidents or accidents caused by a defective product, or in case of invasion of privacy. With increased trade and movement within the Union, this kind of litigation will become more widespread. Member States do not at present have common rules for deciding which law should apply in cases concerning non-contractual obligations, so each court applies its own national rules. Consequently, the outcome of cases can vary widely from one Member State to another, prompting plaintiffs to bring their actions before the courts which will apply the most favourable legislation ("forum shopping"). The conflict of laws' rules proposed by the Commission strike a reasonable balance between the interests of the person claimed to be liable and the person sustaining the damage. Since the basic rule leads, in general, to the application of the law of the place where the damage is sustained, the proposal reflects the legitimate expectations of the victim, who - in particular in the case of an accident - never intended to enter into relation with the author of the damage. The proposed regulation also contains specific rules for particular matters in which the basic rule does not allow for striking such a balance. The solutions proposed by the Commission, which reflect the recent developments of the rules on conflict of laws' in the Member States, also lead to the application of a law that corresponds to the centre of gravity of the situation. They will also serve to strengthen legal certainty: many Member States have not codified their private international law rules, and as a result solutions emerge from the decisions of the courts which are generally not well known by the public. Thus the present proposal contributes to better transparency and foreseeability of how these types of disputes are resolved. International jurisdiction and the recognition and enforcement of judgements in another Member State is already dealt with in Council Regulation 44/2001/EC of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, which applies to both contractual and non-contractual obligations. As regards applicable law, the rules on contracts were harmonised by the Rome Convention of 1980 on the law applicable to contractual obligations. This initiative will complete the harmonisation at Community level of the rules of private international law on civil and commercial obligations. This proposal was the subject of a large-scale public debate based on a written consultation on a preliminary draft proposal for a Regulation in 2002 and a public hearing in Brussels in January 2003. The final Commission proposal takes due account of the numerous comments made.