

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

2003/0168(COD) - 06/07/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Diana WALLIS (UK, ALDE,) and made some amendments to the Commission's proposal. The principal amendments are as follows:

- The parties may agree, by an agreement entered into after their dispute arose or, where there is a pre-existing arms-length commercial relationship between traders of equal bargaining power, by an agreement freely negotiated before the dispute arose, to submit non-contractual obligations to the law of their choice.
- In the absence of such an agreement and unless otherwise provided for in the Regulation, the law applicable to a non-contractual obligation arising out of a tort or a delict will be the law of the country in which the damage occurs or is likely to occur.
- Notwithstanding the general rule on freedom to choose the applicable law and by way of exception, where it is clear from all the circumstances of the case that the non-contractual obligation is manifestly more closely connected with another country, the law of that other country shall apply. Parliament sets out the factors that may be taken into account as manifestly connecting a non-contractual obligation with another country. They include protection of legitimate expectations;
- The choice of law made by the parties will not deprive an employee who is a party to a contract of employment of the protection that would be afforded to him by the mandatory rules under certain conditions;
- For violation of privacy and defamation cases, the country in which the most significant element or elements of the damage occur or are likely to occur should be deemed to be the country to which the publication or broadcasting service is principally directed, or if this is not apparent, the country in which editorial control is exercised, and that country's law should be applicable. The country to which a publication or broadcast is directed should be determined in particular by the language of the publication or broadcast or by sales or audience size in a given country as a proportion of total sales or audience size or by a combination of those factors. Similar considerations should apply in respect of publication via the Internet or other electronic networks. The Commission had proposed a different formula, under which the law of the country where the damage occurs would apply unless this breaches the fundamental principles of freedom of expression and information.
- Special rules are laid down for liability arising out of unjust enrichment or agency without authority.
- Parliament clarified that the Regulation does not apply to non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships as having comparable effects to marriage.
- Parliament deleted specific choice of-law rules for environmental offences, product liability and unfair competition, opting instead for a general rule that the law applicable shall be the law of the country in which the damage occurs.

- On road traffic accidents, for the purposes of determining the type of claim for damages and calculating the quantum of the claim, the court must apply the rules of the individual victim's place of habitual residence unless it would be inequitable to the victim to do so. With regard to liability, the applicable law will be the law of the place where the accident occurred.

- The law applicable to a non-contractual obligation arising out of industrial action will be the law of the country in which the action is to be taken or has been taken.

- The court seised will establish the content of the foreign law of its own motion. To this end, the parties' collaboration may be required. If it is impossible to establish the content of the foreign law and the parties agree, the law of the court seised shall be applied. However, the rules of the Regulation do not apply to evidence and procedure.

- The Commission must report on certain specified matters within three years of the date of adoption of the Regulation.