

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

2003/0168(COD) - 20/12/2006

The committee adopted the report by Diana WALLIS (ALDE, UK) amending the Council's common position under the 2nd reading of the codecision procedure. The amendments focused on a number of issues concerning which Parliament's 1st reading position had not been reflected in the Council's text:

- the committee again insisted that the special provisions on unfair competition and environmental damage should be deleted from the text, on the grounds that the general rule can cater perfectly well for such cases;
- the rapporteur expressed disappointment that the Commission had decided to withdraw from its proposal the provisions on privacy and rights of personality, which were specifically excluded from the scope of the Council's common position (although they were mentioned in the review clause). The committee wanted these matters to be governed by the final regulation and reinstated the amendment on this subject adopted by Parliament at 1st reading. Under these provisions, as regards the law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality, the law of the country in which the most significant element or elements of the loss or damage occur or are likely to occur should be applicable. Where the violation is caused by the publication of printed matter or by a broadcast, the country in which the most significant element or elements of the damage occur or are likely to occur shall 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 factors used to determine that country would include the language of the publication or broadcast or sales or audience size in the country as a proportion of total sales or audience size, or a combination of those factors. Similar considerations should apply in respect of publication via the Internet or other electronic networks;
- with regard to road traffic accidents, the committee again sought to have the victims' national law applied for the purposes of calculating the quantum of the claim. However, this time it extended the provisions to cover personal injury cases in general. The amendment provided that that, in quantifying damages in personal injury cases, "the court seised should apply the principle of *restitutio in integrum* having regard to the victim's actual circumstances in his country of habitual residence". This would include the actual cost of after-care and medical attention;
- MEPs in the committee reinstated the EP's 1st reading amendment designed to ensure that the 'Rome II' regulation can co-exist with internal market legislation and promote, rather than hamper, the proper functioning of the internal market;
- lastly, the committee amended the review clause in order to ensure a more focused approach in future to finding solutions to those issues to which Parliament attached particular importance, such as road traffic accidents, violations of privacy and rights relating to the personality.