

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

2003/0168(COD) - 18/01/2007 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a resolution drafted by Diana Wallis (ALDE, UK) and approved a number of amendments that reintroduce the provisions related to violations of privacy, previously deleted in the Council's common position. The key amendments were as follows:

- a new recital states that the conflict-of-laws rules set out in the Regulation also cover obligations based on strict liability and the harmonised rules on connecting factors also apply to the question of the capacity to incur liability in tort/delict;

- nevertheless, the need to avoid distortions of competition and the requirement of legal certainty must be tempered by the need to do justice in individual cases, and consequently the courts must have a margin of discretion;

- as in the Rome Convention, the principle of "iura novit curia" applies. The court itself should of its own motion establish the foreign law. For the purposes of establishing the foreign law the parties should be permitted to assist the court and the court should also be able to ask the parties to provide assistance;

- Article 6 on **unfair competition and acts restricting free competition was deleted** from the text. It was considered that the general rule could cater perfectly well for cases involving unfair competition. Article 6(3) should cover, inter alia, distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market, **within the meaning of Articles 81 and 82 of the Treaty**;

"Environmental damage" should cover damage to protected species and natural habitats, water damage and land damage as defined in Article 2 of Directive 2004/35/EC;

- Parliament inserted a **new article on violations of privacy and rights relating to the personality**. (Please see the preceding summary on this point.) 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 will 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 will 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 shall be applicable. The country to which the publication or broadcast is directed must 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. This provision will apply mutatis mutandis to publications via the Internet and other electronic networks;

- with regard to road traffic accidents, Parliament again sought to have the victims' national law applied for the purposes of calculating the quantum of the claim. The amendment states that, in **quantifying damages in personal injury cases**, the court seised shall 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;

- the **Commission's report** must pay particular attention to the effects of the way in which foreign law is treated in the different jurisdictions and the question of damages, including the possibility of awarding exemplary or punitive damages in certain jurisdictions. The report shall also include an analytical study of the extent to which courts in the Member States apply foreign law in practice, including recommendations as to the desirability of a common approach to the application of foreign law. The Commission, after extensive consultation with the interested parties, including the Hague Conference on Private International Law, must submit a report on the situation with regard to the law applicable to road traffic accidents. The report must be accompanied by an extensive study of the scale of the phenomenon, the problems and an extended impact assessment. If appropriate, the report will propose amendments to the Regulation and/or the adoption of specific legislation.