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Committee on Legal Affairs

30.11.2006

PE 382.262v02-00

AMENDMENTS 27-39

Draft recommendation for second reading

(PE 378.852v02-00)

Diana Wallis

Common position adopted by the Council on 25 September 2006 with a view to the adoption of a regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations ('Rome II')

Council common position (9751/7/2006 – C6-0317/2006 – 2003/0168(COD))

Council common position

Amendments by Parliament

Amendment by Gabriele Stauner

Amendment 27
Recital 29a (new)

(29a) In the context of the law applicable under this Regulation the court should take into account the fact that the injured party does not have his place of residence in the state in which the accident occurred.

Or. de

Justification

The rapporteur rightly points out that injuries do not always, particularly in the case of road accidents, take place and have to be compensated only at the scene of the accident, but also in the victim's home country. Of course this point must not be allowed to result in rules under material law being created on the nature and scale of the compensation. There is no legal basis for this under Article 65 of the EC Treaty. Indeed it would go beyond the scope of this regulation, which seeks to lay down rules for dealing with conflicts of law. The proposed

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wording also avoids actually creating incentives for litigation. This is especially important in the area of large-scale offences.

Amendment by Gabriele Stauner

Amendment 28
Recital 30a (new)

(30a) As in the Rome Convention, the principle of ‘iura novit curia’ applies. The court itself should of its own motion establish the foreign law. In establishing the foreign law the parties are permitted to assist the court and the court should also be able to ask the parties to provide assistance.

Or. de

Amendment by Gabriele Stauner

Amendment 29
Article 1, paragraph 3

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.

3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles **15a**, 21 and 22.

Or. de

Justification

This amendment should be seen in conjunction with the amendments inserting Article 15a and Recital 30a.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 30
Article 9

Without prejudice to Article 4(2), the law applicable to a non contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the

I. Without prejudice to Article 4(2), the law applicable to a non contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the

organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

2. This Article shall not apply to industrial action taken against a ship. In that case the general principles contained in Article 4 shall apply.

Or. en

Justification

The situation in shipping is very different from land-based industries for which Article 9 could be appropriate. Ships move around and serve harbours of different countries. If industrial action against ships were to be governed by the laws of the different harbours served during a voyage, the rules to apply would vary considerably, thus creating legal uncertainty. Therefore, the law of the flag State should be the rule as far as shipping is concerned.

Amendment by Piia-Noora Kauppi

Amendment 31
Article 9

Without prejudice to Article 4(2), the law applicable to a non contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

This Article shall not apply to industrial action taken against a ship. In that case the general principles contained in Article 4 shall apply.

Or. en

Justification

Article 4 stipulates that the law applicable to a tort is the law of the country in which the damage occurs. Article 9 proposes that the applicable law will always be the law of the

country in which the industrial action is carried out. The situation in shipping is very different from land-based industries, for which Article 9 could be appropriate. If industrial action against ships were to be governed by the laws of the different harbours served during a voyage, the rules to apply would vary considerably. This would be impractical and create uncertainty. Generally all internal relations on a ship are governed by the law of the flag State; this mirrors the fact that in many respects a ship is considered part of the flag State's territory. This legal situation creates predictability for seafarers, who can rely on the terms agreed upon in the employment contract. A change as proposed in Article 9 could result in EU ships avoiding ports where this could give problems, which in practice would mean that ROME II could result in reduced market access for EU ships in some EU ports.

Amendment by Gabriele Stauner

Amendment 32
Article 15 a (new)

Article 15a

Establishing the substance of foreign law
The court seised shall of its own motion establish the substance of foreign law. To that end the court may in certain circumstances also ask the parties to provide assistance.

Or. de

Justification

The principle 'iura novit curia' applies. The court must itself ascertain the foreign law on its own initiative. In ascertaining the foreign law the parties are permitted to assist the court and the court may in appropriate cases call for assistance.

Amendment by Gabriele Stauner

Amendment 33
Article 26, paragraph 1a (new)

1a. In particular, the application of a rule of law specified by this Regulation may be refused if such application would lead to a breach of fundamental rights and freedoms, as enshrined in the European Convention on Human Rights and the

national constitutional law of the Member States.

Or. de

Justification

The rapporteur's Amendment 24 to Article 26 is broadly acceptable. Only the conclusion, to the effect that refusal to apply a provision of a foreign law on the grounds of 'ordre public' will lead to the application of 'lex fori', is not accepted as this is not necessarily the case. The question should be left open for the national law to decide. It also seems unnecessary to refer to international humanitarian law.

Amendment by Gabriele Stauner

Amendment 34
Article 27

This Regulation shall not prejudice the application of ***provisions of Community law*** which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

This Regulation shall not prejudice the application of ***acts of the institutions of the European Communities*** which:

(a) in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations; or

(b) lay down provisions which apply irrespective of the national law governing the non-contractual obligation in question by virtue of this Regulation; or

(c) lay down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of private international law.

Or. de

Justification

The rapporteur's aims are broadly acceptable. But there is no need also to refer to the adoption of legal acts, since Article 27 of the common position is not confined to Community acts that are already adopted. In the interest of legal certainty, letter (c) of the rapporteur's draft report has not been included.

Amendment by Klaus-Heiner Lehne

Amendment 35
Article 28

Relationship with existing international conventions ***deleted***

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them insofar as such conventions concern matters governed by this Regulation.

Or. de

Amendment by Katalin Lévai

Amendment 36
Article 28, paragraph 2a (new)

2a. If all the other elements of the situation at the time when the loss is sustained are located in one or more Member States of the European Union, the rules of this Regulation shall take precedence over those of the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.

Or. en

Justification

To date, only a few Member States have ratified the Hague Convention referred to. In this connection, the regulation should make it clear that the Hague Convention should be

secondary to Rome II in terms of applicability.

Amendment by Klaus-Heiner Lehne

Amendment 37
Article 30

Not later than ...*, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. ***In particular, the report shall consider non-contractual obligations arising out of traffic accidents and out of violations of privacy and rights relating to personality, including defamation.***

Not later than ...*, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation.

Or. de

Amendment by Gabriele Stauner

Amendment 38
Article 30

Not later than ...*, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. ***In particular, the report shall consider non-contractual obligations arising out of traffic accidents and out of violations of privacy and rights relating to personality, including defamation.***

Not later than ...*, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation.

In making its report, the Commission shall 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.

Not later than ..., the Commission, after extensive consultation with the interested parties, shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the situation in the field of violations of privacy and rights relating to personality with regard to freedom of opinion and freedom of the press. The report shall include an extensive study of the scale of the phenomenon, the problems and an extended impact assessment. If appropriate, the report shall propose amendments to this Regulation and/or the adoption of specific legislation.

Not later than ..., the Commission, after extensive consultation with the interested parties, including the Hague Conference on Private International Law, shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the situation with regard to the law applicable to road traffic accidents. The report shall be accompanied by an extensive study of the scale of the phenomenon, the problems and an extended impact assessment. If appropriate, the report shall propose amendments to this Regulation and/or the adoption of specific legislation.

Or. de

Justification

The rapporteur's wish for an extended review clause is shared. The clause should also make it possible to reach agreement with the Council. Since despite intensive debate it has not been possible to find a solution at the Council for the field of violations of privacy and rights relating to personality, following the Commission's withdrawal of the relevant proposal, this issue should not stand in the way of adoption of the regulation as a whole. But this area needs to remain of interest to the legislator because of its fundamental importance. Finally there is no need for particular professional groups to be specified as interlocutors for consultation..

Amendment by Piia-Noora Kauppi

Amendment 39
Article 30

Not later than....*, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposal to adopt this Regulation. In particular, the report shall consider non contractual obligations arising out of traffic accidents ***and out of violations of privacy and rights relating to personality, including defamation.***

Not later than....*, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposal to adopt this Regulation. In particular, the report shall consider non contractual obligations arising out of traffic accidents.

Or. en

Justification

Non-contractual obligations related to violations of privacy and rights relating to personality, including defamation, have explicitly been excluded from the scope of the regulation in its Article 1(h).

Moreover, the insignificant number of cross-border cases in this area has been recognised by the European Commission. The legal basis of the Regulation, Article 65 of the Treaty, only concerns measures of judicial cooperation in civil matters having cross-border implications and thus necessary for the proper functioning of the Internal Market. In this context, the legal basis on the Regulation fails to be valid for non-contractual obligations arising out of violations of privacy and rights relating to the personality.