

Rome I: New Rapporteur (and New Amendments) in the European Parliament Legal Affairs Committee

Following the appointment of *Maria Berger*, in January 2007, as Minister of Justice of Austria, the role of rapporteur on Rome I Proposal in the European Parliament Committee on Legal Affairs (JURI) has been taken on by *Cristian Dumitrescu*, vice-chairman of the JURI Committee, named on February 23rd 2007 (see the OEIL page on Rome I).

In order to allow Mr Dumitrescu to set out his proposed approach and timetable, the Committee decided in its meeting of February to re-open the deadline for tabling amendments (cf. the JURI-newsletter n. 3/2007).

At the meeting of 19 March 2007, a document was released (doc. n. PE 386.328v01-00 of 5 March 2007) containing 11 new amendments, 6 of which were presented by the rapporteur. The 'Rome I' file currently being examined by the JURI Committee is thus formed by three documents:

- **the original Draft report by Maria Berger** (doc. n. PE 374.427v01-00 of 22 August 2006: see our resumé here);
- **the first set of 54 amendments** (amendments 32-85: doc. n. PE 382.371v01-00 of 7 December 2006), presented at the meeting of the Committee of 20 December 2006: most part of the modifications proposed by the MEPs deals with art. 3 (amendments nn. 40-46), art. 4 (nn. 47-52) and art. 5 (nn. 53-67);
- **the second set of amendments** (amendments 86-96: doc. n. PE 386.328v01-00 of 5 March 2007), referred to above.

In addition, an **opinion was delivered** for the JURI Committee **by the Committee on Employment and Social Affairs** (rapporteur: Jan Andersson; doc. n. PE 374.323v02-00 of 14 September 2006), exclusively focused on the conflict rule for employment contracts, in the light of the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

A closer look at some of the amendments presented by rapporteur *Dumitrescu* shows some potentially controversial issues:

- Recital 7, as modified by amendment 87, would **limit the party autonomy to a very narrow scope**:

[T]he parties' freedom to choose the applicable law can be exercised only in favour of the law of a Member State or of principles adopted by the Community legislator in accordance with the codecision procedure. In cases where the parties choose such principles as the applicable law, those principles apply without prejudice to the imperative provisions of the law applicable in the absence of choice and of other Community legal instruments.

- accordingly to recital 7, art. 3(2) of Rome I Proposal, on the **choice as the applicable law of a non-State body of law**, would be redrafted as follows (amendment 90):

The parties may also choose as the applicable law the principles and rules of the substantive law of contract, provided that those principles and rules have been incorporated in a Community instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty. However

(a) questions relating to matters governed by such principles or rules which are not expressly settled by them shall be governed in accordance with the law applicable in the absence of a choice under this Regulation;

(b) the imperative provisions of the law applicable in the absence of choice under this Regulation shall remain applicable, in particular in the case of consumer protection. The application of these principles and rules shall not affect the application other relevant provisions of Community law.

- a **new art. 4a** is introduced **on the law applicable to real property rights** (amendment 91):

Notwithstanding Articles 3 and 4, the law applicable to real property rights, including security rights in the form of immovable property, shall be the law of the place in which the immovable property is situated.

Other amendments presented by the rapporteur deal with voluntary agency (amendment 94: art. 7), form of contract on rights in immovable property (amendment 95: art. 10(4)) and art. 13 on voluntary assignment and contractual subrogation (amendment 96).

The Draft 'Rome I' report is scheduled for adoption in the JURI Committee on 3 May 2007. The subsequent vote at plenary session by the Parliament is scheduled on 22 May 2007 (cf. the OEIL page on Rome I proposal).