

Rome II: Draft Recommendation for EP Second Reading

Diana Wallis MEP and the Committee on Legal Affairs have published the Draft Recommendation for the European Parliament's Second Reading, following the Council's Common Position, on adopting a regulation on the law applicable to non-contractual obligations (Rome II).

Much that was removed by the Commission and Council has been reinserted by the Rapporteur; she has, for example, "decided to continue to press for inclusion" of rules relating to road traffic accidents and violations of privacy and rights relating to the personality. For the latter, new Recital 25a identifies the country where the most significant element(s) occur as:

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 Rapporteur is not put off by its removal in both the amended Commission proposal and the Council's Common Position; indeed, it is suggested that "this issue should not be shirked".

Perhaps even more controversially, provisions have been introduced that would seem to be procedural rules on the pleading and proof of foreign law: new Article 15a states that:

*Any litigant making a claim or counterclaim before a national court or tribunal which falls within the scope of this Regulation **shall notify** the court or tribunal and any other parties by statement of claim or other equivalent originating document of the law or laws which that litigant maintains are applicable to all or any parts of his claim.*

New Article 15b requires the court seised to

*establish the content of the foreign law **of its own motion**. To this end, the parties' collaboration may be required.*

The icing on the cake, however, comes with new Article 21a, innocently entitled "Damages". It 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.*

The Rapporteur admits, in new Recital 29a, that the amendments to the damages provisions that have been drafted seek the same result as those contained in Parliament's first-reading amendments, but simply by different means. The reintroduction is justified on the basis that:

...it is vital to take account of the circumstances in which the victim will find him or herself in his or her country of habitual residence: the actual cost of nursing and carers, medical aftercare and so on. This provision will assist in making free movement of persons within the internal market more attractive for citizens, while showing an awareness of citizens' concerns. It will also avoid placing an unfair burden on the social security and assistance schemes of the country of habitual residence of an accident victim.

The full draft recommendation, with all of the amendments, can be found [here](#).