

Diana Wallis on the Need to Find Coherent EU Cross-Border Legislation

Diana Wallis MEP (*Rapporteur for Rome II*) has stated the case for the Europeanization of the conflict of laws, specifically the need for Rome II, in a piece published by The Lawyer.

Rome II, Wallis states, may well be the subject of a conciliation process (as we noted here a while ago), and the Rapporteur seems suprised that it has come to that:

Why should this have been so difficult when there is clearly a perceived need to provide legal certainty? Some member states of the EU have no conflict rules at all, some have only partial rules and, of course, in other cases the rules of individual countries may themselves be in conflict with one another.

So if we are to know where we are with regards the legal diversity of Europe, we at least need an agreed set of coherent rules; a set of rules that we can all apply to determine whose national law is to be used in any given set of tortious facts that the increasingly mobile lives of EU citizens throw up.

Concessions that there were going to be problems “when such a technical field came into co-decision and also a reticence to let the decision-making out of the expert committees in national justice ministries” are rebuffed by the claim that “...however, the European Parliament has taken its time, consulted widely, held hearings and engendered debate.” Wallis then goes on to discuss two big sticking points for Rome II: *defamation* and *road traffic accidents*. In terms of the former, she states:

So difficult an issue is this that the European Commission has belatedly attempted to withdraw it entirely from the proposal. That may ultimately be the only answer, although the European Parliament did get a formulation at first reading that was supported widely and which it is currently sticking to. A blank space in the legislation will not provide legal certainty and the issue in a world

of growing global and popular media will surely be back to haunt the legislator sooner rather than later.

The arguments for the road traffic accidents, and the damages issue, are rather more fierce:

The problem is that the level of compensation for personal injury varies enormously in member states. Put simply, if a Brit has an accident in Spain the compensation would likely be a third or even a quarter of what might be awarded by an English court. The problem being that it is in the UK that the victim will probably live out their life.

This has led to a huge debate, with suggestions for solutions that certainly offend the private international law purists, even if they do deliver justice. The debate continues, but the European Parliament will not let go, as it plainly touches on the lives of many whom the European Parliament represents.

You can view the full article by Diana Wallis MEP [here](#). Whatever else, it seems clear that all is not well within the European law-making institutions in their struggle to agree on rules on the law applicable to non-contractual obligations.