

Final Round for Rome II: Adoption by the Council, Commission's Statements on the Review Clause and Parliament's Report on the Joint Text

The Council, in the meeting held by the "Environment" configuration in Luxembourg on 28 June 2007, **has adopted the Rome II joint text** approved by the Conciliation Committee, **with the Latvian and Estonian delegations voting against** (see the concerns regarding the conflict rule on industrial action – art. 9 – that these Member States had expressed in a joint declaration issued in the Council's vote on the Common position).

An addendum to the minutes of the Council's meeting contains **three statements by the Commission on the studies regarding the controversial issues** that were set aside in the conciliation (violations of privacy and rights relating to personality, level of compensation awarded to victims of road traffic accidents, treatment of foreign law), to be submitted in the frame of the review clause of Art. 30. These statements will be published in the Official Journal with the legislative act.

The **Parliament's vote** on the joint text, that will formally end the codecision procedure by adopting the Rome II Regulation, is scheduled **on 9 July 2007**. With a view to the final vote, **Rapporteur Diana Wallis** has prepared a **Report of the EP Delegation to the Conciliation Committee**, summarizing the legislative procedure and presenting to the Parliament's plenary the agreement reached with the Council.

Here's a substantial part of the EP's Report (for further details on the previous stages of the procedure, see the Rome II section of our site):

The codecision and conciliation procedure

The Commission submitted on 22 July 2003 a proposal for a Regulation on the

Law Applicable on Non-Contractual Obligations. Following Parliament's first reading on 6 July 2005 (54 amendments adopted) the Council adopted its common position on 25 September 2006. Parliament then concluded its second reading on 18 January 2007 adopting 19 amendments to the Council's common position. The main issues at stake were: violation of personality rights ("defamation"); road traffic accidents; unfair competition; the definition of "environmental damage" the relationship with other Community instruments; the treatment of foreign law; the review clause.

The Council informed with letter from 19 April 2007 that it could not accept all of Parliament's amendments and that conciliation was necessary. Conciliation was then formally opened on 15 May 2007. [...]

Three trilogues held between 6 March and 24 April 2007 [...], followed by subsequent meetings of the EP Delegation [...], lead to provisional agreement on 5 amendments. The Conciliation Committee met then in the evening of 15 May 2007 in the European Parliament with a view to formally opening the conciliation procedure and possibly reaching agreement on the outstanding issues. After several hours of deliberations an overall agreement was reached at midnight. It was unanimously confirmed by the EP Delegation with 17 votes in favour.

The main points of the agreement reached can be summarised as follows:

Road traffic accidents

[...] One of the EP Delegation's main priorities was [...] to ensure that the individual victim's actual circumstances are taken into consideration by the court seized when deciding on the level of the compensation to be awarded.

For the short term, the EP Delegation succeeded in including a reference in the recitals of the Regulation whereby judges when quantifying personal injuries will take account of all relevant actual circumstances of the specific victim, including in particular the actual losses and cost of after-care and medical attention.

For the long term, the EP Delegation succeeded in securing a public commitment by the Commission for a detailed study on all options, including insurance aspects, on the specific problems faced by victims of cross-border

road traffic accidents. The study will be presented by 2008 the latest and would pave the way for a Green Paper. [...]

Unfair competition

On the EP Delegation's insistence the Council agreed to the Commission's proposal for a specific rule on unfair competition that respects the principle of the application of one single national law (an important point for judges and lawyers) while at the same time limiting to a large extent the danger of "forum shopping" (the possibility for plaintiffs to raise their law suit in the Member State of their choice).

Environmental damage

The EP Delegation succeeded in obtaining a definition on "environmental damage" - a term used but not defined in the common position. The definition is in line with other EU instruments, such as the Directive on Environmental Liability.

Violation of personal rights ("defamation")

In view of an overall compromise the EP Delegation had to withdraw its amendments on the inclusion of rules on the violation of personal rights, particularly defamation in the press. Though Parliament managed to overcome the national differences and various conflicts of interests and to adopt its amendments by a large majority, the Member States were unable until the very end to agree on a common approach. The issue however is considered as a "left-over": as part of the review of the Regulation the Commission will draw up a study by 2008 on the situation in this specific field. The findings of the study can serve as a basis for the adoption of relevant rules at a later stage.

Relationship with other Community instruments

On the controversial issue of the relationship between the "Rome II" Regulation and other provisions of Community law it was agreed that the application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments such as the e-Commerce Directive.

Treatment of foreign law

The issue of the treatment of foreign law by national courts – especially how often and how well national courts apply the law of another country – is also settled on the basis of a detailed study to be carried out by the Commission as part of its report on the application of the Regulation. [...]

Review clause

On the insistence of the EP Delegation the review clause was split into a special section with a shorter timetable by 2008 as regards violation of privacy rights (“defamation”) and a general section with the standard timetable whereby the Commission will present a report on the application of the Regulation four years after its entry into force. As part of the general review clause the Commission will also carry out a study on the treatment and application of foreign law by the courts of the Member States and a second study on the effects of Article 28 of the Regulation (“Relationship with existing international conventions”) with regard to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

*[Update: following a comment by M. Winkler on a previous item on Rome II, **Mrs Wallis has posted on our site a reply** providing some clarifications on the Parliament’s approach to the conflict rule **on environmental damage**. Any further comment, on this or other provisions of the Regulation, is welcome]*