Rome II: Agreement Reached in the Conciliation Committee

As stated on press releases published by the Council and the Commission (DG Freedom, Security and Justice), **an agreement has been reached on the text of the Rome II Regulation, during the first official meeting of the Conciliation Committee that was held yesterday evening** (the Conciliation Committee had been convened, pursuant to Art. 251(3) of the EC Treaty, after the formal rejection by the Council of the Parliament's Legislative resolution at second reading: for further details on the steps of the complex procedure that has lead to the agreement, see the Rome II section of our site).

According to a statement by Diana Wallis, Rapporteur on Rome II in the European Parliament, prior to the official meeting of yesterday **the institutions** involved in the codecision procedure (Council and Parliament, the Commission playing a mediating role) **had held six informal meetings** in order to facilitate the negotiations (so called "trialogues": for an overview of the conciliation stage, see the "codecision" section of the Commission's website).

The content of the agreement is summarized as follows in the Council's press release, with particular reference to the controversial issues (that were emphasized by the Commission in its opinion on the EP Second reading):

> *As a general rule, the draft Regulation sets out that the law applicable to a tort/delict is the law of the country where damage occurred. Only in certain limited, duly justified circumstances, the general rule will be derogated from and special rules applied. The draft Regulation contains special rules in matters of product liability, unfair competition, environmental damage, infringements of intellectual property and industrial action. In the context of a global compromise package, the Conciliation Committee settled all the questions arising from the amendments adopted by the European Parliament in second reading.*
>
> *The agreement includes notably:*
>
> ***Violation of privacy or rights relating to the personality:***

While it was agreed that legal actions connected with those rights will be excluded from the scope of this Regulation, the Commission was asked through a review clause to present, not later than 31 December 2008, a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights to relating to personality, taking into account rules relating to freedom of the press and freedom of expression in the media. Violations of privacy resulting from the handling of personal data will be also dealt with in the Commission's study.

Damages in personal injury cases:

This question arises primarily in connection with traffic accidents which have connection with more than one State. In particular, the issue of the quantification of damages in personal injury cases was discussed. The solution agreed provides, on the one hand, for a recital with criteria for the quantification of damages to be applied by judicial authorities in accordance with national compensation rules. On the other hand, the Commission undertook to examine the specific problems resulting for EU residents involved in road traffic accidents in a Member State other than the Member State of their habitual residence and to prepare a study on all options before the end of 2008. This study would pave the way for a Green Paper.

Unfair competition and acts restricting free competition:

A compromise solution was found. It will allow for the application of one single law, while at the same time limiting, as far as possible, "forum shopping" by claimants.

Foreign law:

The Commission will prepare a study on the effects on the way in which foreign law is treated in the different jurisdictions and on the extent to which courts in the Member States apply foreign law in practice pursuant to this Regulation.

Other issues that were settled by the Conciliation Committee concern the relationship with other Community law instruments, the definition of environmental damage for the purposes of this Regulation, and a provision on punitive damages in the context of public policy.

The consolidated text resulting from the agreement (so called "joint text") is not yet available, subject to legal linguistic revision: however, **technical details on the joint text are provided by the statement released by Diana Wallis on her website**, with specific reference to the amendments adopted by the European Parliament at second reading on the basis of the Council's common position.

Once the linguistic revision completed, the Regulation shall be endorsed by the Parliament (absolute majority of votes cast) and the Council (qualified majority voting procedure) to be adopted, within six weeks from the date of approval of the joint text, pursuant to Art. 251(5) of the EC Treaty: the Parliament's vote is scheduled in the plenary session of 10 July 2007 (see the OEIL page on Rome II).

It is entirely possible that the Regulation will be published in the Official Journal in July 2007 (following the Parliament's vote in plenary and the expected signature of its President and the Council's). If no change has been made to the provisions on the application in time, it will start to apply in early 2009 (see art. 32 of the Council's Common Position), to events giving rise to damage which occur after its entry into force (art. 31; the date of entry into force is on the twentieth day following that of the publication on the O.J., except otherwise specified).

(Many thanks to Andrew Dickinson and Janeen Carruthers for the tip-off, and to Martin George and Edouard Dirrig for providing additional information and clarifications)