

The Debate on "Rome II" in the European Parliament

Following on from our news item on the European Parliament's adoption, in plenary session, of the proposed Regulation on the law applicable to non-contractual obligations ("**Rome II**"), the **debate that preceded the vote** has been published online. The opening by Diana Wallis MEP, the Rapporteur, is worth reproducing in full, for Ms Wallis appeals as much to the MEPs' collective conscience as she does to their sense of what is legally correct, and viable:

Madam President, Commissioner, ROME II has been a long journey for us all and, whilst we might have hoped that this was the end, it seems likely that we are just at another staging post.

Let me start by saying that we appreciate that the common position took on board some of our ideas from the first reading. Commissioner, I also want to emphasise the importance that we attach to this regulation, providing, as it will, the ground plan, or roadmap, which will provide clarity and certainty for the basis of civil law claims across Europe. We need this, and we, here in Parliament, want to get it done, but it has to be done in the right way. This has to fit the aspirations and needs of those we represent. This is not just some theoretical academic exercise; we are making political choices about balancing the rights and expectations of parties before civil courts.

I am sorry that we have not reached an agreement at this stage. I still believe that it could have been possible, with more engagement and assistance. Perhaps it is because both the other institutions are not used to Parliament having codecision in this particular area – I am sorry, but you will have to get used to it!

I also want to thank all my colleagues in the political groups in the Committee on Legal Affairs, who have stuck together with me on this long journey and supported a common view, which, subject to sufficient presence in this Chamber today, will be clearly shown in our vote.

Now let me detail the points that still separate us. We have always made it clear that we prefer a general rule, with as few exceptions as possible. If we must

have exceptions, they must be clearly defined. Thus, we have accepted the position on product liability. However, problems still remain in respect of unfair competition and the environment.

With unfair competition, we also face a simultaneous proposal from Commissioner Kroes. The two proposals must work together; currently they do not. We have tried to present a more acceptable formulation, which, sadly, I think is unlikely to succeed here at today's vote, and I would therefore urge colleagues to support the deletion, to allow us to return to this at conciliation and do the work properly.

It is the same with the environment. I know and deeply respect the fact that many would like a separate rule, but it should not be a rule just for the sake of a headline. It should be a rule that is clear in terms of what facts it applies to. Given that we already have several possible formulations, the safest course, again, I would urge, is the general rule. This would also allow us to delete the separate rule today and return to the definition at conciliation.

Now I come to the two big issues for this Parliament. The first is defamation. Please understand that we know only too well how difficult an issue this is. However, we managed to get a huge majority at first reading across this House, and you will likely see a similar pattern repeated here today. That the Commission decided to exclude this issue before we could consider it again was disappointing, to say the least. That it did so on the basis of a clear two-year review clause, which has now been abandoned, is unacceptable. We know the issues surrounding this area of media and communication will only increase and continue to haunt us. Maybe we cannot deal with it now, but we will soon be looking at Brussels I again, and it is imperative that jurisdiction and applicable law remain in step. So, would we deprive ourselves of the opportunity to look at this again? Exclusion may truly be the only answer, but this Parliament wants to try a little bit more to see if we cannot resolve this.

I turn to the issue that my colleagues have been most tenacious in their support for (and I am very grateful for that): damages in road-traffic accidents. Commissioner, we have the support of insurers, the support of legal practitioners, the support of victims, the support of those we represent, but somehow we cannot transmit these concerns to the Commission or to the Council.

Even last week, I was confronted by a very senior justice ministry official who thought that what we were trying to do was the equivalent of applying German law to determine liability in respect of a road-traffic accident which had happened in the UK, where, of course, we drive on the 'wrong' side of the road. Do you really think we are that stupid? I wish people would have the courtesy to read and understand what we are suggesting: merely the accepted principle of restitutio in integrum – to put victims back in the position they were in before the incident. There should be nothing so fearful in this. Indeed, the illogical approach would be for a judge in the victim's country to be able to deal with the case by virtue of the Motor Insurance Directives and Brussels I, and then have to apply a foreign, outside law in respect of damages. This, indeed, would be illogical – and that is the situation we are currently in. Please look at what we are saying and appreciate that, given the even the greater mobility of our citizens on Europe's roads, this matter needs attention, sooner rather than later, and a four-year general review clause just will not do.

My last hope is that our debates will have brought the subject of private international law out of the dusty cupboards in justice ministries and expert committees into the glare of public, political, transparent debate. Therefore, all we ask is that you bear with us a little longer so that, together, the institutions of Europe can get this right.

Franco Frattini, Vice President of the European Commission, led the response to Ms Wallis in the ensuing debate. Other respondees include Barbara Kudrycka (PPE-DE), the Rapporteur for the Committee on Civil Liberties (LIBE) at an earlier stage of Rome II. You can read the full debate here (set out in the original language of each speaker).

(Many thanks to Giorgio Buono, University of Rome "La Sapienza", for the link. I'm also very pleased to announce that Giorgio has taken on the role of Editor for Italy of CONFLICT OF LAWS .NET, which brings our coverage of private international law around the world up to thirteen jurisdictions. Long may the growth continue.)