

JHA Council Session (5-6 June 2008): Adoption of the Rome I Reg. - Political Guidelines on Rome III and Maintenance Reg. - External Dimension of JHA

On 5 and 6 June the **Justice and Home Affairs Council** will hold its 2873rd session in Luxembourg, the last under the Slovenian Presidency. Among the “Justice” issues, scheduled for Friday 6th, **the Council is expected to adopt the Rome I Regulation on the law applicable to contractual obligations** (see the list of public deliberations; for earlier stages of the procedure, see the Rome I section of our site). It should be noted that the vote had been already scheduled for the JHA session held in April, but then, due to reasons not publicly known, it did not take place. The Council’s deliberation, that is open to public, will be broadcasted on the videostreaming section of the Council’s website, at 10:00 AM (GMT+1).

As regards the proposals that are still under consideration, the Council is expected to agree on **some political guidelines for further work on the Rome III and Maintenance regulations**. Here’s an excerpt from the background note of the meeting (see in particular the underlined part on Rome III, *emphasis added*):

Maintenance obligations

The Council will discuss a set of political guidelines of a proposal on maintenance obligations. The guidelines contain a compromise solution on six components of this draft Regulation and thus set out the framework for further discussions on this file. The Council will try to agree on the principal goal of the Regulation – complete abolition of exequatur on the basis of harmonised applicable law rules.

The ambition of the proposal is to eliminate all obstacles which still today prevent the recovery of maintenance within the European Union, in particular

the requirement of exequatur procedure. By abolishing this procedure all decisions on maintenance obligations would be allowed to circulate freely between the Member States without any form of control in the Member State of enforcement and this would significantly speed up the recovery of maintenance owed. It would enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors.

The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due. The six elements of the compromise refer to the scope, jurisdiction, applicable law, recognition and enforceability, enforcement and a review clause.

Jurisdiction and applicable law in matrimonial matters (Rome III)

The Council will have a debate on a proposal for a Council Regulation on rules concerning applicable law in matrimonial matters (Rome III). The purpose of this Regulation is to provide a clear and comprehensive legal framework (covering both jurisdiction as well as applicable law rules in matrimonial matters) and allowing the parties a certain degree of autonomy in choosing the competent court and applicable law in case of divorce.

Spouses would be allowed to choose a competent court or the law applicable to divorce. In the absence of a choice of law by the spouses, the text would introduce conflict-of-law rules. According to the proposal, there is a cascade of connecting factors: the divorce is governed by the law of the country of habitual residence of both spouses, failing that, by that of the last habitual residence of the spouses if one of them still resides there; failing that, of the common nationality of the spouses or, failing that, by the law of the forum. The conflict-of-law rules of the proposal aim at ensuring that, wherever the spouses lodge their request for divorce, the courts of any Member State would normally apply the same substantive law (avoiding of “forum shopping”).

It should be noted that the instrument will be of universal application. This means that the Regulation would also apply if the law applicable is that of a third State. Therefore, according to the proposal, courts have to apply either their own substantive law, that of another Member State or that of a third State (e.g. Switzerland, a US State or Turkey).

It should be noted that the Regulation needs unanimity of the Member States to be adopted and that so far the attempts made by the Presidency failed because of the concerns of some Member States. The goal of the Presidency is to establish at the Council that all possibilities for a compromise have been exhausted, that a large majority of delegations supports the objectives of this proposal and to discuss the possibility of enhanced cooperation between some Member States on this file.

As a last point, the Council will take note of the progress made regarding the **implementation of the strategy for the external dimension of Justice and Home Affairs**. While this strategy encompasses all the heterogeneous matters included in Title IV of the TEC (“Visas, asylum, immigration and other policies related to free movement of persons”), an increasing importance is given to the external relations in the field of judicial cooperation in civil matters.

The Council is currently **considering the accession of the EU to some Hague Conventions**, and **bilateral contacts are taking place with countries like Russia and Ukraine with the aim of clarifying the potential of a bilateral agreement on judicial cooperation in civil and commercial law matters** (see the provisional agenda of the meeting of the Committee on Civil Law Matters held on 27 May 2008). Unfortunately, most part of the related documents are not publicly available (see, for instance, the title of this document).

Some information can be found in the progress reports “on the implementation of the strategy for the External Dimension of the JHA”, prepared by the Commission and the General Secretariat of the Council. The first one, covering year 2006, can be downloaded here (Commission and Council Secretariat), while the second one (January 2007-May 2008) is due at the end of June (a preparing document by the Commission is available here).

(Many thanks to Pietro Franzina, University of Ferrara, for the tip-off on some of the documents referred to above)