

The Results of the JHA Council (24-25 July 2008): UK to Opt into Rome I Reg. - Enhanced Cooperation on Rome III Reg.?

On 24 and 25 July the **Justice and Home Affairs Council** held its 2887th session in Brussels, the first under the French Presidency. The official press release is currently available ~~only~~ in French (UPDATE: English version). Among the “Justice” issues, discussed on Friday 25th, **two main points are of particular importance as regards the development of European private international law.**

ROME I - UNITED KINGDOM TO OPT-IN

The United Kingdom has expressed its wish to opt-in to the Rome I Regulation (see p. 26 of the official press release; on our site, see the Rome I section and the programme of the September conference organized by the Journal of Private International Law). The decision follows the public consultation launched in April by the British Ministry of Justice, whose results have not yet been made publicly available.

ROME III - ENHANCED COOPERATION BETWEEN SOME MEMBER STATES?

As we reported in a previous post, the JHA Council of 5-6 June 2008 established that the unanimity required to adopt the Rome III Regulation could not be obtained, and therefore the objectives of the proposed instrument could not be attained within a reasonable period by applying the relevant provisions of the EC Treaty. According to press sources (IrishTimes.com and Reuters), agreement in the Council had appeared difficult to reach since the beginning of negotiations in 2006, due to the opposition of Sweden, which did not intend to put into question the application of its liberal divorce rules.

As a consequence, in the meeting of 25 July, nine Member States informally reported to the Council their decision to launch the “enhanced cooperation” mechanism (see pp. 23-24 of the official press release).

Here is an excerpt of the article published by the EUObserver.com (*emphasis added*):

Austria, France, Greece, Hungary, Italy, Luxembourg, Romania, Slovenia and Spain have teamed up in order **to formally request the European Commission launch the so-called enhanced co-operation mechanism** - allowing a group of countries to move ahead in one particular area, even though other states are opposed.

It is expected that they will make the request on Monday (28 July), one diplomat told the EUobserver. It is the first time such a move has been made.

It will then be up to the commission to make a legal proposal based on the request. This proposal will then go back to member states where it needs to be approved by a qualified majority of governments.

A controversial and politically sensitive issue anyway, this route for dealing with the divorce question has further irked some capitals because, under normal procedures, a decision in this area would have to be taken by unanimity.

Reacting to the move by the nine member states, EU justice commissioner Jacques Barrot said: "The commission will have to examine all the political, legal and practical implications of such an enhanced co-operation." "We need to get a clearer idea," he added. [...]

Malta and Sweden are widely considered the most reluctant to give the go-ahead to a EU-wide divorce scheme. Strongly Catholic Malta does not recognise divorce, while Stockholm fears that EU harmonisation in the area could threaten its liberal family law.

*Should the pioneering group achieve closer cooperation in this area, the mechanism must remain open to other countries as well. **Germany, Belgium, Portugal and Lithuania are also believed to be considering joining the initiative.***

The enhanced cooperation mechanism was introduced by the Treaty of Amsterdam in 1997, creating the formal possibility of a certain number of Member States establishing a closer (as it was formerly known in the English version before the Treaty of Nice) cooperation between themselves on matters

covered by the Treaties, using the institutions and procedures of the EU and EC. The relevant provisions of the Treaties (as amended by the Treaty of Nice), laying down the substantive conditions and the procedure for the establishment of the cooperation, are set out in Title VII of the TEU (Articles 43-45, providing the “general framework” of the mechanism) and Articles 11-11a TEC, which add special arrangements for areas covered by the EC Treaty.

A description of the mechanism can be found on this page of the Europa website. Here’s an excerpt detailing the procedure in the Community pillar:

Member States intending to establish enhanced cooperation within the framework of the EC Treaty shall address a request to the Commission, which may submit a proposal to the Council to that effect. Authorisation shall be granted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament. A member of the Council may still request that the matter be referred to the European Council of Heads of State and Government. Following this final discussion, the matter is referred back to the Council of Ministers, which may act by the majority provided for in the Treaties. The right of veto granted to the Member States by the Treaty of Amsterdam has thus been abolished. [...]

Article 11A lays down the procedure applicable to the subsequent participation of a Member State. The Commission shall decide on the request of a Member State to participate in enhanced cooperation. The role of the Commission is thus more important within the framework of the EC Treaty than within the other pillars.

It is important to note that the provisions on closer/enhanced cooperation were never actually put into effect since their introduction, and that their potential outcome is largely debated (see the controversial issue of the so called “variable geometry”, often referred as “two-speed Europe” or “Europe à la carte”): it will be therefore very interesting to see how they will be applied for the first time, and **what will be the impact of this “acceleration” by some Member States in the frame of the general debate on the future of the European integration**, so much troubled after the Irish referendum on the ratification of the Lisbon Treaty.

An interesting article on the matter (in French) has been written by *Jean*

Quatremer, over at *Coulisses de Bruxelles* blog, reporting the **negative reactions** of some Member States, such as **Czech Republic, Estonia, Finland, Latvia and Poland**, and the **decision of Ireland, Netherlands and the United Kingdom not to participate** in the enhanced cooperation.

It is paradoxical that the “dismal swamp” of the conflict of laws, one of the last sector to be communitarised, could act as a “front runner” in the progress (or regress?) of the European integration.

Further information will be posted as soon as available.

Kozyris on Rome II: Tort Conflicts on the Right Track! A Postscript to Symeon Symeonides’ “Missed Opportunity”

Prof. John Phaedon Kozyris (Universities of Thessaloniki and Ohio State) has published a very interesting article on Rome II in the latest issue of the *American Journal of Comparative Law* (Vol. 56(2), 2008): **Rome II: Tort Conflicts on the Right Track! A Postscript to Symeon Symeonides’ “Missed Opportunity”** (56 *Am. J. Comp. L.* 471). As the title explains, the article discusses the new European conflict regime on torts, in the light of the assessment made by *Prof. Symeonides* in his recent works (see in particular “Rome II and Tort Conflicts: A Missed Opportunity”, and the other articles cited in our related post, and “The American Revolution and the European Evolution in Choice of Law: Reciprocal Lessons”). While rejecting some of the critiques addressed by *Symeonides* to the final text of Rome II, *Kozyris* commends the EC co-legislators for adopting a “traditional” European approach:

Rome II must be praised for eschewing the “revolutionary” methodologies, especially of the American variety, and for employing definitive, recognizable,

and practical connecting factors to determine the applicable law.

In analysing the conflict rules, special attention is given by the author to the provision on product liability (or, as the author deems it more appropriate, “producer liability”).

The abstract reads as follows:

Regulation 864/2007, covering tort conflicts, concludes a long process that had started in the late 1960s to cover the entire field of obligations in the European Community. The author expresses his satisfaction that the final text, with its emphasis on the lex loci damni, with some habitual residence exceptions, escaped the shoals of the so-called “American conflicts revolution” with its parochial and pro-forum implications and its uncertainties. Further, he comments favorably on the particularized treatment of certain areas such as producer liability and environmental protection and on the inclusion of the in-between topics of unjust enrichment, negotiorum gestio and culpa in contrahendo. However, a closer and more detailed study of the key field of producer liability leads him to considerable reservations on the contacts selected and their prioritization.

Book: Calvo Caravaca / Carrascosa González - Las obligaciones extracontractuales en derecho internacional privado. El Reglamento Roma II

✘ Prof. Alfonso-Luis Calvo Caravaca (University Carlos III of Madrid) and Prof.

Javier Carrascosa González (University of Murcia) have recently published their latest work, devoted to tort conflicts: “**Las obligaciones extracontractuales en derecho internacional privado. El Reglamento Roma II**” (Editorial Comares, May 2008). Despite its title, centered on the new EC Regulation on the law applicable to non-contractual obligations, the book (in Spanish) covers the whole area of tort conflicts, both under the point of view of jurisdiction and applicable law, including matters excluded from the scope of application *ratione materiae* of the Rome II Reg. It is divided into three parts.

The first part (*Competencia judicial internacional y obligaciones extracontractuales*), **devoted to jurisdictional issues**, focuses on Art. 5(3) Brussels I Reg./1968 Brussels Convention, and the abundant case law of the ECJ on the interpretation of these basic provisions. Other conventional texts are taken into account, in the Brussels system (new Lugano Convention of 2007) and in special matters (nuclear damages, civil liability for oil pollution, intellectual and industrial property rights, international transports, etc.), along with the Spanish rules on jurisdiction in torts (Art. 22 of the *Ley Organica del Poder Judicial*). The final section deals with jurisdictional issues arising out of torts committed on the Internet.

The second part (*Ley aplicable a las obligaciones extracontractuales: conexiones generales*) **analyses the main features of the Rome II Reg.:** its methodological foundations, relationships with other international/EC instruments, scope of application, the provision on **choice of law by the parties** (Art. 14) and the **general rule set out in Art. 4** (*lex loci damni*, common domicile exception, escape clause).

The third part (*Ley aplicable a las obligaciones extracontractuales: materias específicas*) **covers the special rules of the Rome II Regulation on specific categories of torts and other non-contractual obligations** (Articles 5-13), along with matters excluded from its material scope of application (such as rights relating to the personality) or whose conflict regime is provided in other international instruments (oil pollution damages, collision between vessels, nuclear damages, etc.). As in the first part on jurisdiction, the last sections are devoted to the Spanish conflict rule on torts (Art. 10(9) of the *Código Civil*) and to problems arising from Internet torts.

The analysis of each provision and issue is complemented by a number of

examples, taken from real cases or fictitious, which help the reader to understand the conflict reasoning and the outcome of the choice-of-law process.

The detailed table of contents, and the introductory chapter (*Presentación*) can be found on the publisher's website.

Title: **Las obligaciones extracontractuales en derecho internacional privado. El Reglamento Roma II**, by *Alfonso-Luis Calvo Caravaca* and *Javier Carrascosa González*, Editorial Comares, Albolote (Granada), 2008, 248 pages.

ISBN: 978-84-9836-390-6. Price: EUR 23.

(Many thanks to Pietro Franzina, University of Ferrara, for the tip-off)

Readers of this blog might also be interested in the forthcoming ninth edition of the conflict of laws manual by *Calvo Caravaca* and *Carrascosa González*: ***Derecho Internacional Privado - Volumen I*** and ***Volumen II*** (Editorial Comares, July 2008). In addition, a valuable resource on PIL cases and legislation is the **excellent website of the Accursio Group** (Spanish Multi-University Group of Research, Teaching & Practice on Private International Law), created and maintained by the two Spanish professors with other scholars: see, besides a number of sections focused on Spanish PIL (such as those on international successions and polygamy), the *Laboratorio Bruselas* section (references and text of the ECJ's case-law on the EC instruments on PIL) and the *Super-Caso* section (tricky conflict cases to be solved by readers).

Rome I Reg. Adopted (and Other Results of the JHA Council Session

of 5-6 June 2008)

Following our post on the agenda of the JHA session held in Luxembourg on 5-6 June 2008, a factsheet has been released by the Slovenian Presidency with the main results of the Council in the field of judicial cooperation in civil matters.

The first and most important achievement is the **adoption of the Rome I Regulation on the law applicable to contractual obligations** (text of the regulation and declarations), that will be soon published in the OJ. The application in time of the act is set out in its Articles 28 and 29 (18 months after its adoption, to contracts concluded after the same date).

As regards the other items discussed in the Council, here's an excerpt of the factsheet (emphasis added):

Maintenance obligations

The Council agreed on a set of political guidelines for further work on a proposal for a Regulation on maintenance obligations and in particular on the principal goal of the Regulation: the complete abolition of exequatur on the basis of harmonised applicable law rules. [...] The guidelines agreed contain compromise solutions on six key elements of the proposal: its scope, jurisdiction, applicable law, recognition and enforceability, enforcement and a review clause.

Rome III - Applicable law in matrimonial matters

A large majority of Member States supported the objectives of this proposal for a Council Regulation. Therefore and due to the fact that the unanimity required to adopt the Regulation could not be obtained, the Council established that the objectives of Rome III cannot be attained within a reasonable period by applying the relevant provisions of the Treaties. Work should continue with a view to examining the conditions and implications of possibly establishing enhanced cooperation between Member States. [...]

The Hague Convention - Protection of children

*The Council adopted a **Decision** authorising certain EU member states to ratify, or accede to, the 1996 Hague Convention, and to make a declaration on the*

application of the relevant internal rules of EU law. This very important Convention concerns jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. It constitutes a crucial instrument to protect the interest of a children at worldwide level. [see also this [press release](#) by the Commission and a [preparatory document](#) to the attention of COREPER]

Recognition and enforcement of judgments on civil and commercial matters (Lugano)

Pending the assent of the European Parliament the Council approved the conclusion of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which will replace the Lugano Convention of 16 September 1988 (see Council doc. n. 9196/08 of 27 May 2008). [...]

External dimension

The Council agreed on an update of the external relations strategy in the field of judicial cooperation in civil matters. The document is not a legal framework but rather an evolving process of defining and achieving policy objectives in full conformity with the provisions of the EC Treaty.

In The Hague Programme the European Council called for the development of a strategy reflecting the Union's special relations with third countries, groups of countries and regions and focusing on the specific needs for JHA cooperation with them.

In April 2006 the Council approved a strategy document outlining aspects of judicial cooperation in civil matters (doc. n. 8140/06). As indicated in this document, the development of an area of freedom, security and justice can only be successful if it is underpinned by a partnership with third countries on these issues which includes strengthening the rule of law and promoting respect for human rights and international obligations.

The external dimension of judicial cooperation in civil matters has growing significance. On the one hand, international agreements with third countries are indispensable for providing legal certainty and foreseeability for European citizens on a global scale. On the other hand, it is also important to safeguard

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)

Rome II: a Critical Appraisal of the Conflict Rule on Culpa In Contrahendo

Prof. Rafael Arenas Garcia (Universitat Autònoma de Barcelona and Àrea de Dret Internacional Privat blog) has written an interesting article on the controversial issue of the **law applicable to culpa in contrahendo**, discussing the conflict rule set out in **Art. 12 of the Rome II regulation: “La regulación de la responsabilidad precontractual en el Reglamento Roma II”**.

The article (in Spanish) will be published in the forthcoming issue (2007) of the *Anuario Español de Derecho Internacional Privado* (Spanish Yearbook of Private International Law - AEDIPr.), but it can be downloaded as a .pdf file from the Àrea de Dret Internacional Privat blog.

The English abstract reads as follows:

Article 12 of Rome II Regulation governs the obligations arising out of dealings prior to the conclusion of a contract. It establishes that the law applicable to these obligations shall be the law applicable to the contract. Where it is not possible to determine such law, the second paragraph of article 12 establishes the application of the general connecting factors of Rome II Regulation. It is also possible to choose the law applicable to culpa in contrahendo.

These solutions are not problem-free. The application of the law governing the future contract is not suitable in order to forbid the breaking of negotiations, without giving to the parties the possibility to rely on the law of the country in which the party has its habitual residence to establish that he can broke off negotiations without liability. It can also be criticized that there is no provision

about the cases in which a contract between the parties has been concluded in order to rule the negotiations. As a result of this lack of provision in these cases the law governing culpa in contrahendo will be the law of the future contract instead of the law of the contract that rules the negotiations.

This article analyses these problems and the difficult delimitation between contractual and non-contractual fields in matters relating to obligations arising out of dealings prior to the conclusion of a contract. It also includes de lege ferenda proposals.

Swiss Institute of Comparative Law: Conference on Rome I Regulation

✘ On Friday, 14th March, the **20th Journée de droit international privé**, organised by the **Swiss Institute of Comparative Law** (ISDC) and the **University of Lausanne** (Center of Comparative Law, European Law and Foreign Legislations), will analyse the new Rome I Regulation, whose final adoption is expected in one of the first Council's sessions in early 2008 (see our previous post here).

✘ Here's a short presentation of the programme (*our translation from French*):

20e Journée de droit international privé

"The new Rome I regulation on the law applicable to contractual obligations" (*Le nouveau règlement européen 'Rome I' relatif à la loi applicable aux obligations contractuelles*)

Introductory remarks: *Walter Stoffel* (University of Fribourg) - The 20th anniversary of the "Journées de droit international privé" and award of the "Prix

Alfred E. von Overbeck” of the ISDC.

First Session: General Aspects (*Généralités*)

Chair: Andrea Bonomi (University of Lausanne)

- *Michael Wilderspin* (European Commission): The new “Rome I” regulation: the European Commission’s point of view (*Le nouveau règlement “Rome I”: point de vue de la Commission européenne*);
- *Eva Lein* (ISDC): The new synergy Rome I/Rome II/Brussels I (*La nouvelle synergie Rome I/Rome II/Bruxelles I*);
- *Caroline Nicholas* (UNCITRAL, Wien): Relationships with international conventions: UNCITRAL/The Hague/Unidroit (*Les relations avec le droit conventionnel: CNUDCI/La Haye/Unidroit*).

Second Session: Basic Principles (*Principes de base*)

Chair: *Peter Mankowski* (University of Hamburg)

- *Stefan Leible* (University of Bayreuth): Choice of applicable law (*Le choix de la loi applicable*);
- *Bertrand Ancel* (University of Paris I): Law applicable in the absence of choice (*La loi applicable à défaut de choix*).

Third Session: Some Special Contracts (*Quelques contrats particuliers*)

Chair: *Bertrand Ancel* (University of Paris I)

- *Helmut Heiss* (University of Zurich): Insurance contracts (*Les contrats d’assurance*);
- *Peter Mankowski* (University of Hamburg): Consumer contracts (*Les contrats conclus par les consommateurs*);
- *Francisco J. Garcimartin Alférez* (University of Madrid ‘Rey Juan Carlos’): Contracts on financial instruments (*Les contrats portant sur des instruments financiers*).

Fourth Session: Specific mechanisms (*Mécanismes spécifiques*)

Chair: *Stefan Leible* (University of Bayreuth)

- *Eleanor Cashin Ritaine* (Director, ISDC): Assignment, subrogation and set-

off (*La cession de créance, la subrogation et la compensation*)

- *Andrea Bonomi* (University of Lausanne): *Lois de police* and public policy (*Les lois de police et l'ordre public*)

Concluding remarks: *Tito Ballarino* (University of Padova) - Emerging of new values and filling loopholes (*Emergence de nouvelles valeurs et comblement des lacunes*).

The conference will be held in French, German and English (no translation is provided).

For the detailed programme and further information (including fees), see the ISDC website and the downloadable leaflet. An online registration form is available.

(Many thanks to Prof. Giulia Rossolillo - University of Pavia - for the tip-off, and to Béatrice Angehrn - ISDC - for providing additional information on the conference)

Rome III: EP LIBE Committee's Draft Report on the Commission's Proposal

On 9 January 2008 *Evelyne Gebhardt*, Rapporteur in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), has released her **Draft report on the Commission's Proposal for a Council regulation amending regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters** (COM(2006)399 of 17 July 2006).

Pursuant to Rule 47 of the European Parliament's Rules of Procedure (16th edition - November 2007), the Rome III regulation is subject to the procedure with associated committees, since its subject matter 'falls almost equally within the competence of two committees' (as determined in Annex VI to the Rules of

Procedure), and it is under the primary responsibility of the LIBE Committee, while the Committee on Legal Affairs (JURI) has been asked for an opinion. *Carlo Casini*, draftsman for the JURI Committee, presented a Draft opinion on 4 December 2007, that was discussed in the meeting of 19 December 2007.

The 'Rome III' file currently being examined by the LIBE Committee is thus formed by the following documents, besides the initial Commission's Proposal and Annexes - SEC(2006)949 and SEC(2006)950 - of 17 July 2006:

- a **Draft report** prepared by Rapporteur Gebhardt, containing 27 amendments to the text proposed by the Commission;
- an interesting **Working document on the law applicable in matrimonial matters**, prepared by the Rapporteur;
- a **Draft opinion delivered by the JURI Committee** (draftsman: Carlo Casini).

Once the Report is adopted in the LIBE Committee, the exam of the Rome III regulation is scheduled in the plenary session of the European Parliament on 22 April 2008 (see the OEIL page on the status of the procedure).

It must be stressed that, pursuant to Art. 67(5) of the EC Treaty, the **Rome III regulation is subject to the consultation procedure**, so the Council is not bound by Parliament's position. The latest Council's document publicly available on the matter is a text drafted in June by the German and Portuguese Presidency on the basis of the meetings of the Committee on Civil Law Matters and of the comments of Member States' delegations (doc. n. 11295 of 28 June 2007). The latest 'Summary of discussions' (doc. n. 5753/08, currently not accessible) was prepared by the Committee on Civil Law Matters on 28 January 2008.

A political agreement is expected to be reached in the Council by the end of the Slovenian Presidency (June 2008). For further information on the Rome III regulation, see the dedicated section of our site.

Rome I (Update): Council's Comment on the EP Vote at First Reading - Live Broadcast of the Council's Public Deliberation - The Debate in the EP - UK to Opt-In

Following our post on the forthcoming JHA Council session (6-7 December 2007), here's a document prepared by the General Secretariat of the Council for the Permanent Representatives Committee (COREPER), providing a short presentation of the Parliament's vote on Rome I and the text of the EP legislative resolution at first reading (see our post here):

I. INTRODUCTION

*The Committee on Legal Affairs adopted sixty-four amendments to the proposal for a Regulation (amendments 1- 64). In accordance with the provisions of Article 251(2) of the EC Treaty and the joint declaration on practical arrangements for the codecision procedure, **a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for a second reading and conciliation.***

*In this context, the rapporteur, Mr Cristian DUMITRESCU (PES - RO), and the PES, EPP-ED, ALDE, UEN and Greens/EFA political groups together tabled **a further twenty-one compromise amendments (amendments 65-85).***

These amendments had been agreed during the informal contacts referred to above. During the debate, Vice-President of the Commission Frattini made a statement regarding Article 5a on behalf of the Commission, and invited the Council to support it.

II. VOTE

At the vote which took place on 29 November 2007, the plenary adopted the twenty-one compromise amendments (amendments 65-85) and forty-nine of the Committee's original amendments [...].

The amendments adopted correspond to what was agreed between the three institutions and ought therefore to be acceptable to the Council.

Consequently, once the lawyer-linguists have scrutinised the text, the Council should be in a position to adopt the legislative act. [...]

As regards the legal-linguistic revision of the EP text, the document sets a deadline of 18 January 2008 for the national delegations to send their observations to the Council's Directorate for the Quality of Legislation: it is therefore likely that, if a political agreement is reached in the Council on 7 December 2007, the Rome I Regulation will be officially adopted in one of the Council's session in early 2008.

The Council's discussion on Rome I, that will take place on 7 December about 11h00 AM, will be open to the public, like every deliberation under the co-decision procedure. It will therefore be broadcasted on the Council's website.

- - -

As regards **the debate that preceded the vote in the European Parliament** (29 November 2007), the transcription (mainly in French) has been made **available on the EP website**. Most part of the speakers (among which Commissioner Frattini and the EP Rapporteur Dumitrescu) **focused on the conflict rule on consumer contracts** (art. 6 of the EP legislative resolution), one of Parliament's main concerns, pointing out the balance struck in the provision between the need of protection of the weaker party and the commercial interests of the "professionals" (especially SMEs).

According to rapporteur Dumitrescu, **the United Kingdom**, that has not so far given notice of its wish to take part in the adoption of the Rome I Regulation, **may be reconsidering its position**, in the light of the text resulting from the informal agreement between EP and Council.

Regulation on Maintenance Obligations

The European Parliament released on 26 November 2007 its tabled legislative report, 1st reading or single reading (download the report from the OEIL page and see the status of the procedure). This report is expected to be debated or examined by the Council on 6 December 2007 after which a probable part-session is scheduled by the DG of the Presidency, 1st reading on 12 December 2007. See our earlier posts on the maintenance obligations regulation [here](#), [here](#) and [here](#).