May 2007 Roundup of U.S. Decisions

Here's a quick roundup of significant caselaw from the U.S. Court of Appeals and Supreme Court relating to private international law issues.

Two interesting actions relating to judgment enforcement have come down from the Ninth and D.C. Circuits. The latest salvo in *Ministry of Defense for the Armed Froces of the Islamic Rep. of Iran v. Elahi*, No. 03-55015 (9th Cir., May 30, 2007), seems to complete a tortured case history that included a Supreme Court decision, and ICC decision and several appellate decisions relating to the enforcment of a judgment for wrongful death agains the Republic of Iran. Plaintiff, whose brother was allegedly assassinated by agents of the Iranian state, sought to enforce the $11.7 million default judgment he received in the United States District Court for the District of Columbia. Unable to seek satisfaction of that amount under the Foreign Sovereign Immunity Act – a conclusion that was affirmed again here on appeal – plaintiff sought a lien against a $2.8 million ICC judgment in favor of Iran from its previous breach of contract action against an American defense contractor. The Terrorism Risk Insurance Act permits such an action against "terrorist parties," provided that the judgment was not currently "at issue" before an international tribunal. Because the ICC judgment was "present[ed]," "fully adjudicated" and "reduced to judgment" in favor of Iran, and because Iran has been labelled as a "state sponsor of terrorism" since 1984, the amount currently held by the American contractor is vulnerable to attachment. Interestingly, the U.S. Government filed papers in support of Iran in this action. The full decision is available here.

The D.C. Circuit in *Termorio S.A. v. Electanta S.P.*, No. 06-7058 (D.C. Cir., May 25, 2007) refused to enforce an arbitral award from the Republic of Columbia between a state-owned entity and two American utility companies. At issue was a $60 million arbitral award against the Columbian entity. The award was made in Columbia. Immediately thereafter, various Columbian government agencies refused to comply with the award and began criminal investigations of executives who worked for the plaintiff in that action. The award was eventually vacated by a Columbian court. Plaintiff then sued in U.S. federal court to enforce the award, notwithstanding its anullment. "[R]esolving this matter with reference to . . . the

New York Convention," particularly Article V(1)(e), the court held that once an award is lawfully set aside in its place of origin, there is nothing to enforce under that Convention. An interesting discussion of the discretion of U.S. courts to enforce such awards despite a foreign anullment followed. While the court,

> *accept[ed] that there is a narrow public policy gloss on Article V(1)(e) and that a foreign judgment is unenforceable as against public policy to the extent that it is 'repugnant to fundamental notions of what is decent and just in the United States,'*

Plaintiffs here failed to meet this high threshold. The full decision is available here.

The Eleventh Circuit decided an interesting case applying the "most significant relationship" test to determine the law applicable to a cross-border tort of tortious interference. In Grupo *Televisa S.A. v. Telemundo Comm. Group, Inc.*, No. 05-16659 (11th Cir., May 10, 2007), a Mexican broadcast company sued its American rival in U.S. federal court alleging that it thwarted its contract with a Mexican soap opera star by offering her a competing role. The American company moved to dismiss the claim by arguing that Mexican law, which does not recognize the tort of tortious intereference with contractual relations, governs the dispute. The district court agreed and dismissed the case, holding, inter alia, that the "place of the injury" should not play an important role in this choice of law decision. The Eleventh Circuit reversed that decision. It began by reference to Section 145 of the Second Restatement, and the four "contacts" that should be considered in a tort action. It then considered the "principal location of the defendant's conduct" as the single most important factor in a "misappropriation of trade values case," and held that "the Florida contacts are both numerically and qualitatively more significant" here. Turning to the general factors in Section 6 of the Second Restatement, the court also recognized that "the relevant policies of the forum [and] other interested states," the "protection of justified expectations," "certainty, predictability and uniformity of result," and "the ease in determination of the law to be applied" counselled the application of Florida law. The full decision is available here.

Finally, the Supreme Court invited the Solicitor General to file a brief in a notable conflicts case. In Teck Cominco Metals v. Pakootas, Petitioner posed the

interesting question of,

> *[W]hether the Ninth Circuit erred in concluding, in derogation of numerous treaties and established diplomatic practice, that CERCLA (and, by extension, other American environmental laws) can be applied unilaterally to penalize the actions of a foreign company in a foreign country undertaken in accordance with that country's laws.*

The Petition and other briefs at that stage are available here.

Rome I: German Position on the Applicable Law on Contracts governing Hotel and Restaurant Services

Following our previous post on new Council documents concerning Rome I, here some new information on Art. 5 of the Proposal:

As stated on the website of the German Hotel and Restaurant Association (*Deutscher Hotel- und Gaststättenverband, DEHOGA Bundesverband*), the German government changed its position with regard to the applicable law on contracts governing hotel and restaurant services and supports now this branch of industry with regard to its conception that those contracts should not be governed by the law of the hotel guest's habitual residence, but rather by the law of the country where the service is provided.

According to Art. 5 (1) of the Commission's Rome I Proposal, consumer contracts in terms of Art. 5 (2) are governed by the law of the Member State in which the consumer has his habitual residence. However, Art. 5 (3) (a) of the Proposal provides for an exception for contracts for the supply of services where the services are to be supplied to the consumer exclusively in a country other than in

which he has his habitual residence. Thus, contracts governing hotel and restaurant services are widely excluded from the application of the law of the guest's habitual residence.

However, amendments proposed by the Committe on Legal Affairs of the European Parliament suggest the deletion of Art. 5 (3) (a) which would lead, with regard to service contracts covered by Art. 5, to the application of the law of the consumer's, i.e. the guest's, habitual residence for contracts involving a guest of a Member State other than the one where the service is provided. See Amendment 62 by *Jean-Paul Gauzès* and Amendment 63 by *Diana Wallis* which can be found here. Further, see also the text of Rome I as drafted by the Council Presidency (Note of 12 October 2006) as well as the text drafted by the Finnish and the German Presidency (Note of 12 December 2006) which do not include Art. 5 (3) anymore .

This development has been observed critically by the German Hotel Association (*Hotelverband Deutschland, IHA*) and the German Hotel and Restaurant Association which feared serious disadvantages in particular for medium-sized businesses in case the law of the guest's habitual residence should be applied.

Now, as stated in the press release, these associations succeeded in convincing German Federal Minister of Justice *Brigitte Zypries* as well as Federal Minister of Economics and Technology *Michael Glos* of their position to apply the law of the country where the services are provided.

See in this context the Summary of Discussions of the Council Committee on Civil Law Matters (Rome I) of 16 February 2007, which contains with regard to Art. 5 (3) (a) the following statement:

> *Several delegations were against the deletion of Article 5(3)(a) of the Commission proposal. The*
> *Presidency noted that there was some support for the reintroduction of that provision into the text of*
> *the draft Regulation.*

Similar also Council document No. 6935/07 of 2 March 2007 where the German Presidency states that several delegations support the idea to reintroduce Art. 5 (3) (a) of the Commission's Proposal.

The **full press release** can be found on the website of the German Hotel and Restaurant Association.

Many thanks again to Dr. Jan von Hein, MPI Hamburg for the tip-off and to Giorgio Buono for valuable information on the relevant documents.

Is the Brussels Convention Compliant with Article 6 ECHR?

This is the interesting question that the French supreme court for private matters (*Cour de cassation*) addressed in a judgement of March 6, 2007.

The argument was raised in respect of the rule allowing to seek a decision of enforceability of the foreign judgement ex parte. Article 34 of the 1968 Brussels Convention provided:

> *the party against whom enforcement is sought shall not at this stage of the proceedings be allowed to make any submissions on the application.*

In this case, a Belgian bank, Fortis, had sued in Belgium two spouses domiciled in France. The Court of appeal of Mons, Belgium, had ruled in favour of the bank, which sought enforcement of the judgement in France. The Belgian judgement was declared enforceable by a French first instance court. The defendants appealed to the Court of appeal of Amiens and lost. They then appealed to the *Cour de cassation*. Their only argument was that the proceedings in the first instance in France were a violation of their right to a fair trial, as they were ex parte proceedings. The *Cour de cassation* held that there was no such violation as they were entiteld to appeal. The appeal was thus dismissed (again).

This case raises two issues. The first is anecdotal. It is fascinating to see that the defendants could take this case up to the French supreme court. The Belgian judgement was made in 2001, and it seems that the enforcement proceedings took six years.

The second issue is much more interesting. Could the Brussels Convention or the Brussels I Regulation be found to be in violation of the European Convention of Human Rights (ECHR)? Before the *Cour de cassation*, the defendants argued that the ECHR was superior to any treaty concluded by the French state. In *Fortis*, the Court does not directly deal with the argument, but it indirectly addresses it since it accepts to rule on whether article 34 complies with article 6 ECHR.

Obviously, the *Cour de cassation* will only give the point of view of the French legal order. The Strasbourg or the Luxembourg courts would certainly have different views on this.

Was the issue addressed elsewhere in Europe?

Rome I: Council's Compromise Package, Insurance Contracts, Financial Aspects Relating to Articles 4 and 5

Following our post on the note from the Luxembourg delegation relating to consumer contracts, a number of new interesting documents on the Rome I Proposal have been made publicly available on the Register of the Council.

Here's a brief presentation:

– doc. n. 8022/07 ADD 1 REV 1 of 13 April 2007, containing a **"compromise package" prepared by the German Presidency** for the JHA Council session of 19-20 April 2007 (see our related post on the Council conclusions). The text focuses on Articles 3 (Freedom of choice), 4 (Applicable law in the absence of choice) and 6 (Individual employment contracts). Art. 7 on contracts concluded by an agent is deleted; other important issues, such as contracts of carriage (art. 4a), consumer contracts (art. 5), insurance contracts (art. 5a) and overriding

mandatory provisions (art. 8) do not form part of the compromise;

– doc. n. 8935/1/07 REV 1 of 4 May 2007, on **insurance contracts**. The document provides a draft text of Art. 5a, taking into account the comments submitted in March by the Member States delegations (docs. 6847/07 and ADD 1 to 12, not accessible to the public);

– doc. n. 7418/07 of 15 March 2007, from the Services of the Commission to the Council's Committee on Civil Law Matters, dealing with **certain financial aspects relating to the application of Articles 4 and 5**. The document is divided in two parts: the first one addresses the conflict rule on contracts concluded at a financial market (Art. 4(1)(j1)), that was introduced by the Finnish presidency (see doc. n. 16353/06 of 12 December 2006) and confirmed by the German Presidency (see the French text of doc. n. 6953/07 of 2 March 2007), stressing the **importance of a specific provision on stock exchange transactions**:

> *The reason for including a specific provision for trading systems relates, in particular, to the fact that regulated markets, multilateral trading facilities and other similar trading systems need to operate under a single law. It is essential that all transactions are carried out in accordance with the governing law of the system. The application of a single governing law is an intrinsic feature of organised multilateral trading systems and necessary for legal certainty for the market participants.*
>
> *These transactions concluded within such a trading system include contracts of buying, selling, lending and other such dealings in financial instruments. Contracts for the provision of services between a financial intermediary and a client are not concluded within these trading systems.*
>
> *The transactions in question are closely connected to the market concerned and it is appropriate and, indeed, necessary that the same law governs them irrespective of the nature of the parties to the transactions (consumer/professional) and the place where the parties have their habitual residence. Any other result would mean that the systems could not operate.*

Problems arising from the **definition of "financial market"** are then addressed, in the light of the Directive 2004/39/EC (MiFID – Markets in Financial

Instruments Directive), and an improved draft of the provision is proposed:

> *[T]he use of the term "financial market" in this provision leads to undesirable uncertainty. There is no definition of this concept in any community instrument. The term is used in the particular context of Article 9 of the Insolvency Regulation but it is not defined. In the framework of a general conflict of law rule in Rome I this expression would lack precision and create legal uncertainty. Given the extreme diversity and complexity of the financial sector activities, there is a need to define all relevant concepts used.*
>
> *Taking into account the universal scope of application of Rome I (Art. 2), the definition of markets and trading systems by reference to the EU regulatory categories in Directive 2004/39/EC (MiFID) has been avoided. This is because cross-reference to the MiFID concepts would limit the provisions to an EU context. Instead, the proposed draft contains a functional description of multilateral system that uses the common elements of the definitions of regulated market and multilateral trading facility in MiFID, together with the condition that such systems should be subject to a single governing law. This description will cover all the equivalent non-EU trading facilities that need to be caught.*

The second part deals with **possible overlaps between the scope of application of the protective rule on consumer contracts** (Art. 5 of the Rome I Proposal) **and the legal regime of financial instruments** (rights and obligations which comprise a financial instrument, contracts to subscribe for or purchase a new issue of transferable securities, contracts concluded within the type of system falling within the scope of the above mentioned Article 4(1)(j1)):

> *All these issues are not covered by Art. 5 of the Rome Convention as that Article only applies to contracts for the provision of services and sale of goods. The questions […] only arise due to the enlarged scope of Article 5 of the Rome I proposal.*
>
> *The proposed text does not exclude contracts for the provision of financial services generally nor does it exclude contracts for the sale of shares and bonds concluded outside the systems referred to in the draft Art. 4(1)(j1).*
>
> *As regards financial instruments, on the assumption that the exclusion from the*

scope of the Rome I proposal of financial instrument under Art. 1(2)(d) may not be exhaustive it is absolutely necessary to provide for this exclusion since without it the actual nature of a financial instrument – the rights and obligations that constitute its essence – could change by virtue of the application of Article 5. […]

Without an amendment to this effect, the actual nature of a financial instrument and the rules of law governing it could be various and unpredictable and would depend on the habitual residence of the person holding it. This question should not be confused with contracts for the provision of financial services. For example, when a bank sells to a consumer shares from company x it is providing a financial service. The consumer friendly rule of Article 5 of the proposal will naturally continue to apply to all these contracts that were already covered by Article 5 of the Rome Convention.

As regards the subscription for shares and units in collective investment schemes, and purchase of new issues of debt, it is important that the issuer in relation to a single issue is not faced with a risk of application of multiple laws depending on the habitual residences of investors. This would effectively prevent cross-border retail offerings of shares, debt, etc. Contractual rights and obligations in relation to the subscription for or purchase of new issues of transferable securities will not necessarily be covered by the narrowly focussed exclusion discussed above for contracts which comprise financial instruments. […]

Thus, on the assumption and to the extent that this issue is not excluded entirely from the scope of the Regulation by virtue of Art. 1(2)(f) (exclusion of contracts governed by company law) it is necessary to ensure in relation to contracts of subscription for or purchase of a new issue of shares, bonds and other transferable securities that Article 5 does not apply.

As a last point, the Services of the Commission point out another **possible inconsistency between Art. 5 of the Rome I Proposal and the MiFID Directive (2004/39/EC)**, **as regards individual investors who act as "professional clients" under Annex II to the Directive**, but may be still considered as consumers for the purposes of the protective conflict rule:

Finally, the Committee may wish to consider an amendment to the text or at

least a recital in order to clarify that individuals who 'opt up' to professional status under MiFID should not be treated as consumers for the purposes of Art. 5. Annex II to MiFID allows clients of investment firms, who would otherwise be classified as "retail clients" to be treated as "professional" clients if they meet specified conditions aimed at establishing that that client is financially sophisticated and experienced in investment. However, such clients may be considered to fall within the category of "consumers" for the purposes of Art. 5. The point is important since firms would be most unlikely to let sophisticated individuals opt up to professional status if Art. 5 were to apply to their dealings, and accordingly the objectives of the MiFID in this respect would be thwarted.

Article on Rome II – Liability for Cross-Border Torts

A very interesting article on Rome II written in German by *Thomas Thiede* and *Katarzyna Ludwichowska* (both Vienna) has been published recently in the "Zeitschrift für vergleichende Rechtswissenschaft" (106 ZVglRWiss (2007), 92 et seq.):

"Die Haftung bei grenzüberschreitenden unterlaubten Handlungen" (Liability for cross-border torts).

An abstract has kindly been provided by the authors:

The article is a critical analysis of a proposal to apply the law of the victim's place of habitual residence to the compensation for personal injuries arising out of tort. The proposal, which was introduced by the European Parliament in the course of work on the EU regulation on the law applicable to non-contractual obligations (Rome II), originally concerned only traffic accidents, but was later modified and extended to all personal injury cases. The authors of the article show the proposal of the European Parliament against the background of solutions accepted in Germany and England. They present the arguments given

by the supporters of the proposal and then proceed to strongly criticise the parliamentary solution, inter alia by showing the negative consequences of splitting an otherwise uniform legal relationship as a result of subjecting the prerequisites of liability and part of its consequences (compensation for damage to property) to lex damni and the other part of the consequences of liability (compensation for personal injuries) to the law of the victim's place of habitual residence.

Jurisdiction and Forum Non Conveniens in Quebec

In *Impulsora Turistica de Occidente v. Transat Tours Canada Inc.* (available here) the Supreme Court of Canada has, in brief reasons, dismissed an appeal from the Quebec Court of Appeal. Transat sued four Mexican companies in Quebec, seeking an extraterritorial injunction against them. The companies successfully resisted the injunction and also convinced the judge at first instance to conclude both that Quebec lacked jurisdiction and that in any event Mexico was the more appropriate forum. On appeal, now confirmed by the Supreme Court of Canada, the decision on jurisdiction was reversed. The Quebec court had jurisdiction and no stay of proceedings was warranted.

The court held Quebec had jurisdiction even in respect of a request for purely extraterritorial relief. The court was able to consider granting injunctive relief against defendants who were not within the province.

The court also held that Mexico was not the more appropriate forum, in part based on a jurisdiction clause in the contract between Transat and one of the four Mexican companies.

It is somewhat unusual for the Supreme Court of Canada to grant leave to hear a case and then render only brief unanimous reasons adopting the reasoning of the

court below.

Since Transat did not appeal the initial denial of its motion for an injunction, its success on appeal resulted in the case being returned to the Superior Court for possible further proceedings.

Trans-Tasman Co-operation in Civil Proceedings

The Australian Attorney-General and New Zealand Associate Justice Minister have recently announced that their respective governments will implement, by way of a bilateral treaty, the recommendations of the Trans-Tasman Working Group report on Court Proceedings and Regulatory Enforcement. That report was released in December 2006 and recommended that there be closer co-operation between the two countries in civil proceedings, especially as regards matters of jurisdiction and enforcement of judgments.

The Working Group's central recommendation was that a 'trans-Tasman regime', modelled on the *Service and Execution of Process Act 1992* (Cth), be introduced as between the two countries. The report went on to recommend that:

- The defendant's address for service could be in Australia or New Zealand, and parties in one country should be able to appear in court in the other by telephone or video link.
- The test for stay of proceedings should be on the basis that a court in the other country is the "more appropriate" court for the proceeding. This contrasts with the "clearly inappropriate" test for forum non conveniens that currently applies in Australia. Anti-suit injunctions will no longer be available as between Australia and New Zealand.
- Appropriate Australian and New Zealand courts should be given statutory authority to grant interim relief in support of proceedings in the other country's courts, such as Mareva and Anton Piller orders.
- A judgment from one country could be registered in the other. It would

have the same force and effect, and could be enforced, as a judgment of the court where it is registered. Final non-money judgments such as injunctions will also be registrable.

- A judgment could only be refused enforcement in the other country on public policy grounds. Other grounds, such as breach of natural justice, would have to be raised with the original court. Currently, the grounds for non-enforcement of New Zealand judgments under the *Foreign Judgments Act 1991* (Cth) are wider.
- The common law rule that an Australian or New Zealand court will not directly or indirectly enforce a foreign public law should not apply to the enforcement of judgments under the Trans-Tasman scheme. Thus, civil pecuniary penalties from one country should be enforceable in the other unless specifically excluded, and criminal fines imposed for certain regulatory offences in one country should be enforceable in the other in the same way as a civil judgment debt.

The proposals apply to *in personam* civil matters; actions *in rem* are excluded, as are matters covered by existing multilateral agreements such as those regarding the dissolution of marriage and enforcement of maintenance and child support obligations. The Working Group made no recommendation about the *Mozambique* rule as it applies to foreign land, preferring to leave this matter to independent domestic reform in the respective countries.

Note from the Luxembourg Delegation on Rome I Proposal

A note from the Luxembourg delegation on the Proposal for a Regulation on the law applicable to contractual obligations ("Rome I") which has appeared on the agenda for the Competitiveness Council meeting on 21 and 22 May 2007 deals rather critically with Article 5 of the planned regulation.

Here an excerpt:

The Luxembourg Government is very concerned about the negative impact on competitiveness of the instruments of private international law which are currently being converted into Community instruments. In particular, it would like to draw the attention of the Competitiveness Council to the proposal for a Regulation on the law applicable to contractual obligations ("Rome I", 6935/07), which is currently under discussion in the Justice and Home Affairs Council.

Article 5 of the proposal has the effect, in certain cases, of depriving the parties of the freedom to choose the law applicable to business-to-consumer cross-border contracts. This changes the current situation under the Rome Convention, which lays down different protective rules and reflects a fair balance between the needs of businesses and those of consumers. This substantial change would have warranted an impact assessment by the Commission. However, the economic impact of this proposal has not been evaluated. Its consequences for the internal market and for consumers have not been analysed.

[…]

With a view to the Justice and Home Affairs Council meeting on 12 and 13 June 2007, it would be appropriate for the authorities concerned in all the Member States to be made aware of the negative consequences of this proposal for the internal market, for businesses and for European consumers. No decision should be taken which prejudices competition. In this context the Luxembourg delegation would recall the instruction given by the European Council in March 2003 that "the Competitiveness Council should be effectively consulted within the Council's decision-making processes on proposals considered likely to have substantial effects on competitiveness".

The complete note can be found here.

Many thanks to Dr. Jan von Hein, MPI Hamburg for the tip-off.

British Institute of International & Comparative Law Seeks New Director

The **British Institute of International & Comparative Law** (see information about the Institute here) is looking to **recruit a new Director**.

The Institute, the UK's leading centre for the advancement of the understanding and practical application of international law, will celebrate its 50th Anniversary in 2008. The present Director, Professor Gillian Triggs, will be returning to Australia shortly to take up the post of Dean of the Law School at the University of Sydney, and the Institute is now seeking a dynamic individual with global vision as her successor.

The Institute, a community of legal scholars and practitioners, is an independent charitable body which seeks to support the international rule of law in global problem-solving, to foster a comparative understanding of all national legal systems, and to provide a forum for public debate on international law through its well-established research, events and publications, of which its best known is the International and Comparative Law Quarterly. The Institute's unique strength is to combine a diverse community of scholars with practitioners in the world's leading legal marketplace. It serves as an unrivalled focal point for its substantial membership.

Following a period of dramatic growth in the range and depth of its work, the Institute has consolidated its leading position and reputation. It aims to combine the highest standards of scholarship with a high degree of practical relevance for the world of the 21st century. The research staff of the Institute undertakes a wide range of work, including major research projects for a variety of government and private bodies, which seek to address
some of the key issues which have become of increasing public interest – such as the establishment of the rule of law in post-conflict states, international humanitarian law, international trade, the World Trade Organisation and global poverty, and evidence before international courts and tribunals.

The Institute's work ranges across public and private international law,

comparative law, European law and human rights. Research is currently streamed into the following 3 programmes:

- International Law programme
- Law and Development programme
- European and Comparative Law programme

Within these programmes there are a number of specialist practitioner groups enabling the members of the Institute to discuss current issues at an expert level. The Director, who reports to the Board of Trustees, has overall responsibility for the Institute's activities, including shaping its research programme and directing its research, managing its staff of some 30 academics, interns and administrators, and representing the Institute externally to government, the legal profession, corporations, non-governmental organisations and the public. In all probability the successful candidate will have a background in law, but could have experience in government, public bodies or other institutions. Candidates should feel comfortable representing the Institute in public and in the media, working with the Institute's Development Director in attracting major funding for its programmes, and have a proven record in managing people and organisations.

A competitive salary is offered, which, depending on age and experience, is likely to be at the upper end of the UK academic range. Written applications with full curriculum vitae and the names of three referees should be made in confidence to: Ruth Eldon, Institute Secretary, BIICL, 17 Russell Square, Charles Clore House, London WC1B 5JP. Tel. + 44 (0) 20 7862 5151. For further particulars e-mail: r.eldon@biicl.org. For more information on BIICL's activities see www.biicl.org. Applications should be received by **22 June 2007**. First interviews will be conducted shortly thereafter.

Diana Wallis on Rome II's

Agreement: “A first – in many senses”

Following the agreement on a joint text of the Rome II Regulation reached in the first meeting of the Conciliation Committee, on 15 May (see our post here), Diana Wallis MEP, Rapporteur on Rome II in the European Parliament, has held a press conference to comment the successful outcome of the negotiations.

Excerpts from Mrs Wallis’ statements have been published on her website and on the website of her political group, ALDE (Alliance of Liberals and Democrats for Europe):

> *Speaking after last night’s Conciliation meeting between the three EU institutions to hammer out the final text on the Rome II Regulation (the law applicable to non-contractual obligations), the European Parliament’s Rapporteur, Diana Wallis MEP, proclaimed it ‘a first’ – in many senses.*
>
> *Diana Wallis said, “This is the first time that the EU has put into a Regulation an extensive area of private international law where there was previously no pre-existing international Convention. It is the first time that the European Parliament has had co-decision in this area of civil law – moreover certainly a first in terms of conciliation. Also, a new experience for all the institutions involved in the process – the European Parliament has left its clear mark on the final text agreed last night.”*
>
> *Diana Wallis was particularly pleased with the result on road traffic accidents, often involving personal injury – the most common and frequent form of tort (non-contractual obligation) that touches the lives of many citizens as they go about their business and leisure pursuits across Europe. She went to say, “The European Parliament has underlined the right of citizens to be fully reimbursed for their loss in such cases despite the national differences in compensation levels, whatever country they come from, whilst also extracting from the Commission a full study in the area by 2008 that ‘would pave the way for a Green paper’.”*
>
> *“The European Parliament has also sought to introduce some further clarity into the fuzzy thinking as to the relationship between this Regulation relating to*

choice of law rules and other Internal Market instruments such as the e-commerce Directive. We have certainly ended in a better position than where we started from."

Diana Wallis welcomed the fact that the Conciliation was also instructive in bringing together three different Commission departments around the table to support the same text in relation to a number of issues. "This coherent joint working across the area of civil and commercial law is to be much welcomed and better late than never."

Finally Diana Wallis concluded that: "The European Parliament has left its imprint on several other issues, including party autonomy and flexibility to the general rule. It also insisted on several studies being undertaken by the Commission, notably on defamation and the treatment of foreign law, which may leave the way open for future legislation."

Mrs Wallis' focus on the role of the European Parliament in drafting legislation in the field of judicial cooperation in civil matters has been stressed several times (on Rome II, see our posts here and here), and it is particularly meaningful since at present she is perhaps the most influential MEP involved in the legislative process of EC private international law instruments: she is shadow rapporteur, appointed by the ALDE group, for Rome I, and draftswoman on the maintenance regulation (see her Draft opinion on the Commission's proposal here).

As regards substantive law, she has been draftswoman for the Internal Market and Consumer Protection Committee (IMCO) for the opinion on the Commission Communication "European Contract Law and the revision of the acquis: the way forward", and has prepared for the JURI Committee a Draft report with recommendations to the Commission on limitation periods in cross-border disputes involving injuries and fatal accidents.