Procedure file

Basic information

INL - Legislative initiative procedure 2009/2170(INL)	Procedure completed
Amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II) See also 2003/0168(COD) Subject 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		02/09/2009
		ALDE WIKSTRÖM Cecilia	
		Shadow rapporteur	
		PPE BOULLIER GALLO Marielle	
		S&D MCCARTHY Arlene	
		Verts/ALE LICHTENBERGER Eva	
		EFD SPERONI Francesco Enrico	
European Commission	Commission DG	Commissioner	
	Justice and Consumers	REDING Viviane	

Key events

11/11/2009	Committee referral announced in Parliament		
26/04/2012	Vote in committee		
02/05/2012	Committee report tabled for plenary	A7-0152/2012	Summary
09/05/2012	Debate in Parliament		
10/05/2012	Results of vote in Parliament		
10/05/2012	Decision by Parliament	T7-0200/2012	Summary
10/05/2012	End of procedure in Parliament		

Technical information

Procedure reference	2009/2170(INL)

Procedure type	INL - Legislative initiative procedure
Procedure subtype	Request for legislative proposal
	See also 2003/0168(COD)
Legal basis	Rules of Procedure EP 47
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/01255

Documentation gateway

Committee draft report		PE469.993	02/12/2011	EP	
Amendments tabled in committee		PE478.663	12/01/2012	EP	
Committee report tabled for plenary, single reading		A7-0152/2012	02/05/2012	EP	Summary
Text adopted by Parliament, single reading		T7-0200/2012	10/05/2012	EP	Summary

Amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II)

The Committee on Legal Affairs adopted a report by Cecilia WIKSTRÖM (ADLE, SE) with recommendations to the Commission on the amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II).

The report recalls that following its ruling in Shevill, the Court of Justice has held in eDate Advertising that Article 5(3) of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his or her rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his or her interests is based.

That person may also, instead of an action for liability in respect of all the damage caused, bring his or her action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.

Currently, the Rome II Regulation lacks a provision for the determination of the law applicable to violations of privacy and rights relating to personality. Consideration of an appropriate rule has been coloured by controversy about "libel tourism", a type of forum shopping in which a claimant elects to bring an action for defamation in the jurisdiction which is considered most likely to produce a favourable result generally that of England and Wales, which is regarded as the most claimant-friendly in the world. However, this is an issue that goes beyond the United Kingdom.

In this context, Members call on the Commission:

- to submit, on the basis of point (c) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal designed to add to the Rome II Regulation a provision to govern the law applicable to a non-contractual obligation arising out of violations of privacy and rights relating to personality, including defamation, following the detailed recommendations set out in the annex to the draft resolution;
- to submit, on the basis of point (d) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal for the creation of a centre for the voluntary settlement of cross-border disputes arising out of violations of privacy and rights relating to personality, including defamation, by way of alternative dispute resolution.

The proposal requested does not have financial implications.

Amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II)

The European Parliament adopted a resolution with recommendations to the Commission on the amendment of Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II) (Initiative Rule 42 of its Rules of Procedure).

The resolution recalls that following its ruling in Shevill, the Court of Justice has held in eDate Advertising that Article 5(3) of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an alleged infringement of personality rights by means of content placed online on an internet website, the person who considers that his or her rights have been infringed has the option of bringing an action for liability, in respect of all the damage caused, either

before the courts of the Member State in which the publisher of that content is established or before the courts of the Member State in which the centre of his or her interests is based.

That person may also, instead of an action for liability in respect of all the damage caused, bring his or her action before the courts of each Member State in the territory of which content placed online is or has been accessible. Those courts have jurisdiction only in respect of the damage caused in the territory of the Member State of the court seised.

Currently, the Rome II Regulation lacks a provision for the determination of the law applicable to violations of privacy and rights relating to personality. Consideration of an appropriate rule has been coloured by controversy about "libel tourism", a type of forum shopping in which a claimant elects to bring an action for defamation in the jurisdiction which is considered most likely to produce a favourable result generally that of England and Wales, which is regarded as the most claimant-friendly in the world. However, this is an issue that goes beyond the United Kingdom.

In this context, Members call on the Commission to submit, on the basis of point (c) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal designed to add to the Rome II Regulation a provision to govern the law applicable to a non-contractual obligation arising out of violations of privacy and rights relating to personality, including defamation, following the detailed recommendations set out in the annex to the draft resolution.

The main elements of the text requested by the European Parliament are as follows:

- the law applicable to a non-contractual obligation arising out of a violation of privacy or rights relating to the personality, including defamation, shall be the law of the country in which the most significant element or elements of the loss or damage occur or are likely to occur. However, the law applicable shall be the law of the country in which the defendant is habitually resident if he or she could not reasonably have foreseen substantial consequences of his or her act occurring in the country designated above;
- where the violation is caused by the publication of printed matter or by a broadcast, the country in which the most significant element or elements of the damage occur or are likely to occur shall be deemed to be the country to which the publication or broadcasting service is principally directed or, if this is not apparent, the country in which editorial control is exercised, and that country's law shall be applicable. The country to which the publication or broadcast is directed shall be determined in particular by the language of the publication or broadcast or by sales or audience size in a given country as a proportion of total sales or audience size or by a combination of those factors;
- the law applicable to the right of reply or equivalent measures and to any preventive measures or prohibitory injunctions against a publisher or broadcaster regarding the content of a publication or broadcast and regarding the violation of privacy or of rights relating to the personality resulting from the handling of personal data shall be the law of the country in which the publisher, broadcaster or handler has its habitual residence.

Parliament calls on the Commission to submit, on the basis of point (d) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal for the creation of a centre for the voluntary settlement of cross-border disputes arising out of violations of privacy and rights relating to personality, including defamation, by way of alternative dispute resolution. In this regard, the Commission should carry out extensive consultations with interested parties, including journalists, the media and specialist lawyers and judges.

The proposal requested does not have financial implications.