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THE EUROPEAN UNION**

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OUTCOME OF PROCEEDINGS

from : Committee on Civil Law Matters (Rome I)

on : 2 February 2007

Subject : Summary of discussions

1. Adoption of the agenda

The agenda as set out in CM 184/07 was adopted.

2. Proposal for a Regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I)

- 5203/06 JUSTCIV 3 CODEC 18
- 16353/06 JUSTCIV 276 CODEC 1485
- 14691/06 JUSTCIV 239 CODEC 1215
- 15364/06 JUSTCIV 246 CODEC 1313
- 16047/06 JUSTCIV 269 CODEC 1448 and ADD 1
- 5251/07 JUSTCIV 3 CODEC 41

(a) Article 5 - Consumer contracts

– Exclusion of choice of law agreements

On Article 5(1), four delegations objected to the principle of excluding a choice of law for consumer contracts. Other delegations and the Commission representative supported the exclusion of any possibility of a choice of law agreement in Article 5(1). The Presidency concluded that for the time being, the text of Article 5(1), second subparagraph, in document 16353/06 should remain unchanged on this point.

– Geographical scope of Article 5(1)

The Presidency invited delegations to indicate whether they could accept the universal application of Article 5 as suggested in document 16353/06. Two delegations suggested limiting the application of Article 5 to consumers who were habitually resident in a Member State, as in the Commission proposal. The Presidency concluded that there was sufficient support for universal application of Article 5 and that it should therefore be retained in the text.

– Article 5(1)(b)

The UK delegation presented its proposal for a recital explaining the concept of "directing activities", especially in the context of e-commerce and distance contracts (5251/07 JUSTCIV 3 CODEC 41). Two delegations supported the philosophy of the UK proposal while accepting a possible need for improvement of the text. The Commission representative and several delegations were firmly against the UK proposal. One delegation preferred clarifying the text of the provision rather than the recital. The Presidency concluded that the text should remain unchanged for the time being, but the issue needed further attention.

- Relationship between Article 5 and the consumer protection *acquis*/"active consumers" and Article 5(1a)

The Polish delegation presented document 6112/07 JUSTCIV 21 CODEC 96 on the relationship with the consumer protection *acquis*. One delegation shared the concerns of the Polish delegation, but suggested solving the problem by deleting the reference to Article 3 in Article 5(1a) of document 16353/06. This would rule out the possibility of "active consumers" who do not fulfil the criteria in Article 5(1) being exposed to the choice of "exotic" laws. One delegation suggested that Article 3(4) and (5) would provide a sufficient solution for this issue. The Commission representative underlined the need for an in-depth analysis of the problem.

- Article 5(3)(a)

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.

- Article 5(3)(b)

Some delegations were in favour of applying Article 5(1) to the transport of passengers or at least of consumers, others were in favour of maintaining Article 5(3)(b). Some were against differentiating between passengers who are consumers and those who are not. The Commission representative underlined the special features of transport treaties and considered that there were better ways to protect passengers than through deleting Article 5(3)(b). It was agreed that the issue depended on the overall solution for transport contracts (Article 4).

– Article 5(3)(c)

No delegation objected to the text of that provision in document 16353/06; however, it was noted that the English text in document 16353/06 departed from the text of Article 4(3) of the Rome Convention.

– Article 5(3)(d)

The UK delegation presented its proposal for a rewording of Article 5(3)(d) of document 16353/06 JUSTCIV 276 CODEC 1485 (document 5857/07 JUSTCIV 16 CODEC 81). Some delegations had reservations, but most indicated the need for further analysis. The Presidency concluded that the Committee should further examine the issue.

(b) Article 5a - Insurance contracts

Some delegations were against introducing rules on insurance contracts into Rome I or indicated that the question should be left to a review clause. Some had doubts about the content of Article 5a in relation to insurance of ships and aeroplanes (which are, however, large risks in the sense of Article 5a(1) and (4)).

Others underlined the need for simplifying the rules on insurance contracts and welcomed the Presidencies' proposal in principle. Some suggested adding a choice of the law of the nationality of the policyholder in the case of life insurance.

The Commission representative indicated that the Commission was open to the inclusion of a provision on insurance contracts in the draft regulation, subject to ongoing internal consultations on the problem of the different geographical scope of the insurance directives and of the future Regulation. For the Commission, the inclusion of insurance contracts would bring more clarity and be an issue of better regulation. The Commission representative and the Presidency explained that Article 5a was based on the existing directives and would not, in principle, bring fundamental changes to the existing regime. One delegation, however, pointed to some differences in detail.

The Presidency concluded that the proposal on the inclusion of insurance contracts had gained some, although not unanimous support, and invited delegations to send written comments on Article 5a by the end of February.

(c) Article 6 - Individual employment contracts

The Netherlands delegation presented a working paper proposing a change in Article 6(1), which did not meet with support except from one delegation. One delegation issued a scrutiny reservation in relation to Article 6(1).

One delegation suggested clarifying which of the alternatives ("in or from which") in paragraph 2 would take precedence.

Some delegations stressed the need to clarify the "place of business"; one suggested adding a recital concerning ships or aeroplanes.

The Presidency concluded that the text of Article 6 of document 16353/06 was supported in principle, subject to some problems in relation to details.

(d) Article 8 - Overriding mandatory rules

The definition in Article 8(1) was generally supported. The Belgian, Luxembourg and French delegations opposed the use of the term "dispositions impératives" in the context of Article 8 which deals with "lois de police" and therefore with a fundamentally different legal concept.

No comments were made on Article 8(2).

Some delegations and the Commission representative were against the deletion of Article 8(3). Others were firmly opposed to that provision. One delegation stressed that the practical impact of this provision was very limited. The Presidency concluded that there was as yet no general consensus on either deleting or retaining Article 8(3) .

(e) Article 9 - Consent and material validity

The Committee agreed on the text of Article 9.

3. Other business

The Chair indicated that an additional meeting on Rome I would probably take place on 12 March 2007.