



**COUNCIL OF
THE EUROPEAN UNION**

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PUBLIC

OUTCOME OF PROCEEDINGS

from : Committee on Civil Law Matters (Rome II)
on: 27 and 28 March 2006
Subject : Summary of discussions

1. Adoption of the agenda

The agenda as set out in CM 911/06 was adopted.

The Presidency gave an overview of the informal talks held with the European Parliament and its plans with regard to reaching agreement on the proposal.

Several delegations made suggestions of additional items to be examined under Any Other Business.

2. Amended proposal for a Regulation of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II)

- 6622/06 JUSTCIV 32 CODEC 171

- 7432/06 JUSTCIV 62 CODEC 247

The Committee proceeded to the examination of specific Articles.

Article 4

It was agreed to replace the words ‘damage was sustained’ by ‘damage occurred’ in Article 4 c) in order to ensure terminological consistency.

Some delegations suggested to simplify the cascade solution and to delete the reference to Articles 3(2) and 3(3). One delegation considered that the reference to the law of the country where the product was acquired would have to be deleted.

Other delegations emphasised that the agreement achieved in the JHA Council should be respected and therefore the references to Articles 3(2) and (3) should be retained.

One delegation considered that the solution was too much tilted in favour of the producer. In a cross-border context the producers are used to trading across frontiers and therefore it would be the consumer who needed more protection.

The Presidency concluded that there was a clear majority in favour of the existing solution and suggested to simplify the wording.

Article 5

Many delegations considered that one single rule should be applicable to any violation of competition rules, including the infringement of Articles 81 and 82 of the EC Treaty. Delegations were divided in deciding whether this single rule should consist of applying the law of the forum or the law of the country of market effect.

The Presidency noted that there was a slight majority for applying the market effect rule.

Article 7

Most delegations preferred to have a specific rule for environmental damage.

The majority of delegations supported the second option in the text.

It was agreed to delete the reference to the time for choosing and to indicate in a recital that the time will be determined in accordance with procedural law.

Article 8

Two delegations considered that the applicable law for infringements of EC law should be the law of the forum. Others disagreed and the majority could support the text of the Presidency.

Several delegations considered that the wording of subparagraph (3) should be further clarified.

Article 9 C

The German delegation made a new drafting proposal. Other delegations could not support this proposal.

It was acknowledged that the term *culpa in contrahendo* was interpreted differently in different jurisdictions.

Many delegations could go along with option 2 in the Presidency text.

The Presidency took note of the discussions and indicated that it would draft a new proposal.

Article 1(2) d)

The Presidency noted that there was general agreement on the wording of Article 1(2) d).

Article 1 (2) h)

Several delegations considered that an exclusion should encompass all non-contractual obligations arising out of violations of privacy and rights relating to personality and not only those committed by the media. Otherwise the concept of media should be clarified.

Other delegations considered that in the light of the Council discussions and the revised Commission proposal the exclusion should be limited to the media.

The Presidency concluded that there was majority support for the Presidency text.

Article 26 A

Some delegations considered that the review clause should be simplified. A few delegations considered that the Commission cannot be forced to submit a proposal and therefore the text should be amended.

Several delegations considered that two years for a new proposal was a far too short a deadline.

Others emphasised that this deadline was in line with the political commitment expressed by the Commission in the JHA Council in February 2006.

The majority of delegations could support the Presidency text.

Article A

All delegations could go along with the idea behind the provision.

Several delegations considered that this provision should be simplified. In particular, it was suggested to merge a) and c), and to leave out b). A few delegations indicated that the title of the provision was not appropriate. The Presidency agreed to take those considerations into account while redrafting the text.

Article 11

Delegations could in general support the Presidency text with the exception of subparagraph d) where the majority suggested going back to the Commission proposal.

The UK delegation suggested replacing “redress” by “remedy” in subparagraphs c) and f).

The Committee debated the Spanish proposal for a new subparagraph j) on assignability, contained in footnote 2 on page 13. Some delegations could support the Spanish proposal either as a separate point or as incorporated into subparagraph f). Other delegations considered that this should be left to the Rome I instrument. The Presidency concluded that the Spanish proposal did not gain majority support.

Article 15A

The delegations could accept the proposal of the Presidency.

Article 25

The Committee held a debate on Article 25 in the light of the opinion of the Legal Service 57645/06 JUR 119 JUSTCIV 77 CODEC 272

The German delegation made a new drafting proposal (see 7928/06 JUSTCIV 84 CODEC 295) suggesting that Member States still could conclude agreements of regional nature with third countries that contain choice of law rules relating to non-contractual obligations.

Several delegations could go along with the German proposal, whereas other delegations expressed hesitations for the need for such a clause.

The Presidency took note of the positions of delegations.

Article 27 and 27 A

Some delegations preferred to replace the term “events giving rise to damage” by more neutral wording like “events giving rise to non-contractual obligations” or “events giving rise to liability.”

Several delegations considered that the distinction between the date of entry into force and the date of application was confusing. The Presidency pointed out that the date of entry into force brought along obligations for Member States, which would have to be fulfilled prior to application (e.g. notification of Conventions).

A few delegations considered that 15 months was too short and suggested 18 or even 24 months for application.

3. Any other business

a) Spanish proposal

The Spanish delegation introduced their drafting proposal for a new Article on *acta iure gestionis* (see 7681/06 JUSTCIV 78 CODEC 274).

Certain delegations could support the Spanish proposal. However, other delegations did not see the need to distinguish state liability in this manner.

b) UK proposal on Article 1(2) d bis

The United Kingdom introduced their drafting proposal for a new subparagraph d bis (see 7928/06 JUSTCIV 84 CODEC 295 ADD 1).

Several delegations agreed that the topic merited further consideration and that the UK proposal could be an appropriate starting point. Other delegations considered that having regard to the late stage of negotiations it was doubtful whether another exclusion would be justified.

c) Article 5(3)

The United Kingdom delegation introduced a drafting proposal for Articles 5(3) and 5(4) (see 7928/06 JUSTCIV 84 CODEC 295 ADD 1).

Several delegations considered that they needed more time for internal deliberations.

d) Article 12(2)

The Committee took note of the request of the UK delegation to delete this paragraph.

e) Article 8a

The German delegation presented their drafting proposal. This proposal did not gain majority support.

A number of delegations did not support the inclusion of Article 8a at all.

f) recital in relation to Article 23

The Luxembourg delegation introduced their proposal for a recital (see 7928/06 JUSTCIV 84 CODEC 295 ADD 2).

Delegations were divided on this question.

g) Article 1(1a)

The Irish delegation, supported by the United Kingdom delegation, regretted the deletion of Article 1(1a) and emphasised the importance of it to their delegation, reserving the right to come back to it at a different level.

The United Kingdom delegation invited the Council Legal Service to express their position on the question whether a no-restriction on scope would be in conformity with Community law.
