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THE EUROPEAN UNION**

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OUTCOME OF PROCEEDINGS

From : Committee on Civil Law Matters (Rome I)

on : 25 April 2007

No. Cion prop. : 5203/07 JUSTCIV 3 CODEC 18

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

- Summary of discussions

1. Adoption of the agenda

The agenda was adopted as set out in CM 1392/07.

**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
- 6935/07 JUSTCIV 44 CODEC 168
- 15364/06 JUSTCIV 246 CODEC 1313
- 6112/07 JUSTCIV 21 CODEC 96

- 7614/07 JUSTCIV 62 CODEC 247
- 7953/07 JUSTCIV 70 CODEC 291
- 8789/07 JUSTCIV 103 CODEC 403
- 8887/07 JUSTCIV 108 CODEC 416

(a) Article 4a and Article 5(3)(b) (contracts on carriage of passengers and goods)

Delegations agreed that provisions on carriage of goods and on carriage of passengers should be separated. One delegation suggested reintegration of the provision on carriage into Article 4, while the others welcomed a special Article on carriage.

(i) Carriage of goods (Article 4a(1) and (3))

There was general agreement that choice of law agreements should be possible in that sector, and several delegations underlined that the default rule would therefore be of a limited impact. Two delegations expressed their preference for the Commission proposal, one of them was even open to excluding carriage from scope. The other delegations which took the floor agreed to the Presidency proposal.

The first sentence of paragraph 1 was accepted in principle by those delegations (subject to an improvement of the drafting). Concerning the second sentence of paragraph 1, delegations were in favour of maintaining the text in square brackets. One delegation would have preferred to base the rule on the place of loading instead of the place of delivery in order to ensure coherence with the Hague-Visby-Rules, the other delegations agreed to the place of delivery as the subsidiary connecting factor.

Concerning the drafting, several delegations suggested replacing "place of loading" by "place of receipt". One delegations pointed to the difference between "shipper" and "consignor" and presumed that the use of the word "consignor" was intended to mean the person who had concluded the contract on carriage. One delegation suggested deleting the words "at the time of the conclusion of the contract" in the second sentence.

Several delegations underlined the need to ensure coherence with international conventions in the area of transport. Some delegations pointed to Article 4(4), third sentence, of the 1980 Rome Convention and suggested referring to that idea in a recital.

The Chair concluded that the Committee agreed in principle on Article 4a(1), first sentence, subject to a possible redrafting (replacement of "place of loading" by "place of receipt"). In the second sentence, all square brackets and the words "at the time of the conclusion of the contract" should be deleted. Article 4(4), third sentence, of the Rome Convention could become a recital. The relation with international conventions in the area of transport should be addressed in Article 23. However, the Chair underlined that, as far as he was aware, those conventions included rules of substantive law so that, normally, there should be no conflict with the rules on applicable law.

(ii) Carriage of passengers (Article 4a(2) and (3))

No delegation supported option 2 of the Presidency proposal. Several delegations supported either the Commission proposal, or option 1 or 3. A majority of delegations were in favour of option 4, subject to several amendments such as the possibility for a limited choice of law by the parties (place of departure or place of destination). One delegation pointed to practical difficulties for the carrier to provide for the correct general conditions of transport and to operate the choice of law agreements if, e. g., a train passed several countries, allowing passengers to get on and off at various places.

A majority of delegations agreed that it would not be appropriate to distinguish between passengers who are consumers and those who are not. Some delegations considered, however, that Article 5(1) should apply where the contract on carriage was concluded by a consumer.

Some delegations mentioned the need for coherence with international conventions in the transport sector. The Commission representative recalled that those conventions were not dealing with conflict-of-laws issues.

The Chair concluded that it was necessary to find an appropriate balance of the interests of passengers and carriers. He said that option 2 of the Presidency paper was rejected, that there was some support for options 1 and/or 3, but that the majority was in favour of option 4 as the basis for further discussion. The proposal of adding a possibility for a limited choice of law was supported by many delegations. There was a certain tendency not to apply Article 5 to passengers but rather to cover all aspects of carriage in Article 4a.

(b) Article 8(3) (Overriding mandatory provisions)¹

The Netherlands and the Swedish delegation presented their proposals for a new Article 8a and a new Article 11a respectively. Several delegations indicated their willingness to compromise. The Presidency concluded that work should be continued on that provision.

(c) Article 12 (Incapacity)

Only one delegation supported the idea of extending Article 12 to companies and other bodies (footnote to Article 12 in document 6935/07). The Chair concluded that the text of Article 12 should remain as it stands.

(d) Article 18 (Habitual residence)

The Italian proposal for a rewording of Article 18 (document 7614/07) was supported by three other delegations; the other delegations preferred the Presidency text (document 6935/07).

(e) Articles 5 and 22 (Relation between Rome I and the directives on consumer protection)

The Polish delegation presented its proposal for a new wording of Articles 5 and 22, aiming at integrating the conflict-of-law rules in the different directives on consumer protection into Article 5 of the draft regulation and providing that the Regulation should prevail over the rules of those directives (document 8887/07).

¹ Note for the French translation: Please use the term "lois de police" (see 6935/07 COR 1).

Some delegations recognised that the Polish delegation had pointed to an important issue. However, they also underlined that Article 3(5) should give a solution also for consumer contracts, that legal questions such as the application to EEA countries, the UK and Denmark needed to be solved and that following the Polish proposal might lead to delaying the adoption of the Regulation. One delegation reiterated its concerns that Article 5(1a) might lead to the application of the law of a third country and underlined that the Polish proposal would not solve that question. Some delegations also said that such a proposal needed to be coordinated with the consumer protection policy (e. g. green paper of the Commission). The Commission representative indicated that, on the similar question whether a provision on insurance contracts could be included, the Legal Service of the Commission had held that a future reference in the directives to the provision of the future Regulation could be a solution to the legal questions invoked by some delegations.

The Chair concluded that many delegations underlined that the legal issues needed to be solved and that following the proposal might lead to delaying the adoption of the instrument.
