





Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters	
Subject 7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs		19/01/2009
		PPE-DE ZWIEFKA Tadeusz	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Civil Liberties, Justice and Home Affairs		09/02/2009
		ALDE DEPREZ Gérard	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	2954	07/07/2009

Key events			
23/12/2008	Legislative proposal published	COM(2008)0893	Summary
15/01/2009	Committee referral announced in Parliament, 1st reading		
21/04/2009	Vote in committee, 1st reading		Summary
23/04/2009	Committee report tabled for plenary, 1st reading	A6-0270/2009	
06/05/2009	Debate in Parliament		
07/05/2009	Results of vote in Parliament		
07/05/2009	Decision by Parliament, 1st reading	T6-0380/2009	Summary
07/07/2009	Act adopted by Council after Parliament's 1st reading		
09/07/2009	End of procedure in Parliament		
13/07/2009	Final act signed		
	Final act published in Official Journal		

Technical information

Procedure reference	2008/0259(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	EC Treaty (after Amsterdam) EC 061-; EC Treaty (after Amsterdam) EC 067-p5; EC Treaty (after Amsterdam) EC 065
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/71895

Documentation gateway

Legislative proposal		COM(2008)0893	23/12/2008	EC	Summary
Committee draft report		PE419.961	09/02/2009	EP	
Document attached to the procedure		SEC(2009)0275	27/02/2009	EC	Summary
Amendments tabled in committee		PE421.304	12/03/2009	EP	
Document attached to the procedure		SEC(2009)0500	07/04/2009	EC	Summary
Committee opinion	LIBE	PE421.294	15/04/2009	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0270/2009	23/04/2009	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0380/2009	07/05/2009	EP	Summary
Commission response to text adopted in plenary		SP(2009)3616	07/07/2009	EC	
Draft final act		03655/2009/LEX	13/07/2009	CSL	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Regulation 2009/662](#)
[OJ L 200 31.07.2009, p. 0025](#) Summary
[Corrigendum to final act 32009R0662R\(01\)](#)
[OJ L 236 13.09.2011, p. 0035](#)

Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters

PURPOSE: to establish a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: apart from the *acquis communautaire*, the field of civil justice is characterised by a number of bilateral agreements concluded by Member States with third countries prior to the entry into force of the relevant provisions of the Amsterdam Treaty or prior to their accession to the Community. To the extent that such pre-existing agreements contain provisions that are not compatible with the EC Treaty, Member States must take all steps to eliminate the incompatibilities. The European Court of Justice has confirmed that, if necessary, they are required to denounce agreements that are incompatible with the *acquis*. Apart from pre-existing bilateral agreements, there may also be a need for the conclusion of new agreements with third countries governing areas of civil justice that come within Title IV of the EC Treaty.

In Opinion 1/03 of 7 February 2006 relating to the conclusion of the new Lugano Convention, the Court of Justice held that the Community has acquired exclusive competence to conclude international agreements with third countries, on matters affecting the rules set out, *inter alia*, in Regulation (EC) No 44/2001 ("Brussels I"), in particular on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Commission considers that it must be assumed that the Community has acquired exclusive competence for the negotiation and conclusion of bilateral agreements in this field. Nevertheless, it has to be assessed if there currently exists a sufficient Community interest for the Community to replace all such existing or proposed agreements between Member States and third countries with Community agreements. For that reason it is necessary to establish a procedure with a twofold purpose.

IMPACT ANALYSIS: several options were examined by the Commission for setting up the procedure, although without carrying out a formal impact assessment: (a) the "passive" status quo ; (b) the "active" status quo would involve opting not to develop any legislative procedure for the re-delegation of Community powers ; (c) the issuing of an authorisation by the Community, based on general criteria laid down by a legislative instrument (for example, a Regulation) or by a Council decision (on the basis of the aforementioned legislative instrument) (d) a specific authorisation to be granted on a case-by-case basis after having assessed the agreement notified by the Member State on the basis of objective criteria. This last option was selected by the Commission.

CONTENT : the objective of the proposal is to establish a procedure for the Community to make an assessment of whether there is a sufficient Community interest in the conclusion of proposed bilateral agreements with third countries, and in the absence thereof authorise the Member States to conclude these agreements with third countries in certain fields concerning judicial cooperation in civil and commercial matters falling under the exclusive competence of the Community.

It is proposed to limit the procedure in question only to sectoral issues related to matrimonial matters, parental responsibility and maintenance obligations on the one hand, (please see [CNS/2008/0266](#)) and, on the other hand, to the law applicable to contractual and non-contractual obligations. This proposal deals with the second subject matter.

The procedure is based on prior notification of the draft agreement by the Member State that wish to obtain the authorisation to re-negotiate and conclude the agreement with the third country on the basis of specific conditions to be evaluated on a case-by-case basis.

If the Community has already concluded an agreement on the same subject matter with the third country concerned, the Member State is not allowed to negotiate or conclude the agreement with the third country concerned and any application submitted will be rejected. If that is not the case, the Commission must determine whether such an agreement is expected in the near future. If no such agreement is expected in the near future the Commission may grant authorisation, provided that the following two conditions are met:

(a) the Member State concerned has demonstrated that it has a specific interest in concluding an agreement with the third country, related in particular to the existence of economic, geographic, cultural or historical ties between the Member State and that third country; and (b) the Commission determines that the proposed agreement is of limited impact on the uniform and consistent application of the Community rules in place and on the proper functioning of the system established by those rules.

The procedure also provides for the inclusion in the agreements of sunset clauses to limit the validity in time of the agreements concluded by the Member States until the point when the Community concludes an agreement on the same subject matters with the third country concerned.

Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters

This Commission Staff Working Document recalls the legal arguments that form the basis of the special mechanism established by the two proposals for a regulation on the establishment of a procedure for the negotiation and conclusion of agreements by the Member States with third countries concerning, respectively, the applicable law in contractual and non-contractual obligations for sectoral matters, and the competence, recognition and implementation of decisions in certain sectors of family law, including in relation to maintenance obligations, as well as the applicable law in this area.

The Commission Services consider that the proposed procedure is legally possible and that it does not undermine the Community *acquis* and the exercise of the exclusive competence of the Community, provided that it falls within strict limits in terms of form and substance and that it remains true to the principle of exceptionality.

Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters

This Commission Staff Working Document outlines some of the preparatory work carried out by the Commission when drawing up proposals for Regulations establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations and concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance obligations.

In particular, it reflects the alternative solutions presented to Member States' experts to discuss a mechanism for bilateral agreements of Member States with third states in the areas falling under exclusive external Community competence.

It should also be noted that the Commission published on 27 February another Staff Working Document (SEC(2009)275final), presenting the

legal analysis of the Commission Legal Service on the legality of the Commission proposals. It summarizes the main statements from the Legal Service's opinion on the issue of the Member States' bilateral agreements with the third states in general and on the draft Commission proposals.

This Working document firstly examines the legal framework of the proposed Regulations and offers alternative solutions to deal with the current situation which range from the passive status quo (no specific measures to be taken) to specific authorisations (the Community may be given the possibility to authorise Member States to act in areas of exclusive Community competence provided that such authorisation is specific).

Other proposed actions include a legal instrument consisting of substantive criteria and a procedure to determine whether Member States should be authorised to conclude bilateral agreements on particular subject matters that fall wholly or partially under the Community's exclusive competence.

Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters

The Committee on Legal Affairs adopted the report drawn up by Tadeusz ZWIEFKA (EPP-ED, PL) and amended, under the first reading of codecision procedure, the proposal for a regulation of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations. The committee has altered the reference to 'sectoral matters' in order to provide for a greater degree of legal certainty, tightened up the time limits and streamlined the procedure.

The main amendments are as follows:

Scope: Members state that the Regulation should not apply if the Community has already concluded an agreement with the third country or third countries concerned on the same subject-matter. Two agreements should be considered to concern the same subject matter only if, and to the extent that, they regulate in substance the same specific legal issues. Provisions simply stating a general intention to cooperate on such issues should not be considered as concerning the same subject-matter.

Definitions: the term 'agreement' is re-defined to mean (a) a bilateral agreement between a Member State and a third country; or (b) a regional agreement between a limited number of Member States and of third countries neighbouring Member States of the EU on intended to address local situations and not open for accession to other States.

Notification: the Commission shall make the notification and, if necessary, the accompanying documentation, available to the European Parliament and the Council, subject to any requirements of confidentiality.

Assessment by the Commission: the report stipulates that the notification of the Member State shall be rejected by the Commission if: (a) the Community has already concluded an agreement with the third country or third countries concerned on the same subject matter; or (b) the envisaged agreement does not fall within the scope of this Regulation.

It adds that a Community interest shall be deemed to exist: (a) if five or more Member States have concluded, or intend to conclude, an agreement falling within the scope of this Regulation, with the same third country and on the same subject matter; (b) if the European Parliament or the Council sends a communication to that effect to the Commission within three months of receipt of a notification.

If no Community agreement is envisaged for the next 2 years, the Commission must verify that all 4 of the committee's conditions are met. These include the condition that the envisaged agreement would not harm the object and purpose of the Community's external relations policy.

Authorisation to open negotiations: a new clause states that the agreement shall contain a clause for the automatic replacement of the agreement between the Community or the Community and its Member States and the third country or third countries concerned on the same subject matter. The Commission must give a reasoned decision within 3 months and notify Parliament within 1 month of taking it.

Refusal to authorise the opening of formal negotiations: a new article is added setting out the consequences of the Commission's refusal to authorise negotiations, including the deadlines that the Commission must meet, and the procedure for finding a solution.

The committee also inserts new articles on the refusal to authorise the conclusion of the agreement, confidentiality and information to Member States. It removes the Commission's discretion with regard to authorising the conclusion of an agreement. The text states that within 30 days of the submission of the opinion of the Commission the Member State concerned may request that a debate on the matter be held within the Council at the earliest possible moment. In the event of such a request, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the debate within the Council.

Provisions on comitology are deleted.

Expiry: Members state that the Regulation shall expire on 31 December 2019. Notwithstanding the expiry of the Regulation on that date or its abrogation, where authorisation to open negotiations is granted to a Member State before that expiry or abrogation date, those negotiations shall be allowed to continue and to be completed in accordance with the provisions of the Regulation.

Report: the Commission's report shall contain a positive recommendation either to abrogate the Regulation or to maintain it in force until the expiry date. If the Regulation is maintained in force, the Commission shall present a further such report to the European Parliament, the Council and the European Economic and Social Committee no later than 1 January 2019. The reports may be accompanied by an appropriate legislative proposal, in particular for the replacement of the Regulation by a regulation with the same scope or by a regulation with its scope extended to recognition and enforcement of judgments in civil and commercial matters under Council Regulation (EC) No 44/2001.

It should be noted that this proposal is closely linked to the proposal on a procedure for bilateral agreements concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations (please see [CNS/2008/0266](#)).

Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters

The European Parliament adopted by 500 votes to 20 with 11 abstentions a legislative resolution amending, under the first reading of codecision procedure, the proposal for a regulation of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of agreements on particular matters concerning applicable law in contractual and non-contractual obligations.

The amendments are the result of a compromise between Parliament and Council.

The main amendments are as follows:

Scope: Members state that the Regulation should not apply if the Community has already concluded an agreement with the third country or third countries concerned on the same subject-matter.

Definitions: the term 'agreement' is re-defined to mean (a) a bilateral agreement between a Member State and a third country; or (b) a regional agreement between a limited number of Member States and of third countries neighbouring Member States of the EU intended to address local situations and not open for accession to other States.

Notification: the Member State concerned must notify the Commission in writing of its intention at the earliest possible moment before the envisaged opening of formal negotiations.

Assessment by the Commission: the Commission shall, in making this assessment, first check whether any relevant negotiating mandate with a view to a Community agreement with the third country is specifically envisaged within the next 24 months. If this is not the case, the Commission shall assess whether all 3 specified conditions are met, inter alia, that the proposed agreement would not undermine the object and purpose of the Community's external relations policy as decided by the Community.

Authorisation to open negotiations: if all 3 conditions are met, the Commission shall authorise the Member State to open formal negotiations on the agreement. The text provides for: (i) full or partial denunciation of the agreement in the event of a subsequent agreement between the EC and the same third country on the same subject matter; or (ii) direct replacement of the relevant provisions of the agreement by provisions of a subsequent agreement between the EC and the third country on the same subject matter.

Refusal to authorise the opening of formal negotiations: a new article is added setting out the consequences of the Commission's refusal to authorise negotiations, including the deadlines that the Commission must meet, and the procedure for finding a solution.

The compromise text also contains new articles on the refusal to authorise the conclusion of the agreement, confidentiality and information to Member States. It removes the Commission's discretion with regard to authorising the conclusion of an agreement if that agreement meets the necessary criteria.

Provisions on comitology are deleted.

Review: no earlier than 8 years after the date of adoption of the Regulation the Commission shall submit a report on the application of the Regulation. This report shall either: (a) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with the text (see below) or (b) recommend that this Regulation be replaced as of that date by a new Regulation.

Expiry: Members state that the Regulation shall expire 3 years after the submission by the Commission of the report described above. Notwithstanding the expiry of the Regulation, all negotiations ongoing on that date which have been entered into by a Member State under the Regulation with a view to amending an existing agreement or to negotiating and concluding a new agreement shall be allowed to continue and to be completed on the conditions laid down in the Regulation.

It should be noted that this proposal is closely linked to the proposal on a procedure for bilateral agreements concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations (please see [CNS/2008/0266](#)).

Member State/third country bilateral agreements: applicable law in contractual and non-contractual obligations for sectoral matters

PURPOSE: to establish a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations.

LEGISLATIVE ACT: Regulation (EC) No 662/2009 of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations.

CONTENT: the Council adopted regulations establishing procedures for the negotiation and conclusion of bilateral agreements between member states and third countries, concerning:

- jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations, and applicable law in matters relating to maintenance (see [CNS/2008/0266](#));
- applicable law in contractual and non-contractual obligations.

Before the Community took on exclusive competence for these areas of civil law, it was for the Member States themselves to conclude agreements with third countries with which they had specific ties. As the Community gradually took over exclusive competence, Member States' competence in these matters was eroded, with results that were sometimes less than satisfactory. The procedure established by the two Regulations is the solution that has been found.

Following an agreement reached at first reading with the European Parliament, this Regulation enables Member States to conclude agreements on specific matters covering applicable law in contractual and non-contractual obligations.

The Regulation includes the following main elements:

Scope: this Regulation shall apply to agreements concerning particular matters falling, entirely or partly, within the scope of [Regulation \(EC\) No 593/2008](#) on the law applicable to contractual obligations (Rome I) and [Regulation \(EC\) No 864/2007](#) on the law applicable to non-contractual obligations (Rome II).

Definitions: the term "agreement" shall mean: (i) a bilateral agreement between a Member State and a third country; (ii) regional agreement between a limited number of Member States and of third countries neighbouring Member States which is intended to address local situations and which is not open for accession to other States.

Notification: where a Member State intends to enter into negotiations in order to amend an existing agreement or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission in writing of its intention at the earliest possible moment before the envisaged opening of formal negotiations.

Assessment by the Commission: the Commission shall first check whether any relevant negotiating mandate with a view to concluding a Community agreement with the third country concerned is specifically envisaged within the next 24 months. If this is not the case, the Commission shall assess whether all three specified conditions are met, inter alia, that the envisaged agreement would not undermine the object and purpose of the Community's external relations policy as decided by the Community.

Authorisation to open negotiations: if all three conditions are met, the Commission shall authorise the Member State to open formal negotiations on the agreement. The text provides for: (i) full or partial denunciation of the agreement in the event of a subsequent agreement between the EC and the same third country on the same subject matter; or (ii) direct replacement of the relevant provisions of the agreement by provisions of a subsequent agreement between the EC and the third country on the same subject matter.

Refusal to authorise the opening of formal negotiations: the Regulations sets out the consequences of the Commission's refusal to authorise negotiations, including the deadlines that the Commission must meet, and the procedure for finding a solution. The text also contains articles on the refusal to authorise the conclusion of the agreement, confidentiality and information to Member States.

Review: no earlier than 8 years after the date of adoption of the Regulation the Commission shall submit a report on the application of the Regulation. This report shall either: (a) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with the text (see below) or (b) recommend that this Regulation be replaced as of that date by a new Regulation. If the report recommends a replacement of this Regulation, it shall be accompanied by an appropriate legislative proposal.

Expiry: the Regulation shall expire three years after the submission by the Commission of the report described above. Notwithstanding the expiry of the Regulation, all negotiations ongoing on that date which have been entered into by a Member State under the Regulation with a view to amending an existing agreement or to negotiating and concluding a new agreement shall be allowed to continue and to be completed on the conditions laid down in the Regulation.

ENTRY INTO FORCE: 20/08/2009.