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2004



2009

Committee on Legal Affairs

2008/0266(CNS)

2.4.2009

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation on establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries 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
(COM(2008)0894 – C6-0035/2009 – 2008/0266(CNS))

Rapporteur: Tadeusz Zwiefka

PA_Legam

SHORT JUSTIFICATION

The rapporteur's reasons for proposing the amendments set out below correspond largely with those set out in his draft report on the proposal for a regulation 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 obligations¹. It must be borne in mind, however, that there is no question of the Community's having exclusive competence in the area covered by this proposal for a regulation.

In addition, this proposal falls to be dealt with under the consultation procedure. Given that it needs to be closely aligned with the other proposed regulation on bilateral agreements covering applicable law in contractual and non-contractual obligations, to which the codecision procedure applies, your rapporteur intends to work extremely closely with the rapporteur for the Committee on Civil Liberties, Justice and Home Affairs, which has the main responsibility for this file.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Title

Text proposed by the Commission

Proposal for a Council Regulation *of [...] establishing a procedure for the negotiation and conclusion of bilateral agreements between Member States and third countries 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*

Amendment

Proposal for a Council Regulation establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, ***matters of*** parental responsibility and ***matters relating to*** maintenance obligations, and applicable law in matters relating to maintenance obligations

¹ COM(2008)0893.

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) Judicial cooperation in civil matters between Member States and third countries has traditionally been governed by agreements between Member States and third countries.

Amendment

(2) Judicial cooperation in civil matters between Member States and third countries has traditionally been governed by agreements between Member States and third countries. ***Such bilateral agreements relating to family-law matters, of which there are a large number, very often reflect historical links between the Member State in question and a particular third country or countries. They respond to a manifest need on the part of citizens in both the Member State and the third country concerned.***

Amendment 3

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) There may also be a need for the conclusion of new agreements with third countries governing areas of civil justice that come within the purview of Title IV of the EC Treaty.

Amendment

(4) There ***is a manifest*** need for the conclusion of new agreements with third countries ***relating to family-law matters*** that come within the purview of Title IV of the EC Treaty ***given, in particular, that many existing bilateral agreements do not reflect present circumstances or require modernisation.***

Amendment 4

Proposal for a regulation Recital 8

Text proposed by the Commission

(8) **An** assessment is needed of whether there currently exists sufficient Community interest in replacing all existing or proposed bilateral agreements between Member States and third countries with Community agreements. **Consequently, it is necessary** to establish a procedure with a twofold purpose. The first is to allow the Community to assess whether there is such sufficient Community interest in the conclusion of a particular bilateral agreement. The second is to authorise Member States to conclude the agreement at issue if there is no **current** Community interest in the conclusion of such an agreement.

Amendment

(8) **On the one hand, an** assessment is needed of whether there exists sufficient Community interest in replacing all existing or proposed bilateral agreements between Member States and third countries with Community agreements. **On the other hand, in view of the potential number of bilateral agreements which will have to be concluded, the Community does not always have the resources to conclude such agreements directly. Consequently, it is necessary, in accordance with the principles laid down in Article 10 of the EC Treaty and the principle of sincere cooperation, for its institutions and the Member States to cooperate with a view to enabling the latter to amend existing agreements and, where necessary, to conclude new agreements in a manner consistent and in accordance with the Community's interest. It is therefore appropriate** to establish a procedure with a twofold purpose. The first is to allow the Community to assess whether there is such sufficient Community interest in the conclusion of a particular bilateral agreement. The second is to authorise Member States to conclude the agreement at issue if there is no **present** Community interest in the conclusion of such an agreement. **This approach is consonant with the usual Community practice whereby it is for Member States to execute Community law.**

Amendment 5

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) A coherent and transparent procedure should be established to authorise Member

Amendment

(9) A coherent and transparent procedure should be established to authorise Member

States to amend existing agreements with third countries or to negotiate and conclude new agreements in exceptional circumstances, in particular where the Community itself has not indicated its intention to exercise its external competences to conclude the agreement. This procedure is without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the EC Treaty. Because it derogates from the rule that the Community is exclusively competent to conclude international agreements on these matters, the proposed procedure must be regarded as an exceptional measure and must be limited in scope *and in time*.

States to amend existing agreements with third countries or to negotiate and conclude new agreements in exceptional circumstances, in particular where the Community itself has not indicated its intention to exercise its external competences to conclude the agreement. This procedure is without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the EC Treaty. Because it derogates from the rule that the Community is exclusively competent to conclude international agreements on these matters, the proposed procedure must be regarded as an exceptional measure and must be limited in scope.

Justification

This amendment is necessary as a result of the deletion of the second paragraph of Article 11.

Amendment 6

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The mechanism in question should also cover closed regional agreements between a limited number of Member States, that is, two or three, and one or more third countries.

Amendment 7

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) The present Regulation should be limited to agreements concerning ***sectoral*** matters related to the fields of jurisdiction, recognition and enforcement of judgments

(10) The present Regulation should be limited to agreements concerning matters related to the fields of jurisdiction, recognition and enforcement of judgments

and decisions in matrimonial matters, parental responsibility and maintenance obligations and to the applicable law in matters relating to maintenance obligations.

and decisions in matrimonial matters, parental responsibility and maintenance obligations and to the applicable law in matters relating to maintenance obligations.

Justification

The limitation of the Regulation to agreements relating to “sectoral matters” is too restrictive and legally unjustified. The deletion of this expression should apply throughout the Regulation.

Amendment 8

Proposal for a regulation

Recital 14

Text proposed by the Commission

Amendment

(14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission.

deleted

Amendment 9

Proposal for a regulation

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. This Regulation shall apply to bilateral agreements between Member States and third countries concerning ***sectoral matters and covering jurisdiction, recognition and enforcement of judgements and decisions in matrimonial matters, parental responsibility and maintenance obligations and applicable law in matters relating to maintenance obligations.***

2. This Regulation shall apply to bilateral agreements between Member States and third countries ***and closed regional agreements*** concerning matters ***falling, entirely or partly, within the scope of Regulation (EC) No 2201/2003¹ and Regulation (EC) No 4/2009².***

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in

matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2001, OJ L 338, 23.12.2003.

² *Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009.*

Amendment 10

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

1. For the purposes of this Regulation, the term “agreement” shall ***be understood as meaning*** bilateral agreement between a Member State and a third country.

Amendment

1. For the purposes of this Regulation, the term “agreement” shall ***mean:***

(a) a bilateral agreement between a Member State and a third country; or

(b) a closed regional agreement between a limited number of Member States and third countries bordering the European Union.

Amendment 11

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

2. For the purposes of this Regulation, “Member State” shall mean any Member State ***other than*** Denmark.

Amendment

2. For the purposes of this Regulation, “Member State” shall mean any Member State ***with the exception of*** Denmark.

Amendment 12

Proposal for a regulation Article 3 – paragraph 1

Text proposed by the Commission

1. Where a Member State intends to enter negotiations with a third country to amend an existing agreement, or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission of its ***intention in writing***.

Amendment

1. Where a Member State intends to enter ***into*** negotiations with a third country to amend an existing agreement, or to conclude a new agreement falling within the scope of this Regulation, it shall notify the Commission of its ***application by letter or by electronic means***.

Justification

It is necessary to rectify the inconsistency with the second subparagraph of Article 5(3), which provides that “The Commission shall give its decision on the application of the Member State within six months of receipt of the notification referred to in Article 3” and to specify the formalities for notification (writing or electronic mail).

Amendment 13

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

2. The notification shall include a copy of the existing agreement, the draft agreement or the draft proposal by the third country concerned, if available, and any other relevant documentation. The Member State shall describe the ***objectives*** of the negotiations and shall specify the issues which are to be addressed, or the provisions of the existing agreement which are to be amended, ***and shall*** provide any other ***relevant*** information.

Amendment

2. The notification shall include, ***as appropriate***, a copy of the existing agreement, the draft agreement or the draft proposal by the third country concerned, if available, and any other relevant documentation. The Member State shall describe the ***subject-matter*** of the negotiations and shall specify the issues which are to be addressed ***in the envisaged agreement***, or the provisions of the existing agreement which are to be amended. ***The Member State may*** provide any other ***additional*** information.

Amendment 14

Proposal for a regulation
Article 3 – paragraph 3

Text proposed by the Commission

3. The notification shall be made at least three months before formal negotiations are scheduled to commence with the third country concerned.

Amendment

3. 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.

Amendment 15

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

1. Upon notification, the Commission shall *make an assessment as to* whether the Member State *can pursue* negotiations *with the third country concerned. If the Community has already concluded any agreement with the third country concerned on the same subject matters, the application of the Member State will be automatically rejected by the Commission.*

Amendment

1. Upon *receipt of the* notification, the Commission shall *assess* whether the Member State *may commence* negotiations.

Amendment 16

Proposal for a regulation
Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. 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.

Amendment 17

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. If the Community has not yet concluded an agreement with the third country concerned, the Commission shall in making its assessment first check whether any relevant Community agreement with the third country concerned is ***expected in the near future***. If this is not the case, the Commission ***may grant authorisation, provided*** that the following two conditions are met:

(a) the Member State concerned has ***demonstrated*** that ***there is*** a specific interest in concluding the ***bilateral sectoral 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.***

Amendment

2. If the Community has not yet concluded an agreement with the third country ***or third countries*** concerned, the Commission shall, in making its assessment, first check whether any relevant Community agreement with the third country ***or third countries*** concerned is ***specifically envisaged within the next twelve months***. If this is not the case, the Commission ***shall check*** that ***all of*** the following conditions are met:

(a) the Member State concerned has ***substantiated*** that ***it has*** a specific interest in concluding the agreement ***owing to*** economic, geographic, cultural, historical ***or social*** ties between the Member State and ***the*** third country ***or countries concerned and that there is no present Community interest in concluding the agreement;***

(b) the Commission determines that the proposed agreement ***does not have a significant*** 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.

(c) the envisaged agreement would not harm the object and purpose of the Community's external relations policy;

(d) in the case of a closed regional agreement, there is no possibility of the Community's concluding an agreement within a reasonable time.

Amendment 18

Proposal for a regulation
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If the information transmitted by the Member State is not sufficient for the purposes of making the assessment, the Commission may request additional information.

Amendment 19

Proposal for a regulation
Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. If the Commission concludes that ***there are no obstacles to the agreement in the light of*** the conditions ***referred to in*** Article 4, ***it may*** authorise ***a*** Member State to open negotiations on the agreement with the third country concerned. If necessary, the Commission may propose negotiating guidelines and ***can*** request the inclusion of particular clauses in the proposed agreement

1. If the Commission concludes that the conditions ***set out in*** Article 4 ***are satisfied***, ***the Commission shall*** authorise ***the*** Member State to open negotiations on the agreement with the third country ***or third countries*** concerned. If necessary, the Commission may propose negotiating guidelines and ***may*** request the inclusion of particular clauses in the envisaged agreement.

Amendment 20

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The agreement shall ***provide for the*** clause on ***its*** denunciation in the event ***that the Community concludes an agreement with*** the same third country on the same subject matter. ***The agreement shall include the following clause:*** “(the name of Member State) ***will*** denounce ***the*** agreement when the ***European Community concludes*** an agreement with (the name of the third country) on the same subject matters of

The agreement shall ***contain a*** clause ***providing for full or partial*** denunciation ***of the agreement*** in the event ***of a subsequent agreement between the Community or the Community and its Member States and*** the same third country ***or third countries*** on the same subject matter. ***That clause shall be worded taking into account the following guidelines:*** “(the name of the Member State) ***shall***

civil justice as governed by *the present* agreement”.

denounce *this* agreement *in part or in full if and* when the Community *or the Community and its Member States conclude* an agreement with (the name of the third country *or third countries*) on the same matters of civil justice as *those* governed by *this* agreement”.

Amendment 21

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. The Commission shall take a decision on the authorisation referred to in paragraphs 1 and 2 in accordance with the procedure referred to in Article 8(2).

deleted

Amendment 22

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The Commission shall give its decision on the application of the Member State within *six* months of receipt of the notification referred to in Article 3.

The Commission shall give its *reasoned* decision on the application of the Member State within *three* months of receipt of the notification referred to in Article 3, *or of additional information if requested in accordance with Article 4(3). This period may be extended once by a period of thirty days at the Commission’s request.*

Amendment 23

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Before *initiallying the* agreement, the Member State concerned shall notify the

1. Before *signing the negotiated* agreement, the Member State concerned

Commission of the outcome of negotiations and **shall** transmit the text of the agreement to the Commission.

shall notify the outcome of **the** negotiations **to the Commission** and transmit the text of the agreement to the Commission.

Amendment 24

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. Upon notification the Commission shall **make an assessment as to** whether the negotiated agreement complies with its initial assessment. In making this further assessment the Commission **must** examine whether the **proposed** agreement **includes the requirements made by the Commission**, in particular as regards the inclusion of clauses referred to in Article 5(1) **and whether the conclusion of the proposed agreement would render the Community law ineffective and would undermine the proper functioning of the system established by its rules.**

Amendment

2. Upon **receipt of this** notification the Commission shall **assess** whether the negotiated agreement complies with its initial assessment. In making this further assessment the Commission **shall** examine whether the **negotiated** agreement **satisfies the conditions set out in Article 4**, in particular as regards the inclusion of clauses referred to in Article 5(1).

Amendment 25

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

4. If the Commission takes the view that the negotiations have resulted in an agreement which fulfils the requirements referred to in paragraph 2, the Member State **may** be authorised to conclude the agreement.

Amendment

4. If the Commission takes the view that the negotiations have resulted in an agreement which fulfils the requirements referred to in paragraph 2, the Member State **shall** be authorised to conclude the agreement.

Justification

This Commission shall have no discretion at this stage.

Amendment 26

Proposal for a regulation
Article 7 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

5. The Commission shall take a decision on the authorisation referred to in paragraphs 3 and 4 in accordance with the procedure referred to in Article 8(3).

deleted

Amendment 27

Proposal for a regulation
Article 7 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

The Commission shall give its decision on the application of the Member State within **six months** of receipt of the notification referred to in paragraph 1.

The Commission shall give its **reasoned** decision on the application of the Member State within **three months** of receipt of the notification referred to in paragraph 1.

Amendment 28

Proposal for a regulation
Article 8

Text proposed by the Commission

Amendment

Committee procedure

Information procedure

1. The Commission shall be assisted by a committee.

1. Upon receipt of the notification provided for in Article 3(1), the Commission shall inform the Council thereof. Where appropriate, the Council shall also be provided with the relevant documentation, subject to any requirements of confidentiality.

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.

2. The European Parliament shall also be informed.

3. Where reference is made to this paragraph, the management procedure laid down in Article 4 of

3. All reasoned decisions provided for in this Regulation shall be made available to the European Parliament and the

Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.

Council.

4. The period provided for in Article 4(3) of Decision 1999/468/EC shall be three months.

Amendment 29

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Confidentiality

1. In notifying the Commission of negotiations and their outcome as envisaged in Articles 3, 4(3) and 7, Member States shall clearly inform the Commission if any information therein is to be considered confidential and whether it can be shared with other Member States.

2. The Commission and Member States shall ensure that any information identified as confidential is treated according to Article 4(1)(a) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹.

¹ OJ L 145, 31.5.2001, p. 43.

Amendment 30

Proposal for a regulation Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Where the stage of the negotiations so permits, the Commission may propose *negotiating* guidelines or the inclusion of

Where the stage of the negotiations so permits, the Commission may propose guidelines or *request* the inclusion of

particular clauses, as referred to in Article 5(1).

particular clauses, as referred to in Article 5(1).

Justification

See the justification for the amendment to the first subparagraph of Article 5(1).

Amendment 31

**Proposal for a regulation
Article 10**

Text proposed by the Commission

No later than ***the 1st*** January 2014 the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on application of this Regulation, ***which*** may be accompanied by an appropriate legislative proposal.

Amendment

No later than ***1*** January 2014 the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on application of this Regulation, ***in particular on the possible extension of its scope. The report shall contain a positive recommendation either to abrogate this Regulation or to maintain it in force for a further period of five years or less.*** It may be accompanied by an appropriate legislative proposal.

Amendment 32

**Proposal for a regulation
Article 11 – paragraph 2**

Text proposed by the Commission

It shall apply until 31 December 2014.

Amendment

deleted

Justification

This need for such a sunset clause is not apparent. In any event 31 December 2014 is unrealistic having regard the time needed to adopt the Regulation and for Member States to conduct negotiations with third countries, particularly in view of the ponderous, time-consuming procedures laid down in the Regulation. In any event, the review clause set out in Article 10, which provides for the Commission to report to the other institutions by 1 January 2014, makes this sunset clause unnecessary.

PROCEDURE

| | |
|---|---|
| Title | Bilateral agreements between Member States and third countries on judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations |
| References | COM(2008)0894 – C6-0035/2009 – 2008/0266(CNS) |
| Committee responsible | LIBE |
| Opinion by Date announced in plenary | JURI 3.2.2009 |
| Rapporteur Date appointed | Tadeusz Zwiefka 19.1.2009 |
| Discussed in committee | 12.2.2009 |
| Date adopted | 31.3.2009 |
| Result of final vote | + : 16 - : 4 0 : 0 |
| Members present for the final vote | Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Klaus-Heiner Lehne, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka |
| Substitute(s) present for the final vote | Nicole Fontaine, Georgios Papastamkos, Jacques Toubon, Renate Weber |