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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council regulation 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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Gérard Deprez

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics.*** In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation 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))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2008)0894),

– having regard to Articles 61(c), 65, 67(2) and 67(5) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0035/2009),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0000/2009),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a regulation
Recital 8

Text proposed by the Commission	*Amendment*
(8) An assessment is needed of whether there ***currently*** exists sufficient Community interest in replacing all existing or proposed bilateral agreements	(8) An assessment is needed of whether there exists sufficient Community interest in replacing all existing or proposed bilateral agreements between Member

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***.

States and third countries with Community agreements. ***The Commission should*** assess whether there is ***a*** Community interest in the conclusion of ***an*** agreement ***between the Community and a third country. If this is not the case*** Member States ***should be authorised*** to conclude the agreement at issue.

Or. en

Amendment 2

Proposal for a regulation
Recital 9

Text proposed by the Commission	*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.***	(9) ***This Regulation should lay down specific criteria and conditions for the*** procedure ***authorising*** 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 Treaty.

Or. en

Amendment 3

Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission	*Amendment*
	(9a) Such criteria and conditions should ensure a balance between, on the one hand, the Community interest, and on the other hand the specific interest of the Member State and should not render Community law ineffective or undermine the proper functioning of the system established by its rules.

Or. en

Amendment 4

Proposal for a regulation
Recital 9 b (new)

Text proposed by the Commission	*Amendment*
	(9b) As the procedure constitutes a derogation from the rules on the exclusive competence of the Community to conclude international agreements in the area of judicial cooperation in civil and commercial matters, it must be regarded as an exceptional measure and should therefore be limited in scope and in time.

Or. en

Amendment 5

Proposal for a regulation
Recital 9 c (new)

Text proposed by the Commission	*Amendment*
	(9c) The Commission should establish a strategy and define priorities with a view

	to developing the Community's external relations in the area of judicial cooperation in civil and commercial law, in accordance with guidelines that the European Council may adopt in the future.

Or. en

Amendment 6

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

Or. en

Amendment 7

Proposal for a regulation
Recital 11

Text proposed by the Commission	*Amendment*
(11) In order to ensure that an agreement proposed by a Member State does not render Community law ineffective and undermine the proper functioning of the system established by its rules, authorisation should be required both in order to start or continue negotiations and to conclude an agreement. This will enable the Commission to assess the expected	(11) In order to ensure that an agreement proposed by a Member State does not render Community law ineffective and undermine the proper functioning of the system established by its rules, authorisation should be required both in order to start or continue negotiations and to conclude an agreement. This will enable the Commission to assess the expected

impact of the (possible) outcome of negotiations on Community law. ***In relevant cases,*** the Commission can propose negotiating guidelines or request the inclusion of particular clauses in the proposed agreements.	impact of the (possible) outcome of negotiations on Community law. The Commission can propose negotiation guidelines or request the inclusion of particular clauses in the proposed agreements.

Or. en

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***

Or. en

Amendment 9

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission	*Amendment*
1. This Regulation establishes a procedure to authorise a Member State to amend ***an existing*** bilateral agreement between that Member State and a third country, or to negotiate and conclude a new bilateral agreement subject to the conditions laid down in the following provisions.	1. This Regulation establishes a procedure to authorise a Member State to amend a bilateral agreement between that Member State and a third country, or to negotiate and conclude a new bilateral agreement subject to the conditions laid down in the following provisions.

Or. en

Amendment 10

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 concerning 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.

Or. en

Amendment 11

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission	*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 ***intention in writing***.	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***.

Or. en

Amendment 12

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
1. ***Upon*** notification, the Commission shall make an assessment as to whether the	1. ***After receipt of the*** notification, the Commission shall make an assessment as

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.	to whether the Member State can pursue negotiations with the third country concerned***, duly taking into account that derogations from the Community's exclusive external competence should remain exceptional and limited in scope and in time***. 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. ***If the Commission considers that there is a Community interest in concluding an agreement between the Community and a third country, it shall also reject the application.***

Or. en

Amendment 13

Proposal for a regulation
Article 4 – paragraph 2 — introductory part

Text proposed by the Commission	*Amendment*
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:	2. If ***there is no*** Community interest ***and if there is no*** agreement with the third country concerned, the Commission shall in making its assessment check whether any relevant Community agreement with the third country concerned is ***specifically envisaged within the next two years***. If this is not the case, the Commission ***shall check*** that the following ***three*** conditions are met:

Or. en

Amendment 14

Proposal for a regulation
Article 4 – paragraph 2 – point a

Text proposed by the Commission	*Amendment*
(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***	(a) the Member State concerned has demonstrated that ***it has*** a specific interest in concluding the bilateral agreement with the third country, related in particular to economic, geographic, cultural or historical ties between the Member State and that third country;

Or. en

Amendment 15

Proposal for a regulation
Article 4 – paragraph 2 – point b

Text proposed by the Commission	*Amendment*
(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.***	(b) the proposed agreement ***does not have a significant*** impact on the uniform and consistent application of the Community rules in place***; and***

Or. en

Amendment 16

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

Text proposed by the Commission	*Amendment*
	(ba) the conclusion of the proposed agreement would not render Community law ineffective or undermine the proper functioning of the system established by

the Community rules.

Or. en

Amendment 17

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 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 conditions referred to in Article 4(2) are met,*** the Commission ***shall*** authorise ***the*** 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.

Or. en

Amendment 18

Proposal for a regulation
Article 5 – paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) The agreement shall contain a clause for the automatic replacement of the agreement between the European Community or the Community and its Member Sates and the third country on the same subject matter.

Or. en

Amendment 19

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***

Or. en

Amendment 20

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 six months of receipt of the notification referred to in Article 3.

Or. en

Amendment 21

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission	*Amendment*
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	2. ***After receipt of the*** 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

agreement would render the Community law ineffective and ***would*** undermine the proper functioning of the system established by its rules.	whether the conclusion of the proposed agreement ***has no Community interest or*** would render the Community law ineffective and undermine the proper functioning of the system established by its rules.

Or. en

Amendment 22

Proposal for a regulation
Article 7 – paragraph 4

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

Or. en

Amendment 23

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***

Or. en

Amendment 24

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 month 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 six months of receipt of the notification referred to in paragraph 1.

Or. en

Amendment 25

Proposal for a regulation
Article 8

Text proposed by the Commission	*Amendment*
Article 8	***deleted***
Committee procedure	
1. The Commission shall be assisted by a committee.	
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.	
3. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7 thereof.	
4. The period provided for in Article 4(3) of Decision 1999/468/EC shall be three months.	

Or. en

Amendment 26

Proposal for a regulation
Article 8 a (new)

Text proposed by the Commission	*Amendment*
	Article 8a
	1. Member States shall notify the Commission of all agreements as defined in Article 2 falling within the scope of this Regulation.
	2. The Commission shall make the information notified under paragraph 1, as well as the information notified in accordance with Article 4, available to the Member States and to the public by publishing it in the Official Journal of the European Union or by any other appropriate means.

Or. en

Amendment 27

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

Or. en

Amendment 28

Proposal for a regulation
Article 11 – paragraph 2

Text proposed by the Commission	*Amendment*
It shall apply until 31 December 2014.	It shall apply until 31 December 2014 ***except in respect of agreements being negotiated for which the Commission has authorised the opening of negotiations (pursuant to Article 5(1)) but which have not yet been finalised***.

Or. fr

EXPLANATORY STATEMENT

Context

This Regulation establishes a procedure 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. According to Article 307 of the Treaty, Member States are required to eliminate any incompatibility between the Community *acquis* and the international agreement concluded by that Member State and the third country.

The European Court of Justice confirmed in its Opinion 1/03 of 7 February 2006 (Lugano) that the Community has acquired exclusive external competences to negotiate and conclude international agreements with third countries on a number of important matters as referred to in Title IV of the Treaty.

Therefore, it is the Community which, on the basis of Article 300 of the Treaty, is competent to conclude such agreements between the Community and a third country. It should therefore be assessed whether there exists sufficient interest in replacing all existing or proposed bilateral agreements between Member States and third countries with Community agreements. That is the reason why this procedure is established. If there is no community interest, Member States should be authorised to conclude the agreements.

Analysis by the rapporteur

The rapporteur would like to underline, however, that, as this procedure **departs** from the rule that it is the Community which concludes an agreement, the procedure to authorise Member States should be subject to very precise conditions. The mechanism should be limited in scope and time. It cannot be applied when the Community has a sufficient interest in concluding a specific agreement with a third country and should not undermine the proper functioning of the system established by the Community rules. The rapporteur esteems it crucial that for the sake of coherence, the Commission should establish a strategy and define priorities with a view to developing a Community policy on external relations in the area of judicial cooperation in civil and commercial law. On the proposed comitology procedure, the rapporteur thinks it is not appropriate and he therefore proposes to delete those references. It is the Commission's competence as *'gardienne du traité'* to ensure that Community law is respected. This competence is conferred upon it by the Treaty and does therefore not concern a case of implementing powers (as foreseen in article 202 of the Treaty). Instead, the rapporteur proposes a system of notification (AM 26), as is also stipulated in Regulation 1931/2006 of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention. The Regulation should be limited in time and applicable until 2014 (apart from the agreements which are currently negotiated and for which the Commission has given the authorisation to start negotiations).