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REPORT

on the proposal for a Council decision amending Decision 2006/325/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
(COM(2009)0101 – C6-0109/2009 – 2009/0034(CNS))

Committee on Legal Affairs

Rapporteur: Lidia Joanna Geringer de Oedenberg

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 decision amending Decision 2006/325/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(2009)0101 – C6-0109/2009 – 2009/0034(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0101),
 - having regard to Articles 61(c) and 300(2), first subparagraph, of the EC Treaty,
 - having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0109/2009),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0056/2009),
1. Approves the Commission proposal;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

EXPLANATORY STATEMENT

The issue in brief

Parliament is consulted on the procedure by which the Community can authorise Denmark to enter into certain international agreements in the area of European civil procedure.

Background

Denmark does not take part in the adoption of measures proposed under the title of the Treaty which includes judicial cooperation in civil matters¹. As a consequence, instruments adopted in the field of judicial cooperation in civil matters are not binding upon or applicable to Denmark which is considered for these purposes as a third country. The Community has so far concluded two international agreements with Denmark, extending to it the application of two crucial instruments in the civil law field, namely

- the Brussels I Regulation², and
- the Regulation on the service of documents³.

Both international agreements provide that Denmark needs the consent of the Community (excluding Denmark) before it can enter into further international agreements which may affect or alter the scope of both Community instruments⁴. However, nowhere is any procedure laid down for the giving of such consent.

The Commission considers that this lack of a procedure for the giving of consent "urgently requires a solution"⁵. Rather than trying to amend the international agreement, which it considers to be a cumbersome procedure, its proposal is to amend both Council Decisions on the conclusion by the Community of the international agreements, without the involvement of Denmark.

Both proposals are based on the same legal basis as the original Council Decisions, *i.e.* Articles 61(c), 300(2)(i) and 300(3)(i).

¹ Protocol 5 annexed to the EC and EU Treaties on the position of Denmark (1997), Article 1. "*Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IV of the Treaty establishing the European Community*".

² Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1.

³ European Parliament and Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, OJ L 324, 10.12.2007, p. 79.

⁴ The international agreements were concluded by Council Decisions 2006/325/EC, OJ L 120, 5.5.2006, p.22, and 2006/326/EC, OJ L 120, 5.5.2006, p. 23. Article 5(2) of both international agreements: "*Denmark will abstain from entering into international agreements which may affect or alter the scope of the Brussels I Regulation as annexed to this Agreement unless it is done in agreement with the Community and satisfactory arrangements have been made with regard to the relationship between this Agreement and the international agreement in question.*"

See by analogy the judgment in Case C-22/70 *Commission v. Council* (European Road Transport Agreement - ERTA), ECR [1971] 263.

⁵ COM(2009) 100 final, explanatory memorandum, p.3.

Content of the twin proposals

The Commission proposes two procedures.

The *first procedure* provides that the Commission alone would have the power to give the Community's consent to Denmark. This procedure would apply where the Member States had already been authorised to conclude, in the interest of the Community, the international agreement which Denmark requests becoming a party to, or where the Community had already concluded it itself.

It should be recalled in this respect that a mechanism has recently been agreed for the negotiation and conclusion of bilateral agreements between Member States (except for Denmark) and third countries¹. However, that mechanism does not currently apply to the Brussels I Regulation², and therefore there is no machinery to mitigate the fact that, according to the Court of Justice, the Community has exclusive competence to conclude international agreements in the area of jurisdiction, recognition and enforcement of judgments in civil and commercial matters³.

The *second procedure* is identical to the first one with the addition of an advisory comitology procedure⁴. This procedure would apply where the first one does not.

The rationale for this duality of procedures is that in the first category of cases, the assessment of whether the Community measures are affected by the international agreement will already have been undertaken.

Approach of the rapporteur

A first exchange of views on both proposals took place in the Committee on Legal Affairs with the former rapporteur, Manuel Medina Ortega, on 21 April 2009.

¹ Regulation No 662/2009 of the European Parliament and of the Council of 13 July 2009 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, OJ L 200, 31.7.2009, p. 25.

² See recital 21 on the future Commission report on the application of the Regulation which refers indirectly (by reference to recital 5) to a possible extension of the mechanism to the Brussels I Regulation. See also the statement in the Council minutes: "The Council invites the Commission to consider carefully, when preparing its report under Article 10, whether, in the light of the experience gathered on the application of the Regulation, the Regulation on its expiry should be replaced by a new one covering the same subject matters or including also other matters covered by other Community instruments. In the context of the report on the application of the Regulation on applicable law, the Commission should consider, in particular, whether a possible new Regulation should cover recognition and enforcement under Regulation (EC) No 44/2001.", and the Commission's response: "The Commission takes note of this invitation and will examine it carefully in its report on the application of the Regulation, without prejudice to its own competences."

³ Opinion 1/03 of 7 February 2006 (Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) [2006] ECR I-1145.

⁴ Article 3 of Decision 1999/468 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23.

In principle, your rapporteur, Lidia Joanna Geringer de Oedenberg, bearing in mind:

- the importance of the integrity of the *acquis* in the area of freedom, security and justice, and in particular the desirability of two crucial instruments of European civil procedure applying throughout the Union,
- the importance of ensuring that Denmark is subject to the same level of scrutiny as any other Member State when it seeks to enter into international agreements affecting the Brussels I and Service of Documents Regulations,
- the limited latitude afforded by the consultation procedure,

is minded to commend the two proposals to the Committee and recommend that it vote in favour of them.

However, she has certain reservations which she would like to discuss in committee with the Commission before the vote on this report goes ahead.

Additional remark

The two proposals should also be seen in the context of the modification of Denmark's situation with regard to judicial cooperation in civil matters following the possible ratification of the Treaty of Lisbon. Indeed, the protocol on the position of Denmark in the area of freedom, security and justice would be amended to include a *passerelle* to an "opt-in" system along the lines of the one currently applying to the UK and Ireland, rather than the current blanket "opt-out"¹. This would potentially remove the need for the mechanisms discussed above, should Denmark choose to opt into any particular measure, for example the Brussels I Regulation or the Regulation on the service of documents.

¹ See Article 8 and the Annex of Protocol 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the Union.

PROCEDURE

Title	Agreement between the EC and Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (amendment of Decision 2006/325/EC)
References	COM(2009)0101 – C6-0109/2009 – 2009/0034(CNS)
Date of consulting Parliament	27.3.2009
Committee responsible Date announced in plenary	JURI 2.4.2009
Committee(s) asked for opinion(s) Date announced in plenary	LIBE 2.4.2009
Not delivering opinions Date of decision	LIBE 2.9.2009
Rapporteur(s) Date appointed	Lidia Joanna Geringer de Oedenberg 2.9.2009
Discussed in committee	5.10.2009
Date adopted	10.11.2009
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sergio Gaetano Cofferati, Edit Herczog, Edvard Kožušník, Kurt Lechner
Substitute(s) under Rule 187(2) present for the final vote	Sajjad Karim