

# EUROPEAN PARLIAMENT

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## **\*\*\*|** **REPORT**

on 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  
(COM(2008)0893 – C6-0001/2009 – 2008/0259(COD))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

### ***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 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 (COM(2008)0893 – C6-0001/2009 – 2008/0259(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0893),
  - having regard to Article 251(2) and Articles 61(c), 65 and 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0001/2009),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0270/2009),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and the Commission.

### **Amendment 1**

#### **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, 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.*

*Justification*

*The rapporteur considers that additional reasons are needed to reinforce the preamble. He would consider in the alternative that a reference might usefully be made to the Commission's Staff Working Document, which has been circulated.*

**Amendment 2**

**Proposal for a regulation**

**Recital 4**

*Text proposed by the Commission*

*Amendment*

(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.

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

*Justification*

*The rapporteur considers that additional reasons are needed to reinforce the preamble. He would consider in the alternative that a reference might usefully be made to the Commission's Staff Working Document, which has been circulated.*

**Amendment 3**

**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 between Member States and third countries with Community agreements. Consequently, it is necessary to establish a***

***deleted***

*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 4

##### Proposal for a regulation

##### Recital 9

###### *Text proposed by the Commission*

(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.

###### *Amendment*

(9) **With regard to agreements with third countries on specific civil justice issues falling within the exclusive competence of the Community, a** coherent and transparent procedure should be established to authorise **a Member State** to amend **an** existing **agreement** or to negotiate and conclude **a new agreement**, in particular where the Community itself has not indicated its intention to exercise its external **competence** to conclude **an** agreement **by way of an already existing mandate of negotiation or an envisaged mandate of negotiation**. This procedure is without prejudice to the exclusive competence of the Community and the provisions of Articles 300 and 307 of the EC Treaty. **It** must be regarded as an exceptional measure and must be limited in scope and in time.

## Amendment 5

### Proposal for a regulation Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) This 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.***

## Amendment 6

### Proposal for a regulation Recital 9 b (new)

*Text proposed by the Commission*

*Amendment*

***(9b) 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.***

## Amendment 7

### Proposal for a regulation Recital 10 a (new)

*Text proposed by the Commission*

*Amendment*

***(10a) Exceptionally, certain regional agreements between a few Member States and a few third countries, for example two***



*or three, intended to address individual local situations and not open for accession to other States should be covered by this Regulation.*

*Justification*

*The rapporteur has sought to tighten up this somewhat to take account of concerns expressed by certain colleagues.*

**Amendment 8**

**Proposal for a regulation**

**Recital 11**

*Text proposed by the Commission*

*Amendment*

*(11) According to these Regulations, the proposed mechanism should apply only to agreements in individual and exceptional cases, concerning sectoral matters and containing rules in the fields covered by these instruments.*

*deleted*

**Amendment 9**

**Proposal for a regulation**

**Recital 12**

*Text proposed by the Commission*

*Amendment*

(12) 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.*

(12) In order to ensure that an agreement *envisaged* by a Member State does not render Community law ineffective and *does not* undermine the proper functioning of the system established by its rules, *and equally to ensure that it does not undermine the Community's external relations policy as decided by the Community, the Member State concerned should be required to notify the Commission of its intentions with a view to obtaining an authorisation to open or continue formal negotiations on an agreement as well as to conclude an agreement. Such a notification should be*

*made by letter or by electronic means. It should contain all relevant information and documentation enabling the Commission to assess the expected impact on Community law of the outcome of the negotiations.*

## **Amendment 10**

### **Proposal for a regulation Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

*(12a) It should be assessed whether there is sufficient Community interest in concluding a bilateral agreement between the Community and the third country concerned or, where appropriate, sufficient Community interest in replacing an existing bilateral agreement between a Member State and a third country with a Community agreement. To that end, all Member States should be informed of any notification received by the Commission concerning an agreement envisaged by a given Member State in order to allow them to demonstrate their interest in joining the initiative of the notifying Member State. The European Parliament should be likewise informed. If, from this exchange of information, a sufficient Community interest were to emerge, the Commission should consider proposing a negotiating mandate with a view to the conclusion of an agreement between the Community and the third country concerned.*

*Justification*

*The rapporteur has been at pains to ensure that the European Parliament is informed as much as possible.*

## **Amendment 11**

### **Proposal for a regulation Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12b) All Member States and the European Parliament should be informed of any notification to the Commission concerning envisaged or negotiated agreements and of any reasoned decision by the Commission under this Regulation. Such information should however fully comply with possible confidentiality requirements.***

*Justification*

*The rapporteur has been at pains to ensure that the European Parliament is informed as much as possible.*

## **Amendment 12**

### **Proposal for a regulation Recital 12 c (new)**

*Text proposed by the Commission*

*Amendment*

***(12c) In situations where the Commission, on the basis of its assessments, intends not to authorise the opening of formal negotiations or the conclusion of a negotiated agreement, the Commission should, before giving its reasoned decision, give an opinion to the Member State concerned. In the case of conclusion of a negotiated agreement the opinion should be addressed to the Council and to the European Parliament.***

## **Amendment 13**

**Proposal for a regulation**  
**Recital 15**

*Text proposed by the Commission*

*(15) 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.*

*Amendment*

*deleted*

**Amendment 14**

**Proposal for a regulation**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

2. This Regulation shall apply to bilateral agreements between Member States and third countries concerning *sectoral matters and covering applicable law in civil and commercial matters, and* falling, *entirely or partly*, within the scope of Regulation (EC) No 593/2008 on the law applicable to contractual obligations and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations.

*Amendment*

2. This Regulation shall apply to bilateral agreements between Member States and third countries concerning *particular* matters falling within the scope of Regulation (EC) No 593/2008 on the law applicable to contractual obligations and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations.

**Amendment 15**

**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;*

*(b) a regional agreement between a*

*limited number of Member States and of third countries neighbouring Member States of the European Union intended to address local situations and not open for accession to other States.*

## **Amendment 16**

### **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 17**

### **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 18**

**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 19**

**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 20**

**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**

*Amendment*

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

*concerned on the same subject matters, the application of the Member State will be automatically rejected by the Commission.*

## **Amendment 21**

### **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 22**

### **Proposal for a regulation**

#### **Article 4 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. 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.***

## **Amendment 23**

## 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 in the following two years***. If this is not the case, the Commission ***shall verify*** 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) ***on the basis of an objective evaluation of the information transmitted by the Member State and all the relevant documentation and considerations, the envisaged agreement would not render Community law ineffective and would not undermine*** the proper functioning of the system established by ***its*** 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 24



**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 25**

**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 Commission concludes that the conditions **set out** in Article 4 **are satisfied**, it **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 26**

**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 27

##### 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 Community or the Community and its Member States and the third country or third countries concerned on the same subject matter.*

#### Amendment 28

##### 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 29

##### 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

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**

referred to in Article 3.

*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 30**

#### **Proposal for a regulation**

#### **Article 5 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. The Commission shall notify its decision to the European Parliament and the Council within one month of taking it.*

### **Amendment 31**

#### **Proposal for a regulation**

#### **Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 5a*

#### *Refusal to authorise the opening of formal negotiations*

*1. If, on the basis of its assessment under Article 4, the Commission intends not to authorise the opening of formal negotiations on the envisaged agreement, it shall give an opinion to the Member State concerned within 90 days of receipt of the notification referred to in Article 3.*

*2. Within 30 days of the submission of the opinion of the Commission, the Member State concerned may request the Commission to enter into discussions with it with a view to finding a solution.*

*3. If the Member State concerned does not make such a request within the time limit referred to in paragraph 2 or if the Commission declines to enter into discussions, the Commission shall give a reasoned decision on the application of*

*the Member State within 130 days of receipt of the notification referred to in Article 3.*

*In the event that discussions are held within the meaning of paragraph 2, the Commission shall give a reasoned decision on the application of the Member State within 30 days of the closure of the discussions.*

*4. The Member State concerned may ask the Commission to make a formal proposal for the conclusion of a Community agreement covering the same subject matter with the third country or third countries concerned.*

#### *Justification*

*The rapporteur is not happy with the mechanism proposed by the Council. He has deleted the reference to a possible debate in the Council as being unhelpful: in point of fact, a Member State can place any item on the Council's agenda for debate in any case. He feels that it would be more useful to provide for a "conciliation" mechanism. If such conciliation fails, it would seem only right and proper that the Member State concerned should be able to ask to Commission to step in to negotiate a Community agreement.*

#### **Amendment 32**

##### **Proposal for a regulation Article 7 – paragraph 1**

###### *Text proposed by the Commission*

1. Before **initialling the** agreement, the Member State concerned shall notify the **Commission of** the outcome of negotiations and **shall** transmit the text of the agreement to the Commission.

###### *Amendment*

1. Before **signing the negotiated** agreement, the Member State concerned shall notify the outcome of **the** negotiations **to the Commission** and transmit the text of the agreement to the Commission.

#### **Amendment 33**

**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 **the clause** referred to in Article 5(1).

**Amendment 34**

**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 35**

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

*Text proposed by the Commission*

**5. The Commission shall take a decision**

*Amendment*

**deleted**

*on the authorisation referred to in paragraphs 3 and 4 in accordance with the procedure referred to in Article 8(3).*

### **Amendment 36**

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

*Text proposed by the Commission*

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.

*Amendment*

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 37**

#### **Proposal for a regulation Article 7 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. The Commission shall notify its decision to the European Parliament and the Council within one month of taking it.**

### **Amendment 38**

#### **Proposal for a regulation Article 7 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 7a**

**Refusal to authorise the conclusion of the agreement**

**1. If, on the basis of its assessment under Article 7(2), the Commission intends not to authorise the conclusion of the negotiated agreement, it shall give an opinion to the European Parliament and to the Council within 90 days of receipt of**

*the notification referred to in Article 7(1).*

*2. 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.*

*3. If the Member State concerned does not request a debate within the Council within the time limit referred to in paragraph 2 the Commission shall give a reasoned decision on the application of the Member State within 130 days of receipt of the notification referred to in Article 7(1).*

*4. The Commission shall notify its decision to the European Parliament and to the Council within 30 days of the decision.*

## **Amendment 39**

### **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, established under Council Regulation (EC) No [...] establishing a procedure for 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.*

*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 and Article 8 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 and Article 8 thereof.*

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

#### **Amendment 40**

##### **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 whether any information therein is to be considered confidential and whether it may be shared with other Member States.*

*2. The Commission and Member States shall ensure that any information identified as confidential is treated in accordance with 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 documents<sup>1</sup>.*

<sup>1</sup> OJ L 145, 31.5.2001, p. 43.



## Amendment 41

### Proposal for a regulation Article 8 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 8b*

#### *Information to the Member States*

*The Commission shall send to the Member States and the competent committee of the European Parliament the notifications received under Articles 3 and 7 and, if necessary, the accompanying documents, as well as all its reasoned decisions under Articles 5, 5a, 7 and 7a, subject to the requirements of confidentiality.*

## Amendment 42

### 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).

## Amendment 43

### Proposal for a regulation Article 10

*Text proposed by the Commission*

*Amendment*

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**

No later than **I** January 2014 the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on **the** application of this Regulation. **The**

may be accompanied by an appropriate legislative proposal.

*report shall contain a positive recommendation either to abrogate this Regulation or to maintain it in force until the expiry date prescribed in Article 10a.*

*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<sup>1</sup>.*

*The Commission's review of Regulation (EC) No 44/2001 shall be extended to take this question fully into account.*

<sup>1</sup> OJ L 12, 16.1.2001, p. 1.

#### **Amendment 44**

#### **Proposal for a regulation Article 10 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 10a*

*Expiry*

*1. This Regulation shall expire on 31 December 2019.*

*2. Notwithstanding the expiry of this Regulation on that date or its abrogation pursuant to Article 10, where authorisation to open negotiations is granted to a Member State pursuant to Article 5 before that expiry or abrogation date, those negotiations shall be allowed to continue and to be completed in accordance with the provisions of this*

*Regulation.*

**Amendment 45**

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

*Text proposed by the Commission*

*Amendment*

***It shall apply until 31 December 2014.***

*deleted*

## EXPLANATORY STATEMENT

Apart from the *acquis communautaire*, the field of civil justice is also 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 need to take all steps to eliminate the incompatibilities, pursuant to Article 307 of the EC Treaty. The European Court of Justice has confirmed that, if necessary, Member States 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<sup>1</sup>, 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. In its opinion the Court found that analysis of the provisions of the new Lugano Convention relating to the rules on jurisdiction showed that those provisions affected the uniform and consistent application of the Community rules on jurisdiction and the proper functioning of the system established by those rules. With regard to the proposed Convention's rules on recognition and enforcement of judgments the Court came to a similar conclusion. It found that the Community rules on the recognition and enforcement of judgments were indissociable from those on the jurisdiction of courts, with which they formed a unified and coherent system, and that the new Lugano Convention would affect the uniform and consistent application of the Community rules as regards both the jurisdiction of courts and the recognition and enforcement of judgments and the proper functioning of the unified system established by those rules.

Consequently, the Commission considers that it must be assumed that the Community has acquired exclusive competence for the negotiation and conclusion of many of the bilateral agreements referred to above. It must be noted, however, that not all commentators agree with the view taken by the Court in Opinion 1/03<sup>2</sup>. Moreover, it is interesting to note the provisions of Articles 3<sup>3</sup> and 4<sup>1</sup> of the Treaty on the functioning of the European Union.

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<sup>1</sup> [2006] ECR I-1145.

<sup>2</sup> See, for instance, the annotation by Ulrich G. Schroeter (Freiburg) in [European Community Private Law Review](#) (GPR) 2006, 203 *et seq*, which criticises the Court's reasoning, arguing that it failed to show that Regulation No 44/2001 would be affected by the new Lugano Convention, that it should have scrutinised the EC's internal competence to regulate relations with non-member countries and that it misunderstood the legal relevance of "disconnection clauses". It is also hard to see how exclusive Community competence can be squared with the Danish opt-out.

<sup>3</sup> Article 3

1. The Union shall have exclusive competence in the following areas:

(a) customs union;  
(b) the establishing of the competition rules necessary for the functioning of the internal market;

The Commission takes the view that it is necessary to assess whether there 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. The first is to allow the Community to assess whether there is such a sufficient Community interest in the conclusion of a particular 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 a Community agreement.

The rapporteur is supportive of the proposed regulation as a potential means of mitigating the inflexibility imposed on Member States by the doctrine of pre-emption in the field of the external competence. This doctrine prevents Member States from entering into useful bilateral and intra-regional agreements with non-member countries falling within that competence. No other solution to this quandary can be envisaged, since the Commission does not have the staff or the time to negotiate Community agreements and moreover in the great majority of cases no Community interest exists in the type of bilateral agreements in question.

However, what the Commission has proposed is limited in scope and, for this reason, your rapporteur has proposed that the review clause also cover a possible future extension to jurisdiction and recognition and enforcement of judgments. The fortunate fact that the Commission is undertaking a review of Regulation (EC) No 44/2001 (“Brussels I”) may be of considerable assistance in this regard.

- 
- (c) monetary policy for the Member States whose currency is the euro;
  - (d) the conservation of marine biological resources under the common fisheries policy;
  - (e) common commercial policy.

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope. (emphasis supplied)

<sup>1</sup> Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.
2. Shared competence between the Union and the Member States applies in the following principal areas:
  - (a) internal market;
  - (b) social policy, for the aspects defined in this Treaty;
  - (c) economic, social and territorial cohesion;
  - (d) agriculture and fisheries, excluding the conservation of marine biological resources;
  - (e) environment;
  - (f) consumer protection;
  - (g) transport;
  - (h) trans-European networks;
  - (i) energy;
  - (j) area of freedom, security and justice;
  - (k) common safety concerns in public health matters, for the aspects defined in this Treaty.
3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.
4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs. (emphasis supplied)

The rapporteur has also made other changes intended to make the Regulation more effective: he has altered the reference to “sectoral matters” in order to provide for a greater degree of legal certainty, tightened up the time limits and removed some of the more cumbersome aspects of the procedure.

He has also removed the Commission’s discretion with regard to authorising the conclusion of an agreement. As the proposal stood, the Commission could refuse authorisation to conclude a bilateral agreement even if it fulfilled all the conditions required for initial authorisation. This could have caused major diplomatic problems with the third country concerned.

Lastly, the rapporteur would note that his amendments are mirrored in his draft opinion on the parallel proposal for a regulation establishing a procedure for negotiation and conclusion of bilateral agreements 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.

15.4.2009

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs

on 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  
(COM(2008)0893 – C6-0001/2009 – 2008/0259(COD))

Rapporteur: Gérard Deprez

### **SHORT JUSTIFICATION**

#### **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).

## AMENDMENTS

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

### Amendment 1

#### 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**

##### *Amendment*

(8) 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. **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



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 ***should be authorised*** to conclude the agreement at issue.

## Amendment 2

### Proposal for a regulation

#### Recital 9

*Text proposed by the Commission*

(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.***

*Amendment*

(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.

## 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 concerned and should not render Community law ineffective or undermine the proper functioning of the system established by its rules.*

#### **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 both in scope and time.*

#### **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.*

## Amendment 6

### Proposal for a regulation

#### Recital 11

*Text proposed by the Commission*

(11) According to **these** Regulations, the proposed mechanism should apply only to agreements in individual and exceptional cases, concerning sectoral matters and containing rules in the fields covered by **these** instruments.

*Amendment*

(11) According to **those** Regulations, the proposed mechanism should apply only to agreements in individual and exceptional cases, concerning sectoral matters and containing rules in the fields covered by **those** instruments. ***For the purposes of this Regulation, it is appropriate to construe the term “sectoral” as meaning “particular”.***

## Amendment 7

### Proposal for a regulation

#### Recital 12

*Text proposed by the Commission*

(12) 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.

*Amendment*

(12) 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. The Commission can propose negotiation guidelines or request the inclusion of particular clauses in the proposed agreements.

## Amendment 8

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

***(15) 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.***

*Amendment*

*deleted*

## Amendment 9

### Proposal for a regulation Article 1 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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.

## Amendment 10

### Proposal for a regulation Article 1 – paragraph 2

*Text proposed by the Commission*

2. This Regulation shall apply to bilateral agreements between Member States and third countries concerning ***sectoral matters and covering applicable law in civil and commercial matters, and*** falling, ***entirely or partly***, within the scope of Regulation (EC) No 593/2008 on the law applicable to contractual obligations and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations.

*Amendment*

2. This Regulation shall apply to bilateral agreements between Member States and third countries concerning ***particular*** matters falling within the scope of Regulation (EC) No 593/2008 on the law applicable to contractual obligations and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations.

## Amendment 11

### 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***.

## Amendment 12

### 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. ***After receipt of the*** notification, the Commission shall make an assessment as 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 both 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.

## Amendment 13

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

*Text proposed by the Commission*

*Amendment*

***1 a. 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.***

**Amendment 14**

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

*Text proposed by the Commission*

*Amendment*

***1b. 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 send a communication to that effect to the Commission within three months of receipt of a notification.***

**Amendment 15**

**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,***

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 following two years***. If this is not the case, the Commission

*provided* that the following *two* conditions are met:

*shall check* that the following *three* conditions are met:

#### Amendment 16

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

*Text proposed by the Commission*

(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*

*Amendment*

(a) the Member State has demonstrated that there is a specific interest in concluding the bilateral agreement *concerning particular matters* with the third country, related in particular to economic, geographic, cultural or historical ties between the Member State and that third country;

#### Amendment 17

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

*Text proposed by the Commission*

(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*

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

#### Amendment 18

##### 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.*

#### **Amendment 19**

##### **Proposal for a regulation Article 5 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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.

#### **Amendment 20**

##### **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 States and the third country on the same subject matter.*

#### **Amendment 21**

##### **Proposal for a regulation Article 5 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*3. The Commission shall take a decision on the authorisation referred to in paragraphs 1 and 2 in accordance with*

*Amendment*

*deleted*



*the procedure referred to in Article 8(2).*

## **Amendment 22**

### **Proposal for a regulation Article 5 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

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.

*Amendment*

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.

## **Amendment 23**

### **Proposal for a regulation Article 5 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. The Commission shall notify its decision to the European Parliament and the Council within one month of taking it.**

## **Amendment 24**

### **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 agreement would render the Community law ineffective and **would** undermine the proper functioning of the system

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 whether the conclusion of the proposed agreement **has no Community interest or** would render the Community law

established by its rules.

ineffective and undermine the proper functioning of the system established by its rules.

#### **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 **all** the requirements referred to in paragraph 2, the Member State **shall** be authorised to conclude the agreement.

#### **Amendment 26**

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

###### *Text proposed by the Commission*

**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).**

###### *Amendment*

*deleted*

#### **Amendment 27**

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

###### *Text proposed by the Commission*

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.

###### *Amendment*

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.

#### **Amendment 28**

**Proposal for a regulation**  
**Article 7 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. The Commission shall notify its decision to the European Parliament and the Council within one month of taking it.**

**Amendment 29**

**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, established under Council Regulation (EC) No [...] establishing a procedure for 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.**

**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 and Article 8 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 and Article 8 thereof.**

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

## Amendment 30

### Proposal for a regulation Article 8 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 8a*

##### *Publication of Notifications*

- 1. The Commission shall transmit notifications under Article 3 to the European Parliament and the Council, and make them publicly available.*
- 2. Member States shall notify the Commission of all agreements as defined in Article 2 falling within the scope of this Regulation. The Commission shall transmit these notifications to the European Parliament and the Council, and make them publicly available.*

## Amendment 31

### 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).

## Amendment 32

### 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 in the**

*process of being negotiated for which the Commission has authorised the opening of negotiations pursuant to Article 5(1) but which have not yet been finalised.*

## PROCEDURE

<b>Title</b>	Bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations	
<b>References</b>	COM(2008)0893 – C6-0001/2009 – 2008/0259(COD)	
<b>Committee responsible</b>	JURI	
<b>Opinion by</b> Date announced in plenary	LIBE 15.1.2009	
<b>Rapporteur</b> Date appointed	Gérard Deprez 9.2.2009	
<b>Discussed in committee</b>	19.3.2009	15.4.2009
<b>Date adopted</b>	15.4.2009	
<b>Result of final vote</b>	+: 31 -: 0 0: 1	
<b>Members present for the final vote</b>	Alexander Alvaro, Emine Bozkurt, Mihael Brejc, Kathalijne Maria Buitenweg, Giusto Catania, Carlos Coelho, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Armando França, Urszula Gacek, Jeanine Hennis-Plasschaert, Ewa Klamt, Henrik Lax, Claude Moraes, Javier Moreno Sánchez, Rareș-Lucian Niculescu, Martine Roure, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Manfred Weber, Renate Weber	
<b>Substitute(s) present for the final vote</b>	Adamos Adamou, Edit Bauer, Marco Cappato, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Bill Newton Dunn, Siiri Oviir, Nicolae Vlad Popa	

## PROCEDURE

<b>Title</b>	Bilateral agreements between Member States and third countries concerning sectoral matters and covering applicable law in contractual and non-contractual obligations
<b>References</b>	COM(2008)0893 – C6-0001/2009 – 2008/0259(COD)
<b>Date submitted to Parliament</b>	23.12.2008
<b>Committee responsible</b> Date announced in plenary	JURI 15.1.2009
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	LIBE 15.1.2009
<b>Rapporteur(s)</b> Date appointed	Tadeusz Zwiefka 19.1.2009
<b>Discussed in committee</b>	12.2.2009
<b>Date adopted</b>	21.4.2009
<b>Result of final vote</b>	+: 9 -: 3 0: 0
<b>Members present for the final vote</b>	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Eva-Riitta Siitonen, Francesco Enrico Speroni, Rainer Wieland, Tadeusz Zwiefka