

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

2008/0259(COD) - 21/04/2009

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

The main amendments are as follows:

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

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

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

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

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

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

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

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

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

Provisions on **comitology** are deleted.

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

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

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