Member State/third country bilateral agreements: judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Gérard DEPREZ (ALDE, BE) amending, under the consultation procedure, 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. The committee notes that 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, and must be regarded as an exceptional measure and should therefore be limited both in scope and in time. It also tightens up the terms under which the Commission must make an assessment, leaving less discretion to the Commission.

The main amendments are as follows:

Scope: Members specify the Regulations which must cover the scope of this proposal. This Regulation will apply to bilateral agreements between Member States and third countries concerning matters falling wholly or partly within the scope of Regulation (EC) No 2201/2003 and Regulation (EC) No 4/2009.

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

Assessment by the Commission: the Commission must duly take into account that derogations from the Community's exclusive external competence should remain exceptional and limited both in scope and in time.

Members add that the application of the Member State shall also 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 proposed agreement does not fall within the scope of this Regulation.

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.

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.

The committee went on to state that the Commission must check whether any relevant Community agreement with the third country concerned is specifically envisaged within the following 2 years. If this is not the case, the Commission shall check that four specified conditions are met. These include the

condition that the agreement would not harm the object and purpose of the Community's external relations policy.

If the conditions are met, the Commission shall authorise the Member State to open negotiations (rather than "may").

Comitology provisions are deleted.

Authorisation to conclude the agreement: the Commission shall give its reasoned decision on the application of the Member State within 6 months of receipt of the notification, and notify its decision to the European Parliament and the Council within 1 month of taking it.

Confidentiality: a new clause states that in notifying the Commission of negotiations and their outcome, Member States shall clearly indicate to the Commission whether any information therein is to be considered confidential and whether it may be shared with other Member States.

The committee also inserts a new article on **publication of notifications**.

Lastly, the Regulation will 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 but which have not yet been finalised.

It should be noted that this procedure is closely linked to the proposal on establishing a procedure for the negotiation and conclusion of bilateral agreements concerning sectoral matters and covering applicable law in contractual and non-contractual obligations (please see COD/2008/0259).