

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

2008/0259(COD) - 07/05/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 500 votes to 20 with 11 abstentions a legislative resolution amending, 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 agreements on particular matters concerning applicable law in contractual and non-contractual obligations.

The amendments are the result of a compromise between Parliament and Council.

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.

**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 intended to address local situations and not open for accession to other States.

**Notification:** the Member State concerned must notify the Commission in writing of its intention at the earliest possible moment before the envisaged opening of formal negotiations.

**Assessment by the Commission:** the Commission shall, in making this assessment, first check whether any relevant negotiating mandate with a view to a Community agreement with the third country is specifically envisaged within the next 24 months. If this is not the case, the Commission shall assess whether all 3 specified conditions are met, inter alia, that the proposed agreement would not undermine the object and purpose of the Community's external relations policy as decided by the Community .

**Authorisation to open negotiations:** if all 3 conditions are met, the Commission shall authorise the Member State to open formal negotiations on the agreement. The text provides for: (i) full or partial denunciation of the agreement in the event of a subsequent agreement between the EC and the same third country on the same subject matter; or (ii) direct replacement of the relevant provisions of the agreement by provisions of a subsequent agreement between the EC and the third country on the same subject matter.

**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 compromise text also contains 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 if that agreement meets the necessary criteria.

Provisions on **comitology** are deleted.

**Review:** no earlier than 8 years after the date of adoption of the Regulation the Commission shall submit a report on the application of the Regulation. This report shall either: (a) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with the text (see below) or (b) recommend that this Regulation be replaced as of that date by a new Regulation.

**Expiry:** Members state that the Regulation shall expire 3 years after the submission by the Commission of the report described above. Notwithstanding the expiry of the Regulation, all negotiations ongoing on that date which have been entered into by a Member State under the Regulation with a view to amending an existing agreement or to negotiating and concluding a new agreement shall be allowed to continue and to be completed on the conditions laid down in the Regulation.

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](#)).