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

2008/0266(CNS) - 07/05/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted, by a legislative resolution amending, under the first reading of codecision 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 main amendments are as follows:

Scope: Members specify the Regulations which must cover the scope of this proposal. This Regulation will apply to matters falling, wholly or partly, within the scope of Regulation (EC) No 2201/200 and Regulation (EC) No 4/2009, to the extent that those matters fall within the exclusive competence of the Community. Parliament adds 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. The term “agreement” also includes certain regional agreements referred to in the above Regulations.

Notification to the Commission: this must take place at the earliest possible moment before the opening of formal negotiations rather than 3 months before formal negotiations commence.

Assessment by the Commission: Parliament stipulates that the Commission shall, in making its assessment, first check whether any relevant negotiating mandate with a view to a Community agreement with the third country concerned is specifically envisaged within the following 24 months. If this is not the case, the Commission shall assess whether 3 specified conditions are met.

Authorisation to open negotiations: if the proposed agreement meets the conditions, the Commission shall (rather than ‘may’) authorise the Member State to open formal negotiations. Parliament states that the agreement shall contain a clause providing for either: (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 Community and the third country on the same subject matter.

The Commission must give a reasoned decision within 90 days of notification.

Members add that when authorising the opening of formal negotiations, the Commission should, where appropriate, be able to propose **negotiating guidelines** or request the inclusion of particular clauses in the proposed agreement. The Commission should be kept fully informed throughout the different stages of the negotiations as far as matters falling within the scope of this Regulation are concerned and may be allowed to participate as an observer in relation to those matters.

Parliament goes on to insert a **new clause on refusal to authorise the opening of formal negotiations,** which provides for Member States' discussions with the Commission with a view to finding a solution and sets out the time limits concerned.

Comitology provisions are deleted.

Authorisation to conclude the agreement: the Commission shall give its reasoned decision on the application of the Member State within 90 days of receipt of the notification.

Parliament also inserts a new clause on **refusal to authorise the conclusion of the agreement.**

Information to the Council, the Member States and the European Parliament: this new clause states that the Commission shall make available to these institutions the notifications received and, if necessary, the accompanying documents, as well as all its reasoned decisions, subject to the requirements of confidentiality.

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.

Report: the report from the Commission must be submitted no earlier than 8 years after the adoption of the Regulation and must (a) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with the terms below or (b) recommend that this Regulation be replaced as of that date by a new Regulation.

Expiry: Parliament stipulates that the Regulation will expire 3 years after the submission by the Commission of the report referred to above, i.e. 11 years after the adoption of the Regulation. Notwithstanding this, all negotiations ongoing on that date 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 this Regulation.

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).