

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

2008/0259(COD) - 13/07/2009 - Final act

**PURPOSE:** to establish 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.

**LEGISLATIVE ACT:** Regulation (EC) No 662/2009 of the European Parliament and of the Council establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations.

**CONTENT:** the Council adopted regulations establishing procedures 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, and applicable law in matters relating to maintenance (see [CNS/2008/0266](#));
- applicable law in contractual and non-contractual obligations.

Before the Community took on exclusive competence for these areas of civil law, it was for the Member States themselves to conclude agreements with third countries with which they had specific ties. As the Community gradually took over exclusive competence, Member States' competence in these matters was eroded, with results that were sometimes less than satisfactory. The procedure established by the two Regulations is the solution that has been found.

Following an agreement reached at first reading with the European Parliament, this Regulation enables Member States to conclude agreements on specific matters covering applicable law in contractual and non-contractual obligations.

The Regulation includes the following main elements:

**Scope:** this Regulation shall apply to agreements concerning particular matters falling, entirely or partly, within the scope of [Regulation \(EC\) No 593/2008](#) on the law applicable to contractual obligations (Rome I) and [Regulation \(EC\) No 864/2007](#) on the law applicable to non-contractual obligations (Rome II).

**Definitions:** the term "agreement" shall mean: (i) a bilateral agreement between a Member State and a third country; (ii) regional agreement between a limited number of Member States and of third countries neighbouring Member States which is intended to address local situations and which is not open for accession to other States.

**Notification:** where a Member State intends to enter into negotiations in order to amend an existing agreement or to conclude a new agreement falling within the scope of this Regulation, it shall 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 first check whether any relevant negotiating mandate with a view to concluding a Community agreement with the third country concerned is specifically envisaged within the next 24 months. If this is not the case, the Commission shall assess whether all three specified conditions are met, *inter alia*, that the envisaged 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 three 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:** the Regulation sets 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 text also contains articles on the refusal to authorise the conclusion of the agreement, confidentiality and information to Member States.

**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. If the report recommends a replacement of this Regulation, it shall be accompanied by an appropriate legislative proposal.

**Expiry:** the Regulation shall expire three 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.

ENTRY INTO FORCE: 20/08/2009.