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

2008/0266(CNS) - 07/07/2009 - Final act

PURPOSE: to establish a procedure regarding bilateral agreements between Member States and third countries, concerning sectoral matters and covering jurisdiction, recognition and enforcement of judgements and decisions in matrimonial matters, parental responsibility and maintenance obligations and applicable law in matters relating to maintenance obligations.

LEGISLATIVE ACT: Council Regulation (EC) No 664/2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance 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;
- applicable law in contractual and non-contractual obligations (see COD/2008/0259).

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.

This Regulation enables Member States to conclude agreements covering jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations.

The main elements of Council Regulation (EC) No 664/2009 can be summarised as follows:

Scope: the Regulation will apply to matters falling, wholly or partly, within the scope of Regulation (EC) No 2201/2003 and Regulation (EC) No 4/2009, to the extent that those matters fall within the exclusive competence of the Community. 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 envisaged opening of formal negotiations.

Assessment by the Commission: 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 three specified conditions are met.

Authorisation to open formal negotiations: if the proposed agreement meets the conditions, the Commission shall authorise the Member State to open formal negotiations. 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.

Moreover, when authorising the opening of formal negotiations, the Commission should be able, if necessary, to propose **negotiating guidelines** or request the inclusion of particular clauses in the envisaged 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 should be allowed to participate as an observer in the negotiations as regards those matters.

Refusal to authorise the opening of formal negotiations: if, on the basis of its assessment, the Commission intends not to authorise the opening of formal negotiations on the envisaged agreement, it shall give an opinion to the Member State concerned within 90 days of receipt of the notification. Within 30 days of receipt of the opinion of the Commission, the Member State concerned may request the Commission to enter into discussions with it with a view to finding a solution.

Authorisation to conclude the agreement: if the negotiated agreement fulfils the conditions and requirements, the Commission shall, within 90 days of receipt of the notification, give a reasoned decision on the application of the Member State authorising it to conclude that agreement. The Regulation also contains a clause on **refusal to authorise the conclusion of the agreement**.

Confidentiality: when providing information to the Commission, the Member State may indicate whether any of the information is to be regarded as confidential and whether the information provided can be shared with other Member States.

Review: no earlier than 7 July 2017, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. That report shall either: (i) confirm that it is appropriate for this Regulation to expire on the date determined in accordance with the terms below; or (ii) recommend that this Regulation be replaced as of that date by a new Regulation.

Expiry: the Regulation shall expire three years after the submission by the Commission of the report referred to above. Notwithstanding this, all negotiations ongoing on that date which have been entered into by a Member State under this Regulation shall be allowed to continue and to be completed in accordance with this Regulation.

ENTRY INTO FORCE: 20/08/2009.