

Basic information	
2008/0266(CNS) CNS - Consultation procedure Regulation	Procedure completed
Member State/third country bilateral agreements: judgments and decisions in matrimonial matters, parental responsibility and maintenance obligations Subject 4.10.02 Family policy, family law, parental leave 4.10.03 Child protection, children's rights 7.40.02 Judicial cooperation in civil and commercial matters	

Key players				
European Parliament	Committee responsible		Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs		DEPREZ Gérard (ALDE)	29/01/2009
	Committee for opinion		Rapporteur for opinion	Appointed
	 Legal Affairs		ZWIEFKA Tadeusz (PPE-DE)	19/01/2009
Council of the European Union	Council configuration		Meetings	Date
	Economic and Financial Affairs ECOFIN		2954	2009-07-07

Key events			
Date	Event	Reference	Summary
19/12/2008	Legislative proposal published	COM(2008)0894 	Summary
03/02/2009	Committee referral announced in Parliament		
15/04/2009	Vote in committee		Summary
16/04/2009	Committee report tabled for plenary, 1st reading/single reading	A6-0265/2009	
06/05/2009	Debate in Parliament		
07/05/2009	Decision by Parliament	T6-0383/2009	Summary
07/05/2009	Results of vote in Parliament		
07/07/2009	Act adopted by Council after consultation of Parliament		

07/07/2009	End of procedure in Parliament		
31/07/2009	Final act published in Official Journal		

Technical information	
Procedure reference	2008/0266(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	EC Treaty (after Amsterdam) EC 061- EC Treaty (after Amsterdam) EC 067-p2 EC Treaty (after Amsterdam) EC 067-p5 EC Treaty (after Amsterdam) EC 065
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/71897

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE421.279	11/03/2009	
Committee opinion	JURI	PE419.962	02/04/2009	
Amendments tabled in committee		PE421.440	03/04/2009	
Committee report tabled for plenary, 1st reading/single reading		A6-0265/2009	16/04/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0383/2009	07/05/2009	Summary
European Commission				
Document type	Reference	Date	Summary	
Legislative proposal	COM(2008)0894 	19/12/2008	Summary	
Document attached to the procedure	SEC(2009)0275 	27/02/2009	Summary	
Document attached to the procedure	SEC(2009)0500 	07/04/2009	Summary	
Commission response to text adopted in plenary	SP(2009)3616	07/07/2009		

Additional information		
Source	Document	Date

National parliaments	IPEX	
European Commission	EUR-Lex	

Final act		
Regulation 2009/0664 OJ L 200 31.07.2009, p. 0046		Summary
Corrigendum to final act 32009R0664R(01) OJ L 236 13.09.2011, p. 0035		

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](#)).

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

2008/0266(CNS) - 27/02/2009

This Commission Staff Working Document recalls the legal arguments that form the basis of the special mechanism established by the two proposals for a regulation on the establishment of a procedure for the negotiation and conclusion of agreements by the Member States with third countries concerning, respectively, the applicable law in contractual and non-contractual obligations for sectoral matters, and the competence, recognition and implementation of decisions in certain sectors of family law, including in relation to maintenance obligations, as well as the applicable law in this area.

The Commission Services consider that the proposed procedure is legally possible and that it does not undermine the Community acquis and the exercise of the exclusive competence of the Community, provided that it falls within strict limits in terms of form and substance and that it remains true to the principle of exceptionality.

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.

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

2008/0266(CNS) - 19/12/2008 - Legislative proposal

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.

PROPOSED ACT: Council Regulation.

BACKGROUND: apart from the *acquis communautaire*, the field of civil justice is characterised by a number of bilateral agreements concluded by Member States with third countries prior to the entry into force of the relevant provisions of the Amsterdam Treaty or prior to their accession to the Community. To the extent that such pre-existing agreements contain provisions that are not compatible with the EC Treaty, Member States must take all steps to eliminate the incompatibilities. Apart from pre-existing bilateral agreements, there may also be a need for the conclusion of new agreements with third countries governing areas of civil justice that come within Title IV of the EC Treaty.

In [Opinion 1/03](#) of 7 February 2006 relating to the conclusion of the new **Lugano Convention**, the Court of Justice held that the Community has acquired exclusive competence to conclude international agreements with third countries, on matters affecting the rules set out *inter alia* in Regulation (EC) No 44/2001 ("Brussels I"), in particular on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Consequently, it must be assumed that the Community has acquired exclusive competence for the negotiation and conclusion of many of the bilateral agreements in this field. Nevertheless, it has to be assessed if there currently exists a sufficient Community interest for the Community to replace all such existing or proposed agreements between Member States and third countries with Community agreements. For that reason it is necessary to establish a procedure with a twofold purpose.

IMPACT ANALYSIS: several options were examined by the Commission for setting up the procedure, although without carrying out a formal impact assessment: (a) the "passive" status quo ; (b) the "active" status quo would involve opting not to develop any legislative procedure for the re-delegation of Community powers ; (c) the issuing of an authorisation by the Community, based on general criteria laid down by a legislative instrument (for example, a Regulation) or by a Council decision (on the basis of the aforementioned legislative instrument) (d) a specific authorisation to be granted on a case-by-case basis after having assessed the agreement notified by the Member State on the basis of objective criteria. This last option was selected by the Commission.

CONTENT: the objective of the proposal is to establish a procedure for the Community to make an assessment of whether there is a sufficient Community interest in the conclusion of proposed bilateral agreements with third countries, and in the absence thereof, authorise Member States to conclude these agreements with third countries in certain fields concerning judicial cooperation in civil and commercial matters falling under the exclusive competence of the Community.

Because the authorisation to Member States derogates from the rule that the Community is exclusively competent to conclude international agreements on these matters, the procedure must be regarded as an exceptional measure and must be limited in scope and in time.

It is proposed to limit the procedure in question only to sectoral issues related to matrimonial matters, parental responsibility and maintenance obligations on the one hand, and, on the other hand, to the law applicable to contractual and non-contractual obligations (please see [COD/2008/0259](#).) This proposal deals with the first subject matter.

The procedure is based on prior notification of the draft agreement by the Member States that wish to obtain the authorisation to re-negotiate and conclude the agreement with the third country on the basis of specific conditions to be evaluated on a case-by-case basis.

If the Community has already concluded an agreement on the same subject matter with the third country concerned, the Member State is not allowed to negotiate or conclude the agreement with the third country concerned and any application submitted will be rejected. If that is not the case, the Commission must determine whether such an agreement expected in the near future. If no such agreement is expected in the near future the Commission may grant authorisation, provided that the following two conditions are met:

- a) the Member State concerned has demonstrated that it has a specific interest in concluding an agreement with the third country, related in particular to the existence of economic, geographic, cultural or historical ties between the Member State and that third country; and
- b) the Commission determines that the proposed agreement is of limited impact on the uniform and consistent application of the Community rules in place and on the proper functioning of the system established by those rules.

The procedure also provides for the inclusion in the agreements of sunset clauses to limit the validity in time of the agreements concluded by the Member States until the point when the Community concludes an agreement on the same subject matters with the third country concerned.

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

2008/0266(CNS) - 07/04/2009

This Commission Staff Working Document outlines some of the preparatory work carried out by the Commission when drawing up proposals for Regulations establishing 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 and 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.

In particular, it reflects the **alternative solutions** presented to Member States' experts to discuss a mechanism for bilateral agreements of Member States with third states in the areas falling under exclusive external Community competence.

It should also be noted that the Commission published on 27 February another Staff Working Document (SEC(2009)275final), presenting the legal analysis of the Commission Legal Service on the legality of the Commission proposals. It summarizes the main statements from the Legal Service's opinion on the issue of the Member States' bilateral agreements with the third states in general and on the draft Commission proposals.

This Working document firstly examines the legal framework of the proposed Regulations and offers alternative solutions to deal with the current situation which range from the passive status quo (no specific measures to be taken) to specific authorisations (the Community may be given the possibility to authorise Member States to act in areas of exclusive Community competence provided that such authorisation is specific).

Other proposed actions include a legal instrument consisting of substantive criteria and a procedure to determine whether Member States should be authorised to conclude bilateral agreements on particular subject matters that fall wholly or partially under the Community's exclusive competence.