



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : Presidency

to : Council

No. prev. doc. : 9878/09 JUSTCIV 127 CODEC 723

No. Cion prop. : 5147/09 JUSTCIV 5

Subject : Proposal for a Regulation of the European Parliament and of the Council 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

- Information on the outcome of the plenary vote in the European Parliament/first reading agreement

1. In the wake of the approval by Coreper on 29 April 2009 of the text agreed with the European Parliament at the informal contacts between the Council, the European Parliament and the Commission on 22 April 2009 at Strasbourg¹ the Chairman of Coreper sent a letter to the Chairman of the Committee on Legal Affairs of the European Parliament informing him that, if the European Parliament adopted the text of the Commission proposal in the exact form as approved by Coreper, the Council would adopt the proposal thus amended thereby securing a first reading agreement.

¹ Document 9093/09 JUSTCIV 99 CODEC 628. It is recalled that an element of the text approved by Coreper on 29 April 2009 was the statement to be made by the Council concerning Articles 5a and 7a (see footnotes 6 and 7 of document 9093/09). This draft statement is reproduced in Annex I to this note.

2. On 7 May 2009 the European Parliament adopted its opinion on the proposal² which contained the text approved by Coreper, with one exception: the sentence in paragraph 3 of Articles 5a and 7a contested by Coreper³ had been deleted.
3. At Coreper on 29 April 2009 two important issues were raised: (a) the scope of a possible new Regulation replacing the soon to be adopted Regulation on its expiry three years after the submission by the Commission of the report on its application, and (b) the procedure for amending or re-negotiating broad legal assistance agreements with third countries entered into by Member States prior to their accession to the European Union.

On the issue of scope (a) some delegations wanted an indication that the Commission would, at the time of the submission of the report, examine whether a possible new Regulation should also cover matters governed by Regulation (EC) No 44/2001 (the Brussels I Regulation). It was suggested that the Council and the Commission could each make a statement to the Council minutes at the time of the adoption of the Regulation containing words to that effect. Drafts for such statements are set out in Annex II to this note.

On the issue of broad legal assistance agreements (b) some delegations called on the Commission to reaffirm that it was ready to make a statement to the Council minutes at the time of the adoption of the Regulation indicating that it would cooperate with Member States with a view to ensuring the amendment or the re-negotiation of such agreements under Article 307 of the EC Treaty. A draft for a statement to this effect is set out in Annex III to this note.

² See document 9338/09 CODEC 669 JUSTCIV 111.

³ "or if the Commission declines to enter into discussions".

4. In the light of this information the Presidency invites the Council to take note of:
- (a) the outcome of the plenary vote in the European Parliament which amounts to a first reading agreement on the proposed Regulation;
 - (b) the upcoming revision of the text of the proposed Regulation by the legal/linguistic experts of the European Parliament and the Council pending the formal adoption by the Council of the Regulation as an "A" item at a later meeting; and
 - (c) the statements by the Council and by the Commission set out in the Annexes to this note, all of which will be entered into the Council minutes at the time of the adoption of the Regulation.
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Draft statement by the Council on Articles 5a and 7a

"In situations where the Commission intends not to authorise the opening of formal negotiations on the envisaged agreement under Article 5a or not to authorise the conclusion of the negotiated agreement under Article 7a the Member State concerned may at any time, if it so wishes, bring the matter before the Council with a view to a debate within that body."

Draft statements by the Council and by the Commission on Article 10

"The Council invites the Commission to consider carefully, when preparing its report under Article 10, whether, in the light of the experience gathered on the application of the Regulation, the Regulation on its expiry should be replaced by a new one covering the same subject matters or including also other matters covered by other Community instruments. In the context of the report on the application of the Regulation on applicable law, the Commission should consider, in particular, whether a possible new Regulation should cover recognition and enforcement under Regulation (EC) No 44/2001."

"The Commission takes note of this invitation and will examine it carefully in its report on the application of the Regulation, without prejudice to its own competences."

Draft statement by the Commission
on broad legal assistance agreements

"The Commission recalls that the rights and obligations arising from agreements concluded, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, are not affected by the provisions of the EC Treaty pursuant to Article 307, first subparagraph. This also applies to the so-called broad legal assistance agreements.

To the extent that such agreements are not compatible with the EC Treaty, the Member States shall take all appropriate steps to eliminate the incompatibilities established, in line with Article 307, second subparagraph, of the Treaty. The Commission is of the view that the acceding Member States should renegotiate such agreements in order to eliminate any incompatibilities with the Community *acquis*, including on matters such as jurisdiction, recognition and enforcement in civil and commercial matters. The Commission offers all its cooperation to achieve a satisfactory result with regard to these specific agreements. The Commission considers the result of these renegotiations should be reviewed after 8 years following the adoption of the Regulations."
