

# Procedure file

Basic information		
CNS - Consultation procedure Regulation	2005/0259(CNS)	Procedure completed
Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations		
Subject 7.40.02 Judicial cooperation in civil and commercial matters		

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		01/06/2006	
		PSE <a href="#">GRABOWSKA Genowefa</a>		
	Former committee responsible			
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs (Associated committee)		01/06/2006	
		PSE <a href="#">GRABOWSKA Genowefa</a>		
	Committee for opinion	Rapporteur for opinion	Appointed	
<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.			
Former committee for opinion				
<b>JURI</b> Legal Affairs (Associated committee)			30/05/2006	
	ALDE <a href="#">WALLIS Diana</a>			
Former committee for opinion on the legal basis				
<b>JURI</b> <a href="#">Legal Affairs</a>			12/06/2006	
	NI <a href="#">SPERONI Francesco</a> <a href="#">Enrico</a>			
Council of the European Union	Council configuration	Meeting	Date	
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2917</a>	18/12/2008	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2908</a>	27/11/2008	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2899</a>	24/10/2008	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2783</a>	05/06/2008	
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2794</a>	19/04/2007	
European Commission	Commission DG	Commissioner		
	<a href="#">Justice and Consumers</a>	FRATTINI Franco		


Key events			
15/12/2005	Legislative proposal published	<a href="#">COM(2005)0649</a>	Summary
14/03/2006	Committee referral announced in Parliament		
06/07/2006	Referral to associated committees announced in Parliament		

19/04/2007	Debate in Council	<a href="#">2794</a>	Summary
20/11/2007	Vote in committee		Summary
26/11/2007	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0468/2007</a>	
12/12/2007	Debate in Parliament		
13/12/2007	Decision by Parliament	<a href="#">T6-0620/2007</a>	Summary
05/06/2008	Debate in Council	<a href="#">2783</a>	Summary
21/10/2008	Amended legislative proposal for reconsultation published	<a href="#">14066/2008</a>	Summary
24/10/2008	Formal reconsultation of Parliament		
17/11/2008	Vote in committee		Summary
20/11/2008	Committee report tabled for plenary, reconsultation	<a href="#">A6-0456/2008</a>	
04/12/2008	Results of vote in Parliament		
04/12/2008	Decision by Parliament	<a href="#">T6-0574/2008</a>	Summary
18/12/2008	Act adopted by Council after consultation of Parliament		
18/12/2008	End of procedure in Parliament		
10/01/2009	Final act published in Official Journal		

### Technical information

Procedure reference	2005/0259(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
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/69076; LIBE/6/33757

### Documentation gateway

Legislative proposal		<a href="#">COM(2005)0649</a>	15/12/2005	EC	Summary
Document attached to the procedure		<a href="#">COM(2005)0648</a>	15/12/2005	EC	Summary
Document attached to the procedure		<a href="#">SEC(2005)1629</a>	15/12/2005	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0588/2006</a>	20/04/2006	ESC	
Document attached to the procedure		<a href="#">COM(2006)0206</a>	12/05/2006	EC	Summary
Document attached to the procedure		<a href="#">N6-0017/2006</a> <a href="#">OJ C 242 07.10.2006, p. 0020-0026</a>	15/05/2006	EDPS	Summary
Committee opinion		PE384.408	14/02/2007	EP	

Committee draft report		<a href="#">PE390.551</a>	12/07/2007	EP	
Committee opinion	JURI	PE386.692	05/10/2007	EP	
Amendments tabled in committee		<a href="#">PE396.554</a>	18/10/2007	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0468/2007</a>	26/11/2007	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0620/2007</a>	13/12/2007	EP	Summary
Amended legislative proposal for reconsultation		<a href="#">14066/2008</a>	21/10/2008	CSL	Summary
Committee draft report		<a href="#">PE415.265</a>	12/11/2008	EP	
Committee final report tabled for plenary, reconsultation		<a href="#">A6-0456/2008</a>	20/11/2008	EP	
Text adopted by Parliament after reconsultation		<a href="#">T6-0574/2008</a>	04/12/2008	EP	Summary

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Regulation 2009/4](#)

[OJ L 007 10.01.2009, p. 0001](#) Summary

[Corrigendum to final act 32009R0004R\(01\)](#)

[OJ L 131 18.05.2011, p. 0026](#)

[Corrigendum to final act 32009R0004R\(02\)](#)

[OJ L 008 12.01.2013, p. 0019](#)

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

In this document, the Commission calls on the Council to provide for measures relating to maintenance obligations taken under Article 65 of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty.

The problem is described as follows: the second indent of Article 67(5) of the Treaty, as amended by the Treaty of Nice, makes a distinction within the general field of judicial cooperation in civil matters, as the measures provided for by Article 65 are taken by the codecision procedure of Article 251, ?with the exception of aspects relating to family law?.

Since 1 February 2003, when the Treaty of Nice came into force, there have thus been two procedural arrangements: codecision, now the standard procedure, and adoption by the Council, acting unanimously after simply consulting the European Parliament, this being the exceptional arrangement for ?measures? containing ?aspects relating to family law?. It is generally easy enough to make the demarcation. There is no doubt that, for example, matrimonial matters and parental responsibility are aspects relating to family law within the Treaty.

When the question arose with the new Brussels II Regulation of abolishing the exequatur procedure for decisions concerning visiting rights, it was accepted as a matter of course that this legislation would affect the operation of national judicial systems in family law matters. Preserving the unanimity rule despite the entry into force of the Treaty of Nice enabled the Member States to ensure that no provisions of Community law could be adopted without their agreement on anything that could concern personal relationships within the family, in particular following a separation: custody, visiting rights, consequences of unlawful removal of children, and so on.

Whenever core aspects of family relationships are at issue and the Community legislation affects the very organisation of the family, the desire to maintain the unanimity rule is more easily understandable. The recognition or otherwise of a judgment relating to custody or visiting rights undeniably has a direct effect on the personal relationship between children and parents and thus affects the equilibrium of the family relationship, which is heavily influenced by the Member States' differing legal and cultural traditions. But there are areas in which this link with the equilibrium of the family relationship is less tight and application of the second indent of Article 67(5) gives particularly unsatisfactory results. An example is the recovery of maintenance obligations.

In this context it is important to reflect properly the hybrid nature of the concept of maintenance obligation ? a family matter in origin but a pecuniary issue in its implementation, like any other claim.

The Community legislature has so far always considered that maintenance obligations should be subject to the ordinary law on judicial

cooperation in civil matters like any other civil claims. Consequently, the Brussels I Regulation (Council Regulation 44/2001/EC) excludes family-law matters but preserves maintenance obligations within its scope. The new Brussels II Regulation, by contrast, covers a wide range of family-law matters (divorce, parental responsibility) but excludes maintenance obligations. And the EEO Regulation (Regulation 805/2004/EC creating a European Enforcement Order for uncontested claims) extends to maintenance claims and was adopted by the codecision procedure.

The new Commission proposal on maintenance obligations falls within a different context. Unlike the Brussels I Regulation and the EEO Regulation, it deals exclusively with maintenance obligations and provides for specific measures applicable to them, whereas in the other two instruments maintenance obligations were merely ancillary issues in the application of the common rules to civil claims. Maintenance obligations are the sole concern of this proposal for a Regulation and its legal nature is determined accordingly.

The fact that maintenance obligations are a family matter means that Community legislation specifically devoted to them relate to family law within the meaning of the second indent of Article 67(5) of the Treaty and thus fall outside the ordinary law on judicial cooperation in civil matters, where the codecision procedure applies.

This conclusion, although legally inescapable, is unsatisfactory. While maintenance obligations do indeed relate to family law, they are but a small component of a larger set. Once its existence is confirmed by a court judgment, a maintenance obligation is a claim and is subject to legal rules that differ very little from the general rules governing asset-related claims. That is the reasoning behind the inclusion of maintenance obligations within the scope of the Brussels I Regulation.

So long as Community law does no more than make it easier to obtain a judgment on a maintenance issue and ensure that the judgment can circulate freely and be enforced throughout the EU, it merely secures a creditor's access to justice and the satisfaction of his claim. Community legislation seen in this light relates mainly to pecuniary interests. The maintenance obligation remains a pecuniary claim representing a sum of money to be recovered with tools that are easy to identify and can be applied to any decision in a financial matter: harmonised rules of international jurisdiction, issuance of an enforceable order recognised everywhere in the EU, seizures of bank accounts or wages and salaries, effective cooperation between Member States to facilitate the legal mechanisms that are in place.

The Commission proposes the following solution: under the second indent of Article 67(2) of the Treaty, the Council, acting unanimously after consulting the European Parliament, may take a decision with a view to providing for all or parts of the areas covered by Title IV of Part Three of the Treaty to be governed by the procedure referred to in Article 251. It is therefore legally possible to transfer maintenance obligations from the unanimity to the codecision procedure. A Council decision to that effect, creating the passerelle between unanimity and the codecision procedure, would be doubly advantageous. For one thing, it would reflect the specific nature of maintenance obligations. Secondly, constructing the passerelle would allow the same legislative procedure, with the same prerogatives of the European Parliament, to be applied for specific measures relating to maintenance obligations as are applied for instruments such as the EEO Regulation (Regulation 805/2004/EC creating a European Enforcement Order for uncontested claims) which established a set of ordinary rules that apply to maintenance claims as to any other claims. It follows that, by reason of the very nature of maintenance obligations and of the legislative context in which the Community has operated hitherto in this area, it would be legally appropriate and politically desirable for the codecision procedure established by Article 251 of the Treaty to be applied to maintenance obligations.

The proposal states that as from 1 June 2006 the Council shall act in accordance with the procedure laid down in Article 251 of the Treaty when adopting measures relating to maintenance obligations referred to in Article 65 of the Treaty. Article 251 of the Treaty shall apply to opinions of the European Parliament obtained by the Council before 1 June 2006 concerning proposals for measures with respect to which the Council shall act in accordance with the procedure laid down in Article 251 of the Treaty.

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**PURPOSE :** to solve the difficulties met by maintenance creditors in the EU.

**PROPOSED ACT :** Council Regulation.

**CONTENT :** this proposal falls within the political mandate set out by the Tampere European Council in 1999 and the mutual recognition programme adopted by the Council and the Commission at the end of 2000. The value of this programme was confirmed by the Hague Programme (2004) and the subsequent plan of action (2005).

The proposed Regulation aims to eliminate all obstacles which prevent the recovery of maintenance within the EU. It will not abolish the economic and social precariousness which afflicts certain debtors and deprives them of employment and of regular income, preventing them from fulfilling their obligations, but it will enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due.

This new European legal order requires an action which cannot be limited solely to the fine tuning of the current mechanisms; ambitious measures have to be taken in all relevant areas of the civil judicial cooperation: jurisdiction, applicable law, recognition and enforcement, cooperation and elimination of obstacles for the good conduct of proceedings. The solutions to this multifaceted problem shall be contained in a single instrument.

The three main objectives are :

1) Simplifying the citizens' life : simplifying life for maintenance creditors means, first and foremost, giving them access to local courts. The current rules of international jurisdiction, which already enable a maintenance creditor to take his claim to a local authority, will be improved and certain ambiguities will be removed from the existing provisions.

Once a decision is given in a Member State, it must have the same force in any Member State as it has in the State of origin, automatically and without formality. Intermediate measures such as the exequatur procedure, which currently delay the process of recovering maintenance claims, will be abolished.

More generally, at each stage of the process of recovering maintenance claims, the creditor will have access to aid and assistance in forms

currently unavailable. In particular he will be able to take all the requisite steps from the place where he lives, including enforcement measures, for instance to have wages and salaries or bank accounts attached, trigger cooperation mechanisms or gain access to information so that he can locate the debtor and assess his assets.

The concern for simplicity means putting an end to the diversity of sources of law in these matters. The future regulation will replace the existing Community Regulations and take precedence over such international conventions as remain in force.

2) Strengthening legal certainty : the rules determining the applicable law will be harmonised, but not the substantive law. This will guarantee a degree of foreseeability in the law without encroaching on the Member States' legal traditions. The effect of the rules determining the applicable law is that the court will give a decision based on the substantive law with which the case is most closely connected. This will help to avoid the most unfair situations: a maintenance creditor will be able to obtain a satisfactory response to his situation and the decision will be all the less open to challenge as it will have been given in accordance with a law designated in accordance with harmonised rules. The harmonisation of the rules governing the applicable law will thus strengthen mutual trust between legal systems.

3) Ensuring effectiveness and continuity of recovery : only the improvement of effective recovery of maintenance is likely to improve substantially and permanently the current situation. This implies making it possible for the creditor to obtain a decision enforceable throughout the territory of the European Union which could then benefit from a simple and harmonised enforcement system. Three requirements have to be met. The first one is to generalise and make automatic the provisional enforcement of all maintenance decisions. The second one consists in abolishing the intermediate measures needed for recognition and enforcement in a Member State of a decision given in another Member State. The third requirement is to adopt a number of measures relating to the enforcement itself: access to information on the situation of the debtor, introducing legal provisions enabling direct deductions of maintenance from wages or bank accounts, strengthening of the ranking of maintenance claims.

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### COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations - COM(2005)0649 of 15 December 2005.

#### 1- POLICY OPTIONS AND IMPACTS

The Commission examined four policy options.

1.1- Option 1: status quo: 17 Member States have ratified the 1973 Hague Convention and a range of cross-border agreements already exist. The Hague Conference has addressed many of the issues in the administrative cooperation recognition and enforcement. However, should the status quo option be selected, there will be no improvement in the numbers of successful claims and enforcements.

1.2- Option 2: non-legislative action: The aim will be to develop measures to address the problem of enforcement in both internal and cross-border cases and within national boundaries. This option should improve cooperation between the competent authorities within each Member State and enable creditors more effective access to justice through the provision of advice and legal aid.

1.3- Option 3: increased EU harmonization: In addition to the non-legislative actions outlined in option 2, option 3 will include the development of a full set of conflict-of-laws rules, covering the scope of all maintenance claims within the EU, including the determination of relationships that constitute a maintenance obligation, statutory limitations, duration of the obligation and the recovery of arrears. The option increases the likelihood that definitional issues will be resolved; however, there will still be no compulsion on a Member State to recognise a maintenance claim brought in another Member State.

1.4- Option 4: complete mutual recognition: The objective of improving recovery of maintenance payments cannot be achieved effectively by the Member States acting alone. Firstly, there is a need to ensure a maintenance decision given in a Member State is recognised and enforceable in any other Member State without any further procedure being required (abolition of *exequatur*) and to improve cooperation between national authorities. Secondly, citizens' access to the enforcement procedures of maintenance decisions in all Member States needs to be simplified by establishing minimum common standards.

Arguments against Option 4: Concern about the rights of the debtor in terms of maintaining their rights to privacy (data protection) and to a fair trial have been expressed.

CONCLUSION: option 4 seems to be the most appropriate for the population concerned: vulnerable lone parent families who are at high risk of economic poverty and social insecurity.

#### IMPACTS

The potential impacts of the proposal can be summarised as follows.

The 'status quo' (option 1), will not meet the policy objectives outlined in the Programme of Measures to address the problems associated with the enforcement of maintenance claims in the EU. Issues such as tracking down the location of debtors, the ability for competent agencies to gain information on the assets of debtors, the provision of advice and legal aid in order to pursue a claim will not be improved. The lack of cooperation between Member States' agencies will also persist and there would be no greater guarantee that maintenance creditors would succeed in having a judgment recognised or enforced due to the existing structures and their associated problems remaining unchanged.

The implementation of non-legislative action, (option 2) is largely focused on improving, rather than changing the current systems. As such, it will address some of the problems in the current situation, but not all of them. It will improve the systems of transfer and the actions of this option will lead to institutional learning and improvement (a peer learning forum and a working party). Its impact on the abilities of the competent authorities to work within the current system may have benefits but it will not address the barriers to greater harmonisation and mutual recognition.

Option 3, increased EU harmonization, will, in addition to leading to improvements in the administration and learning capacity of the competent

authorities, also serve to resolve the complexities associated with the different concepts of maintenance which exist among EU Member States. It will not address the issue of procedural delays resulting from intermediate measures, nor will it lead to guarantees that maintenance claims will be recognised and enforced; it will simply make that eventuality more likely.

These considerations point to the policy option 4 as the preferred option to achieve the policy objectives and address the problems identified. It is in effect the most ambitious iteration of the other three policy options and so therefore represents the furthest development of the four in terms of the issues that it is designed to address. It represents a considerable cost in terms of direct and indirect costs such as ?transition costs? associated with implementation, but not considerably more than options 2 or 3. In contrast, in the long-term, the implementation of option 4 could reduce legal costs dramatically because cases will no longer have to enter into a legal procedure.

## 2- FOLLOW-UP

Given that major elements to the introduction of a programme of complete mutual recognition will include working towards greater cooperation between central authorities, and the setting up of systems to facilitate this, the collection of data on a number of key indicators should be able to be more effectively shared and coordinated between authorities. This could then be assessed and made available on a periodic (yearly) basis in the form of progress reports.

Specific indicators could include:

- ? An evaluation of the success of the development of collaborative mechanisms between Member States? agencies.
- ? An indication of the success of increasing awareness of creditors? rights regarding advice and the provision of legal aid could be revealed indirectly by taking account of any increase in the number of claims brought within each Member State. Indirectly, this could be seen as indicative of the removal of the disincentives associated with the current system and the willingness of maintenance creditors? to take a claim forward.
- ? Comparison between the number of successfully enforced claims for maintenance before implementation and at periodic points after implementation.
- ? Comparison of data on the speed at which claims are processed and enforced before and after implementation.
- ? Monitoring the monetary value of the amount of maintenance payments recovered.

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The European Commission has prepared a Communication in which it outlines, analyses and explains all of the articles set out in the proposed Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, adopted by the Commission on 15 December 2005 (COM(2005)649).

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The European Data Protection Supervisor adopted an opinion on the Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The EDPS welcomes this proposal and recommends duly taking into account the complexity and variety of maintenance obligations, the broad differences in Member States laws in this domain, and the obligations on protection of personal data stemming from Directive 95/46/EC.

Furthermore, the EDPS considers essential to clarify some aspects of the functioning of the system, such as the change in the purpose for which personal data are processed, the legal grounds for processing by national central authorities, and the definition of the data protection rules applicable to further processing by judicial authorities. In particular, the proposal should ensure that transfers of personal data from national administrations to national central authorities and processing by the latter authorities and national courts are carried out only when they are necessary, clearly defined, and based on legislative measures, according to the criteria laid down by data protection rules and complemented by the case law of the Court of Justice.

The EDPS also invites the legislator to specifically address the following substantive points:

- Purpose limitation: a complete and precise definition of the purposes for which personal data are processed is essential. Also the purposes for which data on creditor are processed should be precisely and explicitly defined in the proposal
- Necessity and proportionality of personal data processed: there is a need to define more precisely both the nature of personal data which can be processed according to this regulation, as well as the authorities whose databases can be accessed. A limitation should relate not only to the authorities, but also to the kinds of data that can be processed. The proposal should ensure that national central authorities and courts should be allowed to process personal data only to the extent that this is necessary in the specific case to facilitate the enforcement of maintenance obligations. Furthermore, each kind of maintenance obligation may require a different balance of interests and thus determine to what extent processing of personal data is proportionate in a specific case.
- Special categories of data: processing of sensitive data for the purpose of enforcing maintenance obligations should be in principle excluded, unless it is carried out in compliance with Article 8 of Directive 95/46/EC. Processing of biometrics data for the enforcement of maintenance obligations would be disproportionate and therefore should not be allowed.
- Storage periods: EDPS prefers a flexible but proportionate storage period rather than rigid a priori limitation to a definite period of time, which can prove in certain cases too short for the envisaged purposes of the processing.
- Information to creditor and debtor: a timely, comprehensive and detailed information notice should properly inform the data subject about all

the various transfers and processing operations to which his/her personal data are subject. It is essential that adequate information is also provided to the creditor, in case personal data concerning him/her are exchanged.

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The Council discussed a number of issues of this proposal and agreed on the following political guidelines for further work. It also confirmed Member States' shared will to successfully complete work on this important instrument.

**Abolition of exequatur:** discussions show broad agreement on the principle of such abolition, which will reduce the costs involved in enforcement of maintenance decisions and improve the position of creditors by speeding up enforcement of decisions and making them more easily portable within the European Union. The Council confirmed the principle of abolition of exequatur under the proposed Regulation.

**Cooperation between central authorities:** the Commission is proposing the introduction of a system of cooperation between central authorities in order to facilitate application of the Regulation. The Presidency would point out that similar rules are being drawn up internationally at the Hague Conference and that those negotiations should be borne in mind here. However, the aim should be for the system to be introduced by the Community to go further, where necessary, than the one currently taking shape for the future Hague convention.

**Cross-border implications:** some delegations consider that the proposed Regulation should, in a separate article, explicitly define cross-border cases, as in other instruments concerning judicial cooperation in civil and commercial matters. Some delegations have also voiced concern regarding the link between the scope of the proposed Regulation and relations with third countries. The Presidency accordingly suggests making it clear in a recital that the Regulation applies only in situations having cross-border implications and hence an international aspect. That recital would refer to the requirement in Article 65 of the Treaty and give examples of situations in which maintenance obligations have cross-border implications. Such a recital, the content of which would still have to be discussed, could state that the Regulation applied, for instance, in situations in which the creditor and the debtor were habitually resident in different States, or where a decision on maintenance obligations concerned a debtor and a creditor habitually resident in the same Member State but subsequently needed to be enforced in another Member State after the debtor had moved there. The Council agreed to this approach.

**Agreements with third countries:** given the special nature of maintenance obligations, a number of Member States consider it important, if not essential, for them to be able to retain or conclude bilateral agreements with some third countries. The Council approved the principle of allowing Member States to retain or conclude bilateral agreements with third countries on maintenance obligations, without prejudice to the exclusive external competence of the Community. The criteria and conditions would have to be discussed at a later stage. The Council called on the Committee of Civil Law Matters to further continue the discussions on this proposal with a view to arriving at a solution acceptable to all Member States.

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Genowefa GRABOWSKA (PES, PL) amending, under the consultation procedure, the proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The key amendments adopted in committee are as follows:

- it considered that the proposal ought to be dealt with under the codecision procedure;
- the scope of the Regulation should be extended to cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity or from relations which have comparable effects under the applicable national law, in order to guarantee equal treatment of maintenance creditors. Such obligations should be construed in the widest possible sense covering, in particular, all orders relating to periodic payments, payments of lump sums, transfer of ownership in property and property adjustment, fixed on the basis of the parties' respective needs and resources and being in the nature of maintenance;
- the Regulation should also apply to a public body which seeks reimbursement of maintenance benefits it has provided in lieu of the debtor, provided that the law to which it is subject provides for such reimbursement;
- it should take account of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The aim of this Regulation is to introduce procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair. Regard should be had to the United Nations Convention on the Rights of the Child of 20 November 1989;
- the report also clarifies the meaning of 'maintenance obligation'. Some legal systems distinguish between the duty of maintenance and a more limited duty to contribute to family support. The proposed rule should cover both definitions;
- in proceedings involving *lis pendens* and related proceedings, and in the case of provisional - including protective - measures, Articles 27, 28, 30 and 31 of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general shall apply;
- with this in mind, Articles 8 on related actions, 9 on seising of a court, 10 on provisional including protective measures and 11 on examination as to jurisdiction have been deleted as they duplicate almost word for word the text of Regulation (EC) No 44/2001;
- the report states that the court seised must be satisfied that any choice of law has been agreed after obtaining independent legal advice. All choice-of-law agreements should be in writing;
- the court seised must be satisfied that any prorogation of jurisdiction has been freely agreed after obtaining independent legal advice and that it takes account of the situation of the parties at the time of the proceedings. Article 4 of the proposal concerning the prorogation of jurisdiction

shall not apply if the debtor is a child below the age of 18 or an adult lacking legal capacity;

- the law of the country of the habitual residence of the maintenance creditor should be dominant, as in the existing international instruments, although the law of the forum may be applied even where it is not the law of the creditor's habitual residence, where it allows disputes in this area to be equitably resolved in a simpler, faster and less expensive manner and there is no evidence of forum shopping;
- where the law of the country of the maintenance creditor's habitual residence or the law of the court seised does not enable the maintenance creditor to obtain maintenance from the debtor or where it would be inequitable or inappropriate to apply that law, it should remain possible to apply the law of another country with which the maintenance obligation is closely connected, in particular, but not exclusively, that of the country of the parties' common nationality;
- in determining the amount of maintenance, the court seised shall take as its basis the actual and present needs of the creditor and the actual and present resources of the debtor, taking account of the latter's reasonable needs and any other maintenance obligations to which he or she may be subject;
- in accordance with the proportionality principle, the determination of which personal data should be processed should be made on a case-by-case basis on the basis of the available information and should only be allowed if necessary to facilitate enforcement of maintenance obligations. Moreover, MEPs request that biometrics data such as fingerprints or DNA data shall not be processed;
- lastly, the committee believes that special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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The European Parliament adopted a legislative resolution drafted by Genowefa GRABOWSKA (PES, PL) amending, under the consultation procedure, the proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The main amendments were as follows:

- Parliament felt that the legal base should be Article 61(c), and that the co-decision procedure should apply;
- the Regulation should apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity or relationships deemed by the law applicable to such relationships as having comparable effects;
- a new clause is added stating that the term 'maintenance obligation' shall mean a duty laid down by law ? including in cases where the extent of the obligation and means of complying with it are established by a judicial decision or contract ? to provide any form of maintenance or at least means of subsistence in respect of a person currently or previously linked to the debtor by a family relationship. Such obligations shall be construed in the widest possible sense as covering, in particular, all orders, decisions or judgments of a competent court relating to periodic payments, payments of lump sums, transfer of ownership in property and property adjustment, fixed on the basis of the parties' respective needs and resources and being in the nature of maintenance;
- a new Article is added with regard to the application of the regulation to public bodies. The Regulation shall apply to a public body which seeks reimbursement of maintenance benefits it has provided in lieu of the debtor, provided that the law to which it is subject provides for such reimbursement.;
- in applying the Regulation, regard should be had to the United Nations Convention on the Rights of the Child of 20 November 1989, which provide that : in all actions concerning children, the best interests of the child shall be a primary consideration; every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development ; the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development ; and States should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child. The Regulation should also take account of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance;
- in proceedings involving *lis pendens* and related proceedings, and in the case of provisional ? including protective ? measures, Articles 27, 28, 30 and 31 of Regulation (EC) No 44/2001 shall apply. Parliament deleted Article 8 (related actions), Article 9 (seising of a court) Article 10 (provisional, including protective, measures) and Article 11 (examination as to jurisdiction);
- Parliament also deleted Article 15 (non-application of the designated law at the request of the debtor);
- the court seised must be satisfied that any prorogation of jurisdiction has been freely agreed after obtaining independent legal advice and that it takes account of the situation of the parties at the time of the proceedings. Article 4 will not apply if the creditor is a child below the age of 18 or an adult lacking legal capacity;
- an agreement conferring jurisdiction shall be in writing. Parliament deleted the clause stating that any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing";
- the law of the country of the habitual residence of the maintenance creditor should be dominant, as in the existing international instruments, although the law of the forum may be applied even where it is not the law of the creditor's habitual residence, where it allows disputes in this area to be equitably resolved in a simpler, faster and less expensive manner and there is no evidence of forum shopping;
- where the law of the country of the maintenance creditor's habitual residence or the law of the court seised does not enable the maintenance creditor to obtain maintenance from the debtor or where it would be inequitable or inappropriate to apply that law, it should remain possible to apply the law of another country with which the maintenance obligation is closely connected, in particular, but not exclusively, that of the country of the parties' common nationality;



- an additional part recital states that novel and effective means of enforcement of maintenance decisions should be encouraged;
- in determining the amount of maintenance, the court seized shall take as its basis the actual and present needs of the creditor and the actual and present resources of the debtor, taking account of the latter's reasonable needs and any other maintenance obligations to which he or she may be subject;
- in accordance with the proportionality principle, the determination of which personal data should be processed should be made on a case-by-case basis on the basis of the available information and should only be allowed if necessary to facilitate the enforcement of maintenance obligations. Biometrics data such as fingerprints or DNA data shall not be processed;
- lastly, Parliament stated that special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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The Council agreed a set of political guidelines concerning a proposal for a Regulation on jurisdiction, applicable laws, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The six elements of the guidelines agreed refer to the scope, jurisdiction, applicable law, recognition and enforceability, enforcement and a review clause.

In particular, the Council agreed on the principal goal of the Regulation, which is the complete abolition of exequatur on the basis of harmonised applicable law rules.

To recall, the aim of the proposal is to eliminate all obstacles which still prevent the recovery of maintenance within the European Union, in particular the requirement of exequatur procedure. By abolishing this procedure all decisions on maintenance obligations would be allowed to circulate freely between the Member States without any form of control on the substance in the Member State of enforcement and this would significantly speed up the recovery of maintenance owed.

This will enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due.

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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The Council reached agreement on a draft Regulation on the rules relating to jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The 6 guiding principles which were the subject of agreement concern:

1. scope,
2. definition,
3. jurisdiction,
4. recognition and enforceability,
5. application,
6. review clause.

Before proceeding with the formal adoption of the Regulation, and in view of the amendments which were made to the Commission's initial proposal, the European Parliament is now being consulted upon for a 2<sup>nd</sup> reading, as requested by the Council.

The revised draft Regulation covers all existing forms of maintenance obligation in the Member States, first and foremost those involving children. It shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.

The Regulation is an instrument of particular significance for establishing a European judicial area for European citizens. The Regulation sets the rules on jurisdiction. Furthermore, most Member States will apply harmonised conflict-of-law rules.

The Regulation will remove the remaining obstacles to recovery of maintenance claims within the European Union. In particular, the exequatur procedure will be abolished between all Member States which apply harmonised conflict-of-law rules. Accordingly, decisions on maintenance obligations will be able to circulate freely between practically all Member States without any form of control on the substance in the Member State of enforcement. This will significantly speed up the recovery of maintenance owed.

These improvements will pave the way for a legal environment in line with the legitimate expectations of maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order which will be able to circulate freely throughout the European judicial area and will ensure regular payment of the amounts due.

The Regulation also provides for free legal aid for all proceedings concerning a parent's maintenance obligations in respect of a child below the age of 21.

Lastly, a system of administrative cooperation between Member States' Central Authorities will enable the persons concerned to benefit from practical assistance, in particular through exchange of information (for the purposes of locating debtors, for instance).

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Genowefa GRABOWSKA (PES, PL) and approved the Council's text regarding the proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (renewed consultation.)

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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The European Parliament adopted, by 540 votes to 37 with 16 abstentions, a legislative resolution approving the Council's text regarding the proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (renewed consultation).

The report had been tabled for consideration in plenary by Genowefa GRABOWSKA (PES, PL) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

## Judicial cooperation in civil matters: jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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**PURPOSE:** to ensure that a maintenance creditor should be able to obtain easily, in a Member State, a decision that will be automatically enforceable in another Member State, without further formalities.

**LEGISLATIVE ACT:** Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

**CONTENT:** the Regulation combines in a single instrument all of the measures required for recovery of maintenance claims in the European Union in cross-border disputes. It thus includes provisions on conflicts of jurisdiction, on conflicts of law, on enforceability and enforcement of foreign decisions and on cooperation between Member States' judiciaries.

The scope of this Regulation covers all maintenance obligations arising from a family relationship, parentage, marriage or affinity.

The Regulation removes the remaining obstacles to the recovery of maintenance claims in the European Union. In particular, the exequatur procedure shall be abolished between all Member States which apply harmonised conflict-of-law rules. Accordingly, decisions on maintenance obligations will be able to circulate freely between practically all Member States without any form of control on the substance in the Member State of enforcement. This will significantly speed up the recovery of maintenance owed.

These improvements will pave the way for a legal environment in line with the legitimate expectations of maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order which will be able to circulate freely throughout the European judicial area and will ensure regular payment of the amounts due.

In order to take account of the various ways of resolving maintenance obligation issues in the Member States, this Regulation should apply both to court decisions and to decisions given by administrative authorities, provided that the latter offer guarantees with regard to, in particular, their impartiality and the right of all parties to be heard.

In order to remedy, in particular, situations of denial of justice this Regulation should provide a forum necessitates allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State.

In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should enable the parties to choose the competent court by agreement on the basis of specific connecting factors. To protect the weaker party, such a choice of court should not be allowed in the case of maintenance obligations towards a child under the age of 18.

The Regulation also provides for free legal aid for all procedures concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21.

Lastly, a system of administrative cooperation between Member States' Central Authorities will enable the persons concerned to benefit from practical assistance, in particular through exchange of information, for example to: (i) help locate the debtor or the creditor; (ii) help obtain information concerning the income and other financial circumstances of the debtor or creditor, including the location of assets; (iii) encourage amicable solutions with a view to obtaining voluntary payment of maintenance; (iv) facilitate the collection and expeditious transfer of maintenance payments.

By 18 September 2010, the Member States shall communicate to the Commission the names and contact details of their Central Authorities, as well as other information. That information should be made available to practitioners and to the public through publication in the Official Journal of the European Union or through electronic access to the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

By five years from the date of application, the Commission shall submit a report on the application of this Regulation, including an evaluation of the practical experiences relating to the cooperation between Central Authorities and an evaluation of the functioning of the procedure for recognition, declaration of enforceability and enforcement applicable to decisions given in a Member State not bound by the 2007 Hague Protocol. If necessary, the report shall be accompanied by proposals for adaptation.

Recall that, in the framework of The Hague Conference on Private International Law, the Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance (the 2007 Hague Convention) and the Protocol on the Law Applicable to Maintenance Obligations (the 2007

Hague Protocol). Both those instruments should therefore be taken into account in this Regulation.

ENTRY INTO FORCE: 30/01/2009.

APPLICATION: from 18/06/2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, this Regulation shall apply from the date of application of that Protocol in the Community. Note that certain provisions shall apply from 18/09/2010.