






Procedure file

Basic information		
CNS - Consultation procedure Decision	2009/0023(CNS)	Procedure completed
Civil judicial cooperation: law applicable to maintenance obligations. 2007 The Hague Protocol		
Subject 7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs		02/09/2009
		ALDE WALLIS Diana	
	Former committee responsible		
	 Civil Liberties, Justice and Home Affairs		
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	 Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
	Former committee for opinion		
	 Legal Affairs		
	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2979	30/11/2009
European Commission	Commission DG	Commissioner	
	Justice and Consumers	BARROT Jacques	

Key events			
23/02/2009	Legislative proposal published	COM(2009)0081	Summary
24/03/2009	Committee referral announced in Parliament		
10/11/2009	Vote in committee		Summary
13/11/2009	Committee report tabled for plenary, 1st reading/single reading	A7-0062/2009	
24/11/2009	Results of vote in Parliament		
24/11/2009	Decision by Parliament	T7-0081/2009	Summary
30/11/2009	Act adopted by Council after consultation of Parliament		
30/11/2009	End of procedure in Parliament		
16/12/2009	Final act published in Official Journal		

Technical information	

Procedure reference	2009/0023(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the EU TFEU 218-p6b-ab; Treaty on the Functioning of the EU TFEU 081-p3-a2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/00257

Documentation gateway

Legislative proposal	COM(2009)0081	23/02/2009	EC	Summary
Committee draft report	PE428.221	21/09/2009	EP	
Committee report tabled for plenary, 1st reading/single reading	A7-0062/2009	13/11/2009	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0081/2009	24/11/2009	EP	Summary

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Decision 2009/941](#)
[OJ L 331 16.12.2009, p. 0017](#) Summary

Civil judicial cooperation: law applicable to maintenance obligations. 2007 The Hague Protocol

PURPOSE: to conclude the Protocol on the Law Applicable to Maintenance Obligations.

PROPOSED ACT: Council Decision.

BACKGROUND: in December 2008 the Council adopted [Regulation](#) (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Under the Regulation, the law applicable to maintenance obligations must be determined in accordance with the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations in the Member States bound by that instrument.

Application of the Protocol in the Community will guarantee the application within the Member States of uniform and harmonised rules on applicable law in maintenance matters.

In addition, harmonised rules on applicable law are a precondition for abolishing exequatur for decisions concerning maintenance obligations. As a result, decisions issued in Member States which are bound by the Protocol will circulate freely in other Member States without any form of control on the substance in the Member State where enforcement is sought. This will achieve the political objective that has been on the agenda since the meeting of the European Council in Tampere in 1999.

CONTENT: the proposal concerns the conclusion by the Community of the Protocol on the Law Applicable to Maintenance Obligations concluded on 23 November 2007 under the Hague Conference on Private International Law. The Protocol is designed to offer greater legal certainty and predictability to maintenance creditors and debtors. Since the vast majority of maintenance claims involve children, the Protocol is first and foremost a measure to protect children.

The objective of the Protocol is to improve legal certainty and predictability by creating common provisions on the law applicable to maintenance obligations. The main aim of harmonisation of applicable law rules is to enable creditors to act in full knowledge of the situation, without being subject to diverse national systems. The Protocol seeks to strike a balance between the rights of the maintenance creditor and of the debtor.

The Protocol determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including any maintenance obligation in respect of a child regardless of the marital status of the parents. It provides that, as a general rule,

maintenance obligations shall be governed by the law of the State of habitual residence of the creditor. Special rules provide protection for the maintenance creditor in situations where he or she is unable to obtain maintenance under the law of the State of his or her habitual residence. In the case of spousal maintenance, either of the parties may request application of the law of another State that has a closer connection with the marriage. A special rule on defence gives the debtor the possibility, in certain circumstances, of contesting a claim for maintenance on the ground that there is no such obligation under both the law of the State of habitual residence of the debtor and the law of the State of the common nationality of the parties, if they have one.

Lastly, parties may choose the law applicable to a maintenance claim either for the purpose of a particular proceeding or in general.

Application of the law determined under the Protocol may be refused only to the extent that its effects would be manifestly contrary to the public policy of the forum State. In determining the amount of maintenance, the needs of the creditor and the resources of the debtor must be taken into account, even if the applicable law provides otherwise. The Protocol includes the possibility for Regional Economic Integration Organisations to become a party.

Because of the close link between the objective of the Regulation (EC) No 4/2009 and the rules on applicable law, the Protocol should apply in the Community at the latest on the date of application of the Regulation, i.e. on 18 June 2011.

BUDGETARY IMPLICATION: the proposal has no implication for the Community budget.

Civil judicial cooperation: law applicable to maintenance obligations. 2007 The Hague Protocol

The Committee on Legal Affairs adopted the report drawn up by Diana WALLIS (ALDE, UK), approving unamended, under the consultation procedure, the proposal for a Council decision on the conclusion by the European Community of the Protocol on the Law Applicable to Maintenance Obligations.

In view of the manifest need for the Community to conclude the Protocol and having regard to the changes made by the Council working group to the Commission's proposal, it should be underlined that the rapporteur wholeheartedly commends this proposal to Parliament while regretting the United Kingdom's decision not to opt in.

Civil judicial cooperation: law applicable to maintenance obligations. 2007 The Hague Protocol

The European Parliament adopted by 617 votes to 23 with 31 abstentions, a legislative resolution approving unamended, under the consultation procedure, the proposal for a Council decision on the conclusion by the European Community of the Protocol on the Law Applicable to Maintenance Obligations.

Civil judicial cooperation: law applicable to maintenance obligations. 2007 The Hague Protocol

PURPOSE: to approve, on behalf of the European Community, the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, with a view to working towards the establishment of a common judicial area based on the principle of mutual recognition of decisions.

LEGISLATIVE ACT: Council Decision 2009/941/EC on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

CONTENT: the Council adopted a decision on the conclusion of the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations. With this decision, all EU Member States are bound by the protocol's provisions except Denmark and the United Kingdom.

It should be noted that [Council Regulation \(EC\) No 4/2009](#) on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations provides that the law applicable to maintenance obligations shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations in the Member States bound by that Protocol.

The protocol aims to ensure greater legal certainty and predictability to maintenance creditors and debtors. It determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child regardless of the marital status of the parents.

Application of the Protocol in the Community will guarantee the application within the Member States of uniform and harmonised rules on applicable law in maintenance matters.

Within the Community, the rules of the Protocol shall apply provisionally, without prejudice to Article 5 of this Decision, from 18 June 2011, the date of application of Regulation (EC) No 4/2009, if the Protocol has not yet entered into force on that date.