



EUROPEAN PARLIAMENT

2009 - 2014

Session document

A7-0062/2009

12.11.2009

REPORT

on the proposal for a Council decision on the conclusion by the European Community of the Protocol on the Law Applicable to Maintenance Obligations (COM(2009)0081 – C6-0101/2009 – 2009/0023(CNS))

Committee on Legal Affairs

Rapporteur: Diana Wallis

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- *** Assent procedure
majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	6
PROCEDURE.....	8

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the conclusion by the European Community of the Protocol on the Law Applicable to Maintenance Obligations (COM(2009)0081 – C6-0101/2009 – 2009/0023(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal for a Council decision (COM(2009)0081),
 - having regard to Articles 61(c) and 300(2) of the EC Treaty,
 - having regard to Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0101/2009),
 - having regard to Rules 55 and 90(8) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0062/2009),
1. Approves the conclusion of the Protocol;
 2. Instructs its President to forward its position to the Council and Commission.

EXPLANATORY STATEMENT

The Hague Protocol on the Law applicable to Maintenance Obligations was concluded on 23 November 2007. Its aim is to modernise the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children and the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations and to develop general rules on applicable law that may supplement the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance¹.

The main aim of the harmonisation of applicable law rules is to enable a person owed maintenance ("the creditor") 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.

It 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 (Article 1(1)).

As a general rule, maintenance obligations will be governed by the law of the State of habitual residence of the creditor (Article 3(1)). But 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 (Article 4).

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 (Article 5). A special rule on defence gives the debtor the possibility, in certain circumstances, to contest 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 (Article 6). Finally, parties may choose the law applicable to a maintenance claim either for the purpose of a particular proceeding (Article 7) or in general (Article 8).

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 (Article 13). 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 (Article 14).

Article 24 of the Protocol enables the European Community as a Regional Economic Integration Organisation to become a party.

The particular relevance of the Protocol is that Article 15 of Regulation (EC) No 4/2009 of 18 December 2008 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

¹ For the text of all these Conventions, see the website of the Hague Conference on International Law: http://www.hcch.net/index_en.php?act=text.display&tid=10#family. German and Spanish translations are available on the site, in addition to the official French version.

November 2007 in the Member States bound by that instrument. According to recital 20 of the preamble to the Regulation, for Member States bound by the 2007 Hague Protocol, the rules on conflict of laws in respect of maintenance obligations will be those set out in that Protocol. To that end, a provision referring to the said Protocol should be inserted. The 2007 Hague Protocol will be concluded by the Community in time to enable this Regulation to apply. The United Kingdom will not opt in to the Council Decision on the conclusion by the Community of the Protocol. The Regulation makes a distinction for the purposes of recognition, enforceability and enforcement of decisions between the Member States bound by the 2007 Hague Protocol and those not bound by it. This means that the abolition of exequatur introduced by the Regulation will not apply to United Kingdom.

Council Regulation No 4/2009 becomes applicable either on 18 June 2011 or from the date of application of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

Conclusion

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, the rapporteur wholeheartedly commends this proposal to Parliament while regretting the United Kingdom's decision not to opt in.

PROCEDURE

Title	Protocol on the Law Applicable to Maintenance Obligations
References	COM(2009)0081 – C6-0101/2009 – 2009/0023(CNS)
Date of consulting Parliament	20.3.2009
Committee responsible Date announced in plenary	JURI 19.10.2009
Committee(s) asked for opinion(s) Date announced in plenary	LIBE 19.10.2009
Not delivering opinions Date of decision	LIBE 2.9.2009
Rapporteur(s) Date appointed	Diana Wallis 2.9.2009
Discussed in committee	6.10.2009
Date adopted	10.11.2009
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Sergio Gaetano Cofferati, Edit Herczog, Edvard Kožušník, Kurt Lechner
Substitute(s) under Rule 187(2) present for the final vote	Sajjad Karim