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REPORT

on the 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 – C6-0079/2006 – 2005/0259(CNS))

Committee on Civil Liberties, Justice and Home Affairs

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(*): Procedure with associated committees – Rule 47 of the Rules of Procedure

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***. 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). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Procedure with associated committees – Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 – C6-0079/2006 – 2005/0259(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2005)0649),
 - having regard to Article 61 (c) and Article 67 (2) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0079/2006),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 51 and 35 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0468/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Citation 1

Having regard to the Treaty establishing the European Community, and in particular Article 61 *c)* **and Article 67 (2)** thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 61(*c*) thereof,

Justification

When consulted by the Committee on Civil Liberties, Justice and Home Affairs on the legal basis for the proposed regulation, the Legal Affairs Committee considered that the proposal ought to be dealt with under the codecision procedure.

Amendment 2

Citation 3

Having regard to the opinion of the European Parliament,

deleted

Justification

See the justification to the amendment to Citation 1.

Amendment 3

Citation 4 a (new)

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Justification

See the justification to the amendment to Citation 1.

Amendment 4

Recital 9

(9) The scope of the Regulation should cover all maintenance obligations arising from ***family relationships*** or from relations which have comparable effects, in order to guarantee ***an*** equal treatment of maintenance creditors.

(9) The scope of the Regulation should 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 as 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.

Amendment 5
Recital 10

(10) The rules on jurisdiction differ somewhat from those which are currently applicable, such as they result from Regulation (EC) *n*° 44/2001. In order to ensure as much as possible the protection of the interests of maintenance creditors and to encourage a proper administration of justice within the European Union, these rules should be clarified and cover now all the cases in which there is a sufficient link between the parties and a Member State. ***The fact that the defendant is habitually resident in a non-member State of the European Union should no longer be a reason for non-application of Community rules and for reference to national law.***

(10) The rules on jurisdiction differ somewhat from those which are currently applicable, such as they result from Regulation (EC) *No* 44/2001. In order to ensure as much as possible the protection of the interests of maintenance creditors and to encourage a proper administration of justice within the European Union, these rules should be clarified and cover now all the cases in which there is a sufficient link between the parties and a Member State.

Justification

In view of the negotiation of the Convention on the international recovery of child support and other forms of family maintenance in the Hague Conference, to which the European Community acceded on 3 April 2007, this sentence is better omitted.

Amendment 6
Recital 11

(11) The parties should be able to agree on the competent court, except for maintenance obligations in respect of a minor child, in order to protect the “weaker party”.

(11) The parties should be able to agree on the competent court, except for maintenance obligations in respect of a minor child ***or an adult lacking legal capacity***, in order to protect the “weaker party”.

Amendment 7
Recital 14

(14) The law of the country of the habitual residence of the maintenance creditor should

(14) The law of the country of the habitual residence of the maintenance creditor should

remain predominant, as in the existing international instruments, **but** the law of the forum *should come in second rank, because it often allows, in this specific area, to resolve disputes* in a simpler, faster and less expensive manner.

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**.

Justification

The Regulation's aim of enabling maintenance creditors easily to obtain a decision which will be automatically enforceable in another Member State would be frustrated if a solution were to be adopted which obliged courts to apply foreign law where the dispute could be resolved simpler, faster and more economically by applying the law of the forum. Application of foreign law tends to prolong proceedings and lead to additional costs being incurred in procedures which often involve an element of urgency and in which litigants do not necessarily have deep pockets. Moreover, in some cases application of the law of the creditor's country of habitual residence could give rise to an undesirable result, as in the case where the creditor seeks a maintenance order in the country of which she is a national having sought refuge there after leaving the country in which she had been habitually resident with her husband who is of the same nationality, who is still resident there.

On these grounds, this amendment provides for the discretionary application of the law of the forum, whilst safeguarding against forum shopping.

Amendment 8 Recital 15

(15) Where **none of the laws referred to above enables the** creditor to obtain maintenance from the debtor, it should remain possible to apply the law of another country with which the maintenance obligation is closely **linked. It can be**, in particular, but exclusively the country of the common nationality **of the parties**.

(15) 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.

Justification

This amendment allows for the application of a law other than that of the country of the maintenance creditor's habitual residence or that of the court seised, also in order to avoid

forum shopping.

Amendment 9

Recital 16

(16) Parties should be **authorized**, under certain conditions, to choose applicable law. They should be able to choose the law of the forum for the purposes of particular proceedings. Moreover, they should be entitled to agree on the applicable law prior to any dispute, but only when maintenance obligations involved are other than those in respect of children or vulnerable adults; furthermore, any such choice should be limited to the designation of certain laws only.

(16) Parties should be **allowed**, under certain conditions, to choose **the** applicable law. They should be able to choose the law of the forum for the purposes of particular proceedings. Moreover, they should be entitled to agree on the applicable law prior to any dispute, but only when **the** maintenance obligations involved are other than those in respect of children or vulnerable adults; furthermore, any such choice should be limited to the designation of certain laws only. ***The court seized 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.***

Amendment 10

Recital 17

(17) The debtor should be protected from the application of the law designated where the family relationship on which the maintenance obligation is based is not universally considered as being worthy to be honoured. It should be the case, in particular, for relations between persons related collaterally or by affinity, descendants' maintenance obligations with regard to their ascendants, or maintenance after the dissolution of marriage.

deleted

Amendment 11

Recital 18 a (new)

(18a) Special categories of data concerning racial or ethnic origin, political opinions, religious or

philosophical beliefs, political party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

Amendment 12
Recital 19

(19) Once a maintenance decision has been given in a Member State, it should be enforced quickly and effectively in any other Member State. *The maintenance* creditors should benefit, in particular, from direct deductions from wages and bank accounts of the debtors.

(19) ***The aim of this Regulation is to introduce procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair.*** Once a maintenance decision has been given in a Member State, it should be enforced quickly and effectively in any other Member State. *Maintenance* creditors should benefit, in particular, from direct deductions from wages and bank accounts of the debtors. ***Novel and effective means of enforcement of maintenance decisions should be encouraged.***

Justification

In common with the draft Hague Convention, the Regulation should pursue the objective of promoting accessible, prompt, efficient, cost-effective, responsive and fair procedures.

Enforcement of maintenance decisions is problematic in many jurisdictions. Member States should therefore actively consider novel means of enforcement that have been used to great effect in non-EU jurisdictions, such as confiscation of driving licences.

Amendment 13
Recital 22

(22) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, it seeks to ensure full respect for private and family

(22) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, it seeks to ensure full respect for private and family

life, personal data protection, the rights of the child and the guarantees of effective remedy before an independent and impartial court, in accordance with Articles 7, 8 24 and 47 of the Charter.

life, personal data protection, the rights of the child and the guarantees of effective remedy before an independent and impartial court, in accordance with Articles 7, 8, 24 and 47 of the Charter. ***In applying this Regulation, regard should be had to Articles 3 and 27 of 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.

Justification

Regard should be had to the rights of children as set forth in the relevant UN Convention.

Amendment 14

Recital 23

(23) ***In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹, measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.***

(23) ***The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.***

¹OJ L 184, 17.7.1999, p. 23.

¹OJ L 184, 17.7.1999, p. 23. *Decision as last amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).*

Justification

The comitology provisions have been adjusted to take account of the amendment of the 1999 Comitology Decision. See also the amendments to Articles 50 and 51.

Amendment 15
Recital 24

(24) This Regulation should replace the Community instruments adopted previously and covering the same field. It **shall** prevail, in addition, over other applicable international instruments applicable between the Member States in the same matters, in order to unify and simplify the legal rules in force.

(24) This Regulation should replace the Community instruments adopted previously and covering the same field. It **should** prevail, in addition, over other applicable international instruments applicable between the Member States in the same matters, in order to unify and simplify the legal rules in force. ***It should take account of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.***

Justification

It is important to make it clear that the Regulation is intended to be compatible with the forthcoming Hague Convention.

Amendment 16
Article 1, paragraph 1

1. This Regulation shall apply to maintenance obligations arising from family **relationships** or relationships deemed by the law applicable to such relationships as having comparable effects.

1. This Regulation shall 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.

Justification

See the justification to the amendment for Recital 9.

Amendment 17
Article 2, point (-1) (new)

(-1) 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 decrees 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.

Justification

The meaning of 'maintenance obligation' should be defined: 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.

Amendment 18
Article 2, point 2

(2) the term 'judge' shall mean the judge or ~~deleted~~ an official having powers equivalent to those of a judge in matters relating to maintenance obligations;

Justification

This paragraph is superfluous, since a judge is one of the 'authorities (...) with jurisdiction in matters relating to maintenance obligations', as defined in subparagraph 1.

Amendment 19
Article 2, point (9)

(9) the term 'debtor' shall mean any natural person who owes or who is alleged to owe maintenance.

(9) the term 'debtor' shall mean any natural person who owes or who is alleged to owe maintenance or a public body which has taken over the obligation of the debtor to maintain the creditor,

Amendment 20
Article 2, point (9 a) (new)

(9a) the term ‘proceedings concerning the status of a person’ shall mean any proceedings relating to divorce, legal separation, marriage annulment or affiliation.

Justification

It is necessary to specify what is meant by the expression “proceedings concerning the status of a person”. The definition coincides with the definition of jurisdiction contained in Regulation No 2201/2003, but is expanded to include affiliation proceedings.

Amendment 21
Article 2 a (new)

Article 2a

Application to public bodies

1. Subject to paragraphs 2 and 3, this Regulation shall 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.

2. Article 3(b), (c) and (d) and Article 6 [6b] shall not apply to proceedings brought by a public body.

3. A public body seeking the enforcement of a decision shall submit, together with the application under Chapter VIII, any document necessary to prove that it fulfils the conditions laid down in paragraph 1 and that benefits have been provided for the creditor.

Amendment 22
Article 3, point (c)

c) the court which has jurisdiction to

c) the court which has jurisdiction to

entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, ***unless that jurisdiction is based solely on the nationality of one of the parties;***

entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings;

Justification

This limitation does not seem to serve any useful purpose.

Amendment 23
Article 3, point (d)

d) the court which has jurisdiction to entertain proceedings concerning parental responsibility, under *the* Regulation (EC) n° 2201/2003, if the matter relating to maintenance is ancillary to those proceedings.

d) the court which has jurisdiction to entertain proceedings concerning parental responsibility, under Regulation (EC) No 2201/2003, if the matter relating to maintenance is ancillary to those proceedings ***and parental-responsibility proceedings are already pending before that court or are brought before that court at the same time as an application for maintenance;***

Justification

This clarification seems worthwhile.

Amendment 24
Article 3, point (d a) (new)

(da) the court for the place where the family relationship or the relationship having comparable effects has been officially established.

Justification

The choice by the parties of the place where they officiated there relationship should be reasonably presumed as implying acceptance of the jurisdiction of the court of that place as well.

Amendment 25
Article 4, paragraph 2

2. An agreement conferring jurisdiction shall be in writing. ***Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.***

2. An agreement conferring jurisdiction shall be in writing.

Justification

This provision is excessively vague: it could cover, say, an exchange of e-mails.

Amendment 26
Article 4, paragraph 2 a (new)

2a. 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.

Justification

See the justification of the amendment to Recital 11.

Amendment 27
Article 4, paragraph 4

4. This ***article*** shall not apply ***to a dispute relating to a maintenance obligation towards*** a child below the age of 18.

4. This ***Article*** shall not apply ***if the debtor is*** a child below the age of 18 ***or an adult lacking legal capacity.***

Justification

To protect those entitled to maintenance who are not in a position to exercise free will, there should be no possibility of prorogation of jurisdiction in such cases.

Amendment 28
Article 6, point (b)

b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State ***of was*** the last common

b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State ***in whose territory*** the last

habitual residence of the spouses provided such habitual residence *had* still existed at least one year before the institution of the proceedings.

common habitual residence of the spouses *was situated*, provided *that* such habitual residence still existed at least one year before the institution of the proceedings.

Justification

Affects the English version only.

Amendment 29
Article 7, paragraph 1

1. Where proceedings involving the same maintenance obligation are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

1. 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.

Justification

The rules laid down in this and the following articles replicate existing provisions of Community law contained in Regulation (EC) No 44/2001, to which reference should be made.

Amendment 30
Article 7, paragraph 2

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

deleted

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 31
Article 8

Article 8

deleted

Related actions

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may

stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 32

Article 9

Article 9

deleted

Seising of a court

For the purposes of this Chapter, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation

(EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 33

Article 10

Article 10

deleted

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 34

Article 10, paragraph 1 a (new)

Where maintenance proceedings have been brought by way of application for interim relief, Articles 7 and 8 shall not operate so as to cause the law applicable to the application for interim relief necessarily to apply to any subsequent application for maintenance or variation of maintenance lodged in connection with substantive proceedings for divorce, annulment of marriage/civil partnership or legal separation.

Justification

In the absence of such a provision, it could be held that where a woman applied for maintenance by way of interim measures in country A, where she sought refuge, the law of country A ought to be applied to all questions relating to maintenance obligations arising under divorce proceedings subsequently brought in country B, her country of origin where she resides with her spouse.

Amendment 35

Article 11

Article 11

deleted

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 36 Article 13

1. ***The maintenance*** obligations shall be governed by the law of the country in whose territory the creditor is habitually resident.

2. The law of the forum shall apply:

a) ***if the creditor is unable, by virtue of the law designated in accordance with paragraph 1, to obtain maintenance from the debtor, or***

b) where the creditor ***so requests and this law is the law of the country on whose territory the debtor is habitually resident.***

3. ***The laws designated in accordance with the previous paragraphs shall be disregarded when, by virtue of those laws, the creditor is unable to obtain maintenance, and if it appears from the circumstances as a whole that the maintenance obligation has a close connection with another country, in particular the country of the common nationality of the creditor and the debtor;***

1. ***Maintenance*** obligations shall be governed by the law of the country in whose territory the creditor is habitually resident.

2. The law of the forum shall apply:

(a) ***where it is the law of the country of the creditor's habitual residence, or***

(b) where the creditor ***is unable to obtain maintenance from the debtor by virtue of the law of the country of the creditor's habitual residence, or***

(c) ***unless the creditor requests otherwise and the court is satisfied that he or she has obtained independent legal advice on the question, where it is the law of the country of the debtor's habitual residence.***

3. ***Notwithstanding paragraph 1, the law of the forum may be applied, even where it is not the law of the country of the creditor's habitual residence, where it allows maintenance disputes to be equitably resolved in a simpler, faster and less expensive manner and there is no evidence of forum shopping.***

in such a case, the law of the country with which the maintenance obligation has a close connection shall apply.

4. Alternatively, where the law of the country of the creditor's habitual residence or the law of the forum does not enable the creditor to obtain maintenance from the debtor or where it would be inequitable or inappropriate to apply that law, the maintenance obligations shall be governed by the law of another country with which the maintenance obligation is closely connected, in particular, but not exclusively, that of the country of the common nationality of the creditor and the debtor.

Justification

See the justifications to the amendments to Recitals 14 and 15.

Amendment 37
Article 14, point (a)

(a) at the time the court is seised, ***designate expressly or otherwise in an unequivocal manner the law of the forum for as the law applicable to the maintenance obligation, for the purpose of these proceedings;***

(a) at the time the court is seised, ***provide an agreement in writing designating the law of the forum in an unequivocal manner;***

Justification

The text as it stands is incomprehensible. Obviously, the procedural rules which apply are inevitably those of the court seised.

Amendment 38
Article 14, paragraph 1 a (new)

Paragraph 1 is subject to the proviso that the court seised is satisfied that any choice of court or choice of law has been freely agreed.

Amendment 39
Article 14, point (b) (ii a) (new)

(iia) the law of the place where the family relationship or the relationship having comparable effects has been officially established;

Justification

It is reasonable to assume that the parties accepted at the time they established their relationship that the law of the place where they officiated such relationship could govern other family matters.

Amendment 40
Article 15

Article 15

deleted

Non-application of the designated law at the request of the debtor

1. In the case of maintenance obligations other than those in respect of children and vulnerable adults and between spouses or ex-spouses, the debtor may oppose a claim by the creditor on the ground that there is no such obligation under the law of their common nationality or, in the absence of a common nationality, under the law of the country in which the debtor is habitually resident.

2. In the case of maintenance obligations between spouses or ex-spouses, the debtor may oppose a claim by the creditor on the ground that there is no such obligation under the law of the country with which the marriage has the closest connection.

Justification

This provision seems to conflict with the principle of mutual recognition and to be discriminatory.

Amendment 41
Article 17

1. The law applicable to a maintenance obligation shall determine in particular:

(a) whether, *to what extent* and from whom a creditor may claim maintenance;

(b) *the extent to which* the creditor may claim retroactive maintenance;

(c) the calculation and indexation of the maintenance obligation;

(d) limitation periods and time limits on the institution of proceedings;

(e) the right of a public body which has provided benefits for a creditor to obtain reimbursement of those benefits and the extent of the obligation of the debtor.

2. *Whatever the contents of the applicable law, the needs of the creditor and the resources of the debtor shall be taken into account in determining the amount of maintenance.*

1. The law applicable to a maintenance obligation shall determine in particular:

(a) whether, *for what period and in what amount* and from whom a creditor may claim maintenance;

(b) *for what period and in what amount* the creditor may claim retroactive maintenance;

(c) the calculation and indexation of the maintenance obligation;

(d) limitation periods and time limits on the institution of proceedings;

(e) the right of a public body which has provided benefits for a creditor to obtain reimbursement of those benefits and the extent of the obligation of the debtor.

2. *Notwithstanding paragraph 1, 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.*

Justification

This amendment seeks to tighten up the wording of the Commission's text. It is important to make it clear that the actual needs of the creditor are of paramount importance and to take account of the fact that the debtor may be under a duty already to pay maintenance to, for instance, a previous partner.

Amendment 42
Article 20

The application of a provision of the law designated by this Regulation may be refused only if such application is manifestly incompatible with the public policy ('ordre public') of the forum. ***However, the application of a provision of the law of a Member State designated by this***

The application of a provision of the law designated by this Regulation may be refused only if such application is manifestly incompatible with the public policy ('ordre public') of the forum.

Regulation shall not be refused on such a ground.

Justification

This safeguard needs to be maintained.

Amendment 43
Article 21

Where a State comprises several territorial units each of which has its own rules on maintenance obligations, each territorial unit is regarded as a country for the purposes of the determination of the applicable law according to this Regulation.

A State within which different territorial units have their own rules of law in respect of maintenance obligations shall not be bound to apply this Regulation to conflicts solely between the laws of such units.

Justification

This provision reproduces the corresponding provision of Rome II. Member States comprising several territorial units with their own legal rules should be left to decide whether the provisions of the Regulation should apply as between those territorial units.

Amendment 44
Article 22

1. In proceedings before a court, the document instituting the proceedings or an equivalent document shall be served on the defendant by one of the following methods:

Service of documents shall be governed by the provisions of Regulation XXX/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the addressee;

b) personal service attested by a document signed by the competent person who effected the service stating that the addressee has received the document or refused to receive it without any legal justification, and the date of the service;

c) postal service attested by an acknowledgement of receipt including the

date of receipt, which is signed and returned by the addressee;

d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee.

2. The defendant shall have at least 30 days for the preparation of his or her defence following the day of receipt of the document served in accordance with paragraph 1.

3. The Member States shall inform the Commission within six months following the entry into force of this Regulation of the methods of service which are applicable. They shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

Amendment 45
Article 29

An applicant, who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure for enforcement, to benefit from the ***most favourable*** legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedure for enforcement, to benefit from legal aid ***in accordance with the provisions of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes***¹ or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

¹ OJ L 26, 31.1.2003, p. 41.

Amendment 46
Article 33

The partial or total refusal or suspension of the enforcement of the decision of the court of origin may at the request of the debtor be granted only in the following cases:

(a) *the debtor asserts new circumstances or circumstances which were unknown to the court of origin when its decision was given;*

(b) *the debtor has applied for the review of the decision of the court of origin in accordance with Article 24 and no new decision has yet been given;*

(c) the debtor has already satisfied his or her debt;

(d) the claim is totally or partially extinguished by the effect of prescription or the limitation of actions;

(e) the decision of the court of origin is irreconcilable with a decision given in the Member State of enforcement or which fulfils the conditions necessary for its recognition in the Member State of enforcement.

The partial or total refusal or suspension of the enforcement of the decision of the court of origin may at the request of the debtor be granted only in the following cases:

(a) *when the debtor asserts new relevant or significant relevant circumstances which were not known to the court of origin when its decision was given;*

(b) *when the debtor has applied for a review of the decision of the court of origin in accordance with Article 24 and no new decision has yet been given;*

(c) the debtor has already satisfied his or her debt;

(d) the claim is totally or partially extinguished by the effect of prescription or the limitation of actions;

(e) the decision of the court of origin is irreconcilable with a decision given in the Member State of enforcement or which fulfils the conditions necessary for its recognition in the Member State of enforcement.

Justification

With regard to point (a), it is not possible to re-open at the enforcement stage a discussion on matters which have already been subject to a final ruling. Enforcement can be halted only for reasons relating to enforcement itself, and not for reasons which resulted in the decision being enforced (see Article 45(2) of Regulation (EC) No 44/2001.

With regard to point (b), no special process should be introduced. Differing procedural rules increase the difficulties involved and can delay, rather than speed up or facilitate, the process of resolving such problems.

The possibility of a review in the state of origin would introduce an anomalous appeals system.

Amendment 47 Article 34, paragraph 2

2. An order for monthly direct payment may only be given if the decision has been served to the debtor *by one of the methods referred to in Article 22.*

2. An order for monthly direct payment may only be given if the decision has been served to the debtor *in accordance with the provisions of Regulation XXX/2007 of the European Parliament and of the Council*

***on the service in the Member States of
judicial and extrajudicial documents in
civil or commercial matters.***

Justification

No special process should be introduced. Differing procedural rules increase the difficulties involved and may slow down, rather than speed up and facilitate, the process of resolving problems.

Amendment 48
Article 35, paragraph 1

1. A creditor may ask the court seised as to the substance to deliver an order for temporary freezing of a bank account which is to be addressed to the bank in another Member State in which the debtor has an account. The application and the order for temporary freezing of a bank account shall be in conformity with the standard form set out in the annex IV to this Regulation.

1. A creditor may ask the court seised as to the substance to deliver an order for temporary freezing of a bank account ***in the amount needed for the maintenance obligation to be met***, which is to be addressed to the bank in another Member State in which the debtor has an account. The application and the order for temporary freezing of a bank account shall be in conformity with the standard form set out in the annex IV to this Regulation.

Amendment 49
Article 35 a (new)

Article 35a

Other enforcement orders

The court seised may order all such other measures of enforcement as are provided for in its national law which it considers appropriate.

Justification

This court in which enforcement is sought should not be limited to the orders listed in the Regulation. Whereas Member States should be encouraged to consider novel means of enforcement including those that have been used to great effect in non-EU jurisdictions, courts should certainly use the full panoply of measures available to them under their national law.

Amendment 50
Article 38, paragraph 1

1. **Provisions** of Chapter VI shall apply as appropriate to the recognition and enforcement of authentic instruments and agreements between the parties that are enforceable. The competent authority of a Member State in which an authentic instrument or an agreement between the parties is enforceable shall issue, **at the request of any interested party**, an extract of act using the standard form in Annex II of this Regulation.

1. **The provisions** of Chapter VI shall apply as appropriate to the recognition and enforcement of authentic instruments and agreements between the parties that are enforceable. The competent authority of a Member State in which an authentic instrument or an agreement between the parties is enforceable shall issue **automatically to the parties** an extract of act using the standard form in Annex II of this Regulation.

Justification

The provisions of the Regulation should operate with a minimum of formality.

Amendment 51
Article 44, paragraph 1, introductory phrase

1. The central authorities shall give access to the information which can facilitate the recovery of maintenance claims under the conditions laid down in this Chapter. This information is provided in order to achieve the following objectives:

1. The central authorities shall give access to the information which can facilitate **in a specific case** the recovery of maintenance claims under the conditions laid down in this Chapter. This information is provided in order to achieve the following objectives:

Amendment 52
Article 44, paragraph 1, point (a)

a) to locate the debtor;

a) to locate the **address of the** debtor;

Amendment 53
Article 44, paragraph 1 a (new)

1a. 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.

Amendment 54
Article 44, paragraph 1 b (new)

1b. Biometrics data such as fingerprints or DNA data shall not be processed.

Amendment 55
Article 44, paragraph 1 c (new)

1c. 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.

Amendment 56
Article 44, paragraph 2 a (new)

2a. Requests for information other than that listed in paragraph 2 should be proportionate and necessary to obtain the objectives listed in paragraph 1.

Amendment 57
Article 46, paragraph 3

3. A court shall not store information communicated in accordance with this Regulation for a longer period than the one necessary to facilitate the recovery of a maintenance claim. ***This period shall not exceed one year.***

3. A court shall not store information communicated in accordance with this Regulation for a longer period than the one necessary to facilitate the recovery of a maintenance claim.

Justification

Information shall be available for as long as it is necessary, for the purpose for which it was collected or it is further processed. Indeed, in the case of maintenance obligations, information in some cases is likely to be needed for quite a long period of time, in order for the judge to be able to periodically reassess both, the subsistence of the legal grounds for granting the maintenance obligations and properly quantify these obligations. Indeed, according to the information provided by the Commission, in the EU a maintenance claim is paid for 8 years on average.

Amendment 58 Article 48, paragraph 3 a (new)

3a. This Regulation complies with Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and requires Member States to protect the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community.

Amendment 59 Article 50

Any amendment to the Annexes of this Regulation shall be adopted in accordance with the **consultative** procedure set out in Article 51(2).

Any amendment to the Annexes of this Regulation shall be adopted in accordance with the **advisory** procedure set out in Article 51(2).

Amendment 60 Article 51

1. The Commission shall be assisted by **a** committee, **composed of representatives of the Member States and chaired by the representatives of the Commission**.

2. Where reference is made to this paragraph, **the advisory procedure laid down in** Articles 3 of Decision 1999/468/EC

1. The Commission shall be assisted by **the** committee **provided for by Article 75 of Regulation (EC) No 44/2001**.

2. Where reference is made to this paragraph, Articles 3 **and 7** of Decision 1999/468/EC shall apply, **having regard to**

shall apply, *in compliance with Article 7 (3)*
thereof.

the provisions of Article 8 thereof.

EXPLANATORY STATEMENT

1. Introduction

What is currently lacking at the European Union level, is a common, harmonised system of recognition and enforcement of maintenance decisions.

The main objective of the proposal for the Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations is to eliminate legal obstacles preventing the recovery of maintenance from a citizen residing in another EU Member State.

This regulation is aiming at the fast, (generally) free of charge recovery of maintenance. It is a crucial and necessary regulation for EU citizens. With the achievement of the internal market, cross-border movements of persons have increased considerably – and with them problems which are liable to beset the partners of migrants, particularly in the new Member States, whose citizens are taking the fullest possible advantage of free movement. Moreover, account must be taken of the fact that divorce and separation is on the increase all over the Union.

In preparing the report the rapporteur contacted both, institutions dealing with maintenance obligations, and persons trying to obtain them. Following the consultations, she unfortunately discovered that the court orders in many cases are not executed. In Poland, for example, it is estimated that only 10 % of people obliged to pay maintenance obligations, fulfil this duty. The others who should pay to support their kids, do everything in order to avoid it, they transfer their property to close and distant family members, they officially do not work although they do have some kind of stable income, they do not pick up letters they get from a debt collector, they hide from the system of justice. To make one pay the maintenance obligations, the responsible institutions are forced even to take radical steps like withholding the driving licence. On the other hand, the creditors are living in very poor circumstances and they often do not even have enough money to survive.

One can imagine that these problems are even more difficult to tackle with when the debtor lives abroad. The way to obtain the maintenance claims is much longer, more complicated and in many cases even impossible to realise. Just to avoid these situations and therefore to make the EU Citizens life's easier, such a regulation was introduced.

To focus on this important issue and to encourage the Members States to deal with it and to conclude the work on the draft regulation quickly, she has decided to organise a public hearing on this issue, which is going to take place on the 11th of September.

2. Legal framework

The proposal of the Regulation is a result of a long-term Action Plan aiming at strengthening freedom, security and justice in the EU, adopted by the Heads of States and Governments at the European Council meeting in the Hague, in November 2004 (known as “The Hague Programme”). In this Programme, “the Commission is invited to submit a proposal of a draft instrument on the recognition and enforcement of decisions on maintenance, including

precautionary measures and provisional enforcement in 2005”.

At the same time, since 1999, the Hague Conference on International Private Law (an international organisation whose members are all the Member States of the EU as well as 40 other states), have conducted works in parallel on a thorough reform of the international system of maintenance claims abroad. The works are to be finished in November 2007.

The Rapporteur is closely watching the works of the Hague Conference on International Private Law and believes that its provisions should be parallel to the EU proposals. At the same time, however, she is of the opinion that the EU needs a separate internal regulation on this matter. The large number of sources and the level of integration between the Member States is incomparable to non-EU countries, and also because the weight of the aims set by the EU are different, it is necessary to create a separate, more advanced system on recognition and enforcement of maintenance decisions. Of course a new system must correspond, as much as possible, to the framework of the Hague Conference on international Private Law, but it can be more advanced. It must also be emphasised that it takes a long time to ratify a convention, and sometimes States do not ratify them at all. Whereas taking into consideration the scope of the problem of maintenance obligations recovery and its tendency to increase, it is quite clear that we do need a new, quick and efficient mechanism in this respect within the EU.

3. Scope and content

The scope of the Regulation covers all maintenance obligations resulting from family relations (art. 1). The Rapporteur supports the direction of the solutions adopted in the proposal of the Regulation. However, she would like to bring into consideration the fact that because the term “maintenance obligation” is defined in every Member State in a different way, the scope of the Regulation should cover these maintenance obligations which are foreseen in the national law of every Member State.

The Commission presented, in one single instrument, all the mechanisms applicable to this matter: jurisdiction, applicable law, recognition and enforcement, cooperation and elimination of obstacles for the good conduct of proceedings.

This Regulation shall result in simplifying the citizens’ lives. What we need most is simplifying the conduct of the proceedings necessary for establishing the maintenance liabilities. Following this, the Commission suggests that once the decision has been given, measures have to be taken to give that decision the same force that it has in the Member State of origin, without any further formalities.

In practice, the procedure of claiming maintenance would consist of one step only, i.e. the creditor would have to submit a notion in court. Next, an appointed central body in the creditor’s state, on court’s demand, would send an appropriate application to an appointed central body in the debtor’s state, which would collect the information on the debtor necessary to define and enforce the maintenance obligation, and then it would send it back to the creditor’s state.

The creditor would have the right to request a monthly direct payment via his/her court of

origin which is to be addressed to the debtor's employer in another Member State or to the bank in another Member State in which the debtor has a bank account. (art. 34). A creditor may ask the court seized for an order for temporary freezing of a bank account which is to be addressed to the bank in another Member State in which the debtor has an account (art. 35). As a general rule, the maintenance claims shall be paid in preference to all the other debts of a debtor (art. 36).

5. Conclusions

The Rapporteur supports the draft regulation and accepts the direction of the solutions proposed in it. The implementation will undoubtedly have positive social effects since it will help maintenance creditors living in one Member State to pursue their claims from the debtors residing in other Member States. Following this, the Regulation may facilitate the proper functioning of the internal market mainly through the elimination of the obstacles for the free movement of persons who now suffer from the discrepancies between the Member States in terms of maintenance obligations enforcement.

The proposal for a Regulation on maintenance obligations meets a real need of modern society: to improve the position of maintenance creditors, who are first and foremost children. The growing number of couples separating combined with increasing mobility in the European Union, inevitably means more and more cross-border disputes regarding maintenance claims. More efficient recovery of maintenance claims will thus improve the living and educational conditions of many children. The proposal will facilitate it for the maintenance creditor to take his/her claim to a competent court. And once the decision has been given, measures will be taken to ensure that it is automatically recognised in all the Member States without further formalities. What makes a big change, is that now the creditor will benefit from the immense help that the new Regulation will give in claiming citizens' rights.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE PROPOSED LEGAL BASIS

14.2.2007

Mr Jean-Marie Cavada
Chairman
Committee on Civil Liberties, Justice and Home Affairs
BRUSSELS

Subject: Opinion on the legal basis of the 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 – C6-0079/2006 – 2005/0259(CNS))¹

Dear Mr Chairman,

By letter of 11 January 2007 you asked the Committee on Legal Affairs pursuant to Rule 35(2), to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The committee considered the above question at its meeting of 30 January 2007.

The legal basis proposed is Articles 61(c) and Article 67(2). The reference to Article 67(2) implies that the proposed measure deals with aspects of family law and hence is not subject to the codecision procedure by virtue of the exception set forth in the second indent of Article 67(5).

Pertinent provisions of the EC Treaty

Article 61(c)

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

(c) measures in the field of judicial cooperation in civil matters as provided for in Article 65;

Article 65

Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include:

(a) improving and simplifying:

-the system for cross-border service of judicial and extrajudicial documents;

¹ Not yet published in the OJ.

-cooperation in the taking of evidence;
-the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;

(b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;

(c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Article 67(1) and (2)

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

-the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;

-the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.

Article 67(5)

5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:

-the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this article, Community legislation defining the common rules and basic principles governing these issues,

-the measures provided for in Article 65 with the exception of aspects relating to family law.

Aim and content of the proposal for a regulation

The proposal for a regulation intends to eliminate all obstacles preventing the recovery of maintenance within the European Union in accordance with the Mutual Recognition Programme in Civil Matters adopted on 30 November 2002 and the common Action Plan adopted on 2 and 3 June 2005.

The aim and content of the proposed regulation according to the preamble and enacting terms may be analysed as follows:

According to recital 7, the aim of the regulation is to enable maintenance creditors to obtain easily, in a Member State, a decision which will be automatically enforceable in any other Member State and the enforcement of which will be simplified and accelerated.

To this end the regulation seeks to bring together in a single instrument all the measures necessary to cover the recovery of maintenance obligations within the Community. It therefore contains provisions on jurisdiction, conflict of laws, enforceability and enforcement of foreign decisions and cooperation (recital 8).

The Regulation covers all maintenance obligations arising from family relationships or from relations which have comparable effects, in order to guarantee equal treatment of maintenance creditors (recital 9).

Recital 10 makes it clear that the rules on jurisdiction set out in the regulation differ from those applicable under Regulation (EC) No 44/2001 ("Brussels I"), the aim being to clarify the rules so to cover all cases in which there is a sufficient link between the parties and a Member State. The fact that the defendant is habitually resident in a non-member State of the European Union should no longer be a reason for not applying Community rules and referring to national law.

Recital 11 explains that the parties may agree on the competent court, except in the case of maintenance obligations in respect of a minor child, in order to protect the weaker party.

Recital 12 sets out the need to maintain a clear and effective mechanism for dealing with *lis pendens* and connexity.

Recital 13 makes it plain that the conflict rules should apply only to maintenance obligations and should not determine the law applicable to the establishment of the family relationships on which the maintenance obligations are based.

Recitals 14, 15 and 16 deal with the applicable law (basic principle: the law of the country of the habitual residence of the maintenance creditor should apply, but provision is made for applying the law of the forum or the law of another country with which the maintenance obligation is closely linked). A choice of law may also be made, subject to certain conditions designed in particular to protect children and vulnerable adults.

According to Recital 17, the debtor should be protected from the application of the law designated where the family relationship on which the maintenance obligation is based is not universally considered as being worthy to be honoured. It should be the case, in particular, for relations between persons related collaterally or by affinity, descendants' maintenance obligations with regard to their ascendants, or maintenance after the dissolution of marriage.

Recital 18 explains that decisions given in a Member State relating to maintenance obligations should be recognised and enforceable in all the other Member States without any procedure being necessary. In order to abolish any intermediate measure, a minimum harmonisation of procedure should be carried out. It should guarantee compliance with the requirements of a fair trial according to common standards in all the Member States.

According to Recital 19, a maintenance decision given in a Member State should be enforced quickly and effectively in any other Member State. It should be possible for maintenance to be deducted directly from debtors' wages and bank accounts.

Authentic instruments and agreements between parties which are enforceable in a Member State should be treated as equivalent to decisions (Recital 20).

Recital 21 deals with the setting up of central authorities in the Member States for the exchange of information and to facilitate the recovery of maintenance claims.

The enacting terms are divided into nine chapters.

Chapter I deals with scope and definitions, Article 1 ("Scope of application") providing that the regulation "shall apply to maintenance obligations arising from family relationships or relationships deemed by the law applicable to such relationships as having comparable effects". It should be noted that the terms defined in Article 2 ("court", "judge", "decision", "authentic instrument", "Member State of origin", "Member State of enforcement", "court of origin", "creditor" and "debtor") are not specifically related to family law or defined in terms of family law.

Chapter II deals with jurisdiction (general jurisdiction, prorogation of jurisdiction, jurisdiction based on entry of appearance, residual jurisdiction, *lis pendens*, related actions, seising of courts, provisional measures, examination as to jurisdiction). Again this chapter has no bearing on family law, being concerned solely with jurisdiction over maintenance obligations, *i.e.* pecuniary claims.

Chapter III deals with applicable law. It should be noted here that the opening provision (Article 12) provides that "The provisions of this Chapter shall determine *only the law applicable to maintenance obligations* and shall *not prejudice the law applicable to any of the relationships* referred to in Article 1" (namely "family relationships or relationships deemed by the law applicable to such relationships as having comparable effects"). The remaining articles of this chapter set out the general rules, rules on choice of law, non-application of the designated law at the request of the debtor, the law applicable to public institutions, the scope of the applicable law, application of the law of a non-Member State, *renvoi*, public policy, and States with more than one legal system.

Chapter IV deals with common procedural rules - service of documents, examination as to admissibility, and decision and review.

Chapters V and VI treat of enforceability and enforcement of decisions (including legal aid, security, legalisation, a prohibition of any review of the substance of a decision whose enforcement is sought, refusal or suspension of enforcement, orders for direct payment, temporary freezing of bank accounts, ranking of claims).

Chapter VII deals with authentic instruments and agreements.

Chapter VIII is concerned with cooperation (designation and role of central authorities, access to and use of information, etc).

Lastly, Chapter IX sets out the general and final provisions (relations with other Community instruments, relations with international agreements, comitology, transitional arrangements and entry into force).

The problem

The letter from the Chair of the lead committee states as follows:

"The current choice of legal basis considers maintenance obligations as measures related to family law in the sense of the Article 67, paragraph 5, second indent, TEC. The consequence of this is that those measures fall outside of the common rules on judicial cooperation in civil matters for which the co-decision procedure applies."

The lead committee's rapporteur considers that maintenance obligations are closely related to family law, but that to classify them as such perhaps fails to take sufficiently into account the "hybrid nature of the concept of maintenance - familial by its roots but pecuniary in its implementation, like any other debt".

General considerations on legal basis from the case-law

All Community acts must be founded upon a legal basis laid down in the Treaty (or in another legal act which they are intended to implement). The legal basis defines the Community's competence *ratione materiae* and specifies how that competence is to be exercised, namely the legislative instrument(s) which may be used and the decision-making procedure.

It is clear from settled case-law of the Court of Justice that the choice of legal basis is not at the discretion of the Community legislator but must be determined by objective factors which can be subject to judicial review¹, such as the aim and content of the measure in question². Furthermore, the decisive factor should be the main object of a measure³.

According to the case-law of the Court of Justice, a general Treaty article constitutes a sufficient legal basis even though the measure in question also seeks, in a subordinate manner, to attain an aim sought by a specific Treaty article⁴.

However, where a measure has several contemporaneous objectives which are indissolubly linked with each other without one being secondary and indirect in respect to the others, the measure must be based on the various relevant Treaty provisions⁵, unless this is impossible on account of the mutual incompatibility of the decision-making procedures laid down by the provisions⁶.

¹ Case 45/86, *Commission v. Council* [1987] ECR 1439, para. 5.

² Case C-300/89, *Commission v. Council* [1991] ECR I-287, para. 10, and Case C-42/97, *European Parliament v. Council* [1999] ECR I-869, para. 36.

³ Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27.

⁴ Case C-377/98 *Netherlands v. European Parliament and Council* [2001] ECR I-7079, paras 27-28; Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paras 93-94.

⁵ Case 165/87 *Commission v. Council* [1988] ECR 5545, para. 11.

⁶ See, e.g., Case C-300/89 *Commission v. Council* [1991] ECR I-2867, paras 17-21 (*Titanium dioxide* case),

Appraisal

It may be stated in passing that it is a great pity that the Council has not yet decided to utilise the second indent of Article 67(2) in order to bring the "aspects related to family law" referred to in the second indent of Article 67(5) within the scope of the codecision procedure. This is despite the fact that Commission called on the Council as long ago as 2005¹ to provide that measures relating to maintenance obligations be adopted under the codecision procedure. It seems absurd that a matter as closely connected with citizens' concerns and day-to-day lives as family law should not be subject to the legislative procedure which most closely involves the institution that they elect.

However, the case-law is clear that such considerations have no bearing on the choice of legal basis, which has to be determined in the light of objective factors which can be subject to judicial review, in particular the aim and content of the measure in question.

It is manifest that the main object of the proposal is to enable all maintenance creditors within the EU to obtain "easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice" thereby enabling "regular payment of the amounts due".

New rules of private international law on jurisdiction, applicable law and the recognition and enforcement of decisions relating to maintenance claims will eliminate obstacles to the free movement of persons and therefore facilitate the proper functioning of the internal market.

It cannot be denied that without the existence of family law, the concept of maintenance would not exist; indeed Article 1 of the proposal makes it plain that maintenance obligations "*arise*" from family relationships. However, this having been said, once an obligation to pay maintenance has been established under family law, what we are left with is simply a pecuniary obligation - a debt like any other. Once its existence has been acknowledged and confirmed by a court judgment, an authentic act or an agreement, a maintenance obligation is a pecuniary claim and the fact that it arose out of a family or similar relationship has scarcely any relevance.

The proposed regulation will have no effect on family law as such and Article 12 of the proposal makes this abundantly clear in so far as it provides that the provisions on the law applicable to maintenance obligations "*shall not prejudice the law applicable to any of the relationships referred to in Article 1*". Reference should also be made to Recital 13, which states that the conflict rules should apply only to maintenance obligations and "*should not determine the law applicable to the establishment of the family relationships on which the maintenance obligations are based*".

What is more, it is interesting to note that Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for

Case C-388/01 *Commission v. Council* [2004] ECR I-4829, para. 58 and Case C-491/01 *British American Tobacco* [2002] ECR I-11453, paras 103-111.

¹ Communication from the Commission to the Council, COM(2005) 648 of 15 December 2005.

uncontested claims¹ includes maintenance claims and was adopted under the codecision procedure².

Conclusion

At its meeting of 30 January 2007 the Committee on Legal Affairs accordingly decided, unanimously³, to recommend that the proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations should be based on Article 61(c) and the second indent of Article 67(5) of the EC Treaty and, as a result, subject to the codecision procedure.

Yours sincerely,

Giuseppe Gargani

¹ Official Journal L 143 , 30/04/2004, p.15.

² See Article 4(3), where "authentic instrument" is defined to include "an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them".

³ The following were present for the final vote: Giuseppe Gargani (chairman), Carlo Casini, Cristian Dumitrescu, Monica Frassoni, Kurt Lechner, Klaus-Heiner Lehne, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina and Tadeusz Zwiefka.

5.10.2007

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS (*)

for the Committee on Civil Liberties, Justice and Home Affairs

on the 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 – C6-0079/2006 – 2005/0259(CNS))

Draftswoman (*): Diana Wallis

(*) Procedure with associated committees – Rule 47 of the Rules of Procedure

SHORT JUSTIFICATION

The draftswoman's chief concern in preparing these amendments to the proposal for a regulation has been to ensure that decisions relating to maintenance obligations, in the broadest sense of the expression, in cross-border cases are recognised and enforced across the Union in the quickest and most effective way at the lowest possible cost.

The solutions she proposes are pragmatic and intended to be acceptable to the broadest range of Member States. They may offend purists, but in her view the interests of litigants in having a speedy resolution of a problem which causes real hardship, also and in particular to children, must outweigh all other considerations, having due regard to the needs of maintenance debtors and the rights of the defence.

This opinion is also intended to prompt the Council into action and to give heart to the Commission. The problem which the Regulation sets out to tackle is a very real one for citizens in the Union. With the achievement of the internal market, cross-border movements of persons have increased considerably – and with them the problems which are liable to beset the partners of migrants particularly in the new Member States, whose citizens are taking the fullest possible advantage of free movement. Moreover, account must be taken of the fact that divorce and separation is on the increase all over the Union.

The Union should take responsibility for ensuring that its citizens have an effective right to have maintenance obligations enforced when the freedom of movement enshrined in the

Treaty is exercised and Member States have every interest in ensuring that partners and children do not have to fall back on social security benefits.

While suggesting improvements to the provisions of the proposed regulation, the rapporteur takes the opportunity of calling on the Member States to consider novel forms of enforcement of maintenance decisions which have been found to be highly effective in non-EU jurisdictions.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Citation 1

Having regard to the Treaty establishing the European Community, and in particular Article 61 *c*) **and Article 67 (2)** thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 61(*c*) thereof,

Justification

When consulted by the Committee on Civil Liberties, Justice and Home Affairs on the legal basis for the proposed regulation, the Legal Affairs Committee considered that the proposal ought to be dealt with under the codecision procedure.

Amendment 2 Citation 3

Having regard to the opinion of the European Parliament,

deleted

Justification

See the justification to the amendment to Citation 1.

Amendment 3 Citation 4 a (new)

¹ OJ C 242, 7.10.2006, p. 0020-0026.

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Justification

See the justification to the amendment to Citation 1.

Amendment 4

Recital 9

(9) The scope of the Regulation should cover all maintenance obligations arising from **family relationships** or from relations which have comparable effects, in order to guarantee **an** equal treatment of maintenance creditors.

(9) The scope of the Regulation should 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 as covering, in particular, all orders relating to periodical 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.**

Justification

It is necessary to provide some guidance as to the meaning and scope of the expression "maintenance obligations". It is important to specify that civil partnerships and partnerships between couples of the same sex are also covered.

Amendment 5

Recital 10

(10) The rules on jurisdiction differ somewhat from those which are currently applicable, such as they result from Regulation (EC) n° 44/2001. In order to ensure as much as possible the protection of the interests of maintenance creditors and to encourage a proper administration of justice within the European Union, these rules should be clarified and cover now all the

(10) The rules on jurisdiction differ somewhat from those which are currently applicable, such as they result from Regulation (EC) No 44/2001. In order to ensure as much as possible the protection of the interests of maintenance creditors and to encourage a proper administration of justice within the European Union, these rules should be clarified and cover now all the

cases in which there is a sufficient link between the parties and a Member State.
The fact that the defendant is habitually resident in a non-member State of the European Union should no longer be a reason for non-application of Community rules and for reference to national law.

cases in which there is a sufficient link between the parties and a Member State.

Justification

In view of the negotiation of the Convention on the international recovery of child support and other forms of family maintenance in the Hague Conference, to which the European Community acceded on 3 April 2007, this sentence is better omitted.

Amendment 6

Recital 11

(11) The parties should be able to agree on the competent court, except for maintenance obligations in respect of a minor child, in order to protect the “weaker party”.

(11) The parties should be able to agree on the competent court, except for maintenance obligations in respect of a minor child ***or an adult lacking legal capacity***, in order to protect the “weaker party”.

Amendment 7

Recital 14

(14) The law of the country of the habitual residence of the maintenance creditor should ***remain predominant***, as in the existing international instruments, ***but*** the law of the forum ***should come in second rank, because it often allows, in this specific area, to resolve disputes*** in a simpler, faster and less expensive manner.

(14) 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.***

Justification

The Regulation’s aim of enabling maintenance creditors easily to obtain a decision which will be automatically enforceable in another Member State would be frustrated if a solution were to be adopted which obliged courts to apply foreign law where the dispute could be resolved simpler, faster and more economically by applying the law of the forum. Application of foreign law tends to prolong proceedings and lead to additional costs being incurred in procedures which often involve an element of urgency and in which litigants do not

necessarily have deep pockets. Moreover, in some cases application of the law of the creditor's country of habitual residence could give rise to an undesirable result, as in the case where the creditor seeks a maintenance order in the country of which she is a national having sought refuge there after leaving the country in which she had been habitually resident with her husband who is of the same nationality, who is still resident there.

On these grounds, this amendment provides for the discretionary application of the law of the forum, whilst safeguarding against forum shopping.

Amendment 8

Recital 15

(15) Where ***none of the laws referred to above enables the*** creditor to obtain maintenance from the debtor, it should remain possible to apply the law of another country with which the maintenance obligation is closely ***linked. It can be***, in particular, but exclusively the country of the common nationality ***of the parties.***

(15) 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.

Justification

This amendment allows for the application of a law other than that of the country of the maintenance creditor's habitual residence or that of the court seised, also in order to avoid forum shopping.

Amendment 9

Recital 16

(16) Parties should be ***authorized***, under certain conditions, to choose applicable law. They should be able to choose the law of the forum for the purposes of particular proceedings. Moreover, they should be entitled to agree on the applicable law prior to any dispute, but only when maintenance obligations involved are other than those in respect of children or vulnerable adults; furthermore, any such choice should be limited to the designation of certain laws

(16) Parties should be ***allowed***, under certain conditions, to choose ***the*** applicable law. They should be able to choose the law of the forum for the purposes of particular proceedings. Moreover, they should be entitled to agree on the applicable law prior to any dispute, but only when ***the*** maintenance obligations involved are other than those in respect of children or vulnerable adults; furthermore, any such choice should be limited to the designation

only.

of certain laws only. *The court seized 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.*

Amendment 10

Recital 17

(17) The debtor should be protected from the application of the law designated where the family relationship on which the maintenance obligation is based is not universally considered as being worthy to be honoured. It should be the case, in particular, for relations between persons related collaterally or by affinity, descendants' maintenance obligations with regard to their ascendants, or maintenance after the dissolution of marriage. **deleted**

Justification

This recital is unclear and seems to conflict with the principle of mutual recognition and to be discriminatory. Moreover, the fact that the draftsman's amendment to Article 20 preserves the public-policy safeguard would seem to make such a recital unnecessary.

Amendment 11

Recital 19

(19) Once a maintenance decision has been given in a Member State, it should be enforced quickly and effectively in any other Member State. *The maintenance* creditors should benefit, in particular, from direct deductions from wages and bank accounts of the debtors.

(19) The aim of this Regulation is to introduce procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair. Once a maintenance decision has been given in a Member State, it should be enforced quickly and effectively in any other Member State. *Maintenance* creditors should benefit, in particular, from direct deductions from wages and bank accounts of the debtors. *Novel and effective means of enforcement of maintenance decisions should be encouraged.*

Justification

In common with the draft Hague Convention, the Regulation should pursue the objective of promoting accessible, prompt, efficient, cost-effective, responsive and fair procedures.

Enforcement of maintenance decisions is problematic in many jurisdictions. Member States should therefore actively consider novel means of enforcement that have been used to great effect in non-EU jurisdictions, such as confiscation of driving licences.

Amendment 12

Recital 22

(22) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, it seeks to ensure full respect for private and family life, personal data protection, the rights of the child and the guarantees of effective remedy before an independent and impartial court, in accordance with Articles 7, 8 24 and 47 of the Charter.

(22) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, it seeks to ensure full respect for private and family life, personal data protection, the rights of the child and the guarantees of effective remedy before an independent and impartial court, in accordance with Articles 7, 8, 24 and 47 of the Charter. ***In applying this Regulation, regard should be had to Articles 3 and 27 of 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.

Justification

Regard should be had to the rights of children as set forth in the relevant UN Convention.

Amendment 13

Recital 23

(23) *In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹, **measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.***

(23) *The measures necessary for the **implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.***

¹OJ L 184, 17.7.1999, p. 23.

¹OJ L 184, 17.7.1999, p. 23. *Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).*

Justification

The comitology provisions have been adjusted to take account of the amendment of the 1999 Comitology Decision. See also the amendments to Articles 50 and 51.

Amendment 14

Recital 24

(24) This Regulation should replace the Community instruments adopted previously and covering the same field. It *shall* prevail, in addition, over other applicable international instruments applicable between the Member States in the same matters, in order to unify and simplify the legal rules in force.

(24) This Regulation should replace the Community instruments adopted previously and covering the same field. It *should* prevail, in addition, over other applicable international instruments applicable between the Member States in the same matters, in order to unify and simplify the legal rules in force. *It should be compatible with the Hague Convention on the international recovery of child support and other forms of family maintenance.*

Justification

It is important to make it clear that the Regulation is intended to be compatible with the forthcoming Hague Convention.

Amendment 15
Article 1, paragraph 1

1. This Regulation shall apply to maintenance obligations arising from family **relationships** or relationships deemed by the law applicable to such relationships as having comparable effects.

1. This Regulation shall apply to maintenance obligations arising from **a family relationship, parentage, marriage or affinity or from** relationships deemed by the law applicable to such relationships as having comparable effects.

Justification

See the justification to the amendment for Recital 9.

Amendment 16
Article 2, paragraph -1 (new)

-1. '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 a 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 relating to periodical 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.

Justification

The meaning of 'maintenance obligation' should be defined: 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.

Amendment 17

Article 2, paragraph 2

(2) the term ‘judge’ shall mean the judge or an official having powers equivalent to those of a judge in matters relating to maintenance obligations; ***deleted***

Justification

This paragraph is superfluous, since a judge is one of the 'authorities (...) with jurisdiction in matters relating to maintenance obligations', as defined in subparagraph 1.

Amendment 18
Article 2, point (8)

(8) the term ‘creditor’ shall mean any natural person to whom maintenance is owed or is alleged to be owed,

(8) the term ‘creditor’ shall mean any natural person to whom maintenance is owed or is alleged to be owed ***or a public body which has assumed the position of the creditor for the purpose of enforcement,***

Amendment 19
Article 2, point (9)

(9) the term ‘debtor’ shall mean any natural person who owes or who is alleged to owe maintenance.

(9) the term ‘debtor’ shall mean any natural person who owes or who is alleged to owe maintenance ***or a public body which has taken over the obligation of the debtor to maintain the creditor,***

Amendment 20
Article 2, point (9 a) (new)

(9a) the term ‘proceedings concerning the status of a person’ shall mean any proceedings relating to divorce, legal separation, marriage annulment or affiliation.

Justification

It is necessary to specify what is meant by the expression “proceedings concerning the status

of a person". The definition coincides with the definition of jurisdiction contained in Regulation No 2201/2003, but is expanded to include affiliation proceedings.

Amendment 21
Article 3, point (c)

c) the court which has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, ***unless that jurisdiction is based solely on the nationality of one of the parties;***

c) the court which has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings;

Justification

This limitation does not seem to serve any useful purpose.

Amendment 22
Article 3, point (d)

d) the court which has jurisdiction to entertain proceedings concerning parental responsibility, under *the* Regulation (EC) n° 2201/2003, if the matter relating to maintenance is ancillary to those proceedings.

d) the court which has jurisdiction to entertain proceedings concerning parental responsibility, under Regulation (EC) *No* 2201/2003, if the matter relating to maintenance is ancillary to those proceedings ***and parental-responsibility proceedings are already pending before that court or are brought before that court at the same time as an application for maintenance.***

Justification

This clarification seems worthwhile.

Amendment 23
Article 4, paragraph 2

2. An agreement conferring jurisdiction shall be in writing. ***Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.***

2. An agreement conferring jurisdiction shall be in writing.

Justification

This provision is excessively vague: it could cover, say, an exchange of e-mails.

Amendment 24
Article 4, paragraph 2 a (new)

2a. 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.

Justification

See the justification of the amendment to Recital 11.

Amendment 25
Article 4, paragraph 4

4. This *article* shall not apply ***to a dispute relating to a maintenance obligation towards*** a child below the age of 18.

4. This *Article* shall not apply ***if the debtor is a child below the age of 18 or an adult lacking legal capacity.***

Justification

To protect those entitled to maintenance who are not in a position to exercise free will, there should be no possibility of prorogation of jurisdiction in such cases.

Amendment 26
Article 6, point (b)

b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State ***of was*** the last common habitual residence of the spouses provided such habitual residence ***had*** still existed at least one year before the institution of the proceedings.

b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State ***in whose territory*** the last common habitual residence of the spouses ***was situated,*** provided ***that*** such habitual residence still existed at least one year before the institution of the proceedings.

Amendment 27

Article 7, paragraph 1

1. Where proceedings involving the same maintenance obligation are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

1. In cases involving *lis pendens* and related actions, and in the case of provisional – including protective – measures, Articles 27, 28, 30 and 31 of Regulation (EC) No 44/2001 shall apply.

Justification

The rules laid down in this and the following articles replicate existing provisions of Community law contained in Regulation (EC) No 44/2001, to which reference should be made.

Amendment 28
Article 7, paragraph 2

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court. *deleted*

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 29
Article 8

Article 8 *deleted*

Related actions

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions

are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 30

Article 9

Article 9

deleted

Seising of a court

For the purposes of this Chapter, a court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 31

Article 10

Article 10

deleted

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional,

including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 32
Article 10a (new)

Article 10a

Where maintenance proceedings have been brought by way of application for interim relief, Articles 7 and 8 shall not operate so as to cause the law applicable to the application for interim relief necessarily to apply to any subsequent application for maintenance or variation of maintenance brought in connection with substantive proceedings for divorce, annulment of marriage/civil partnership or legal separation.

Justification

In the absence of such a provision, it could be held that where a woman applied for maintenance by way of interim measures in country A, where she sought refuge, the law of country A ought to be applied to all questions relating to maintenance obligations arising under divorce proceedings subsequently brought in country B, her country of origin where she resides with her spouse.

Amendment 33
Article 11

Article 11

deleted

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 34
Article 13

1. ***The maintenance*** obligations shall be governed by the law of the country in whose territory the creditor is habitually resident.

2. The law of the forum shall apply:

a) ***if the creditor is unable, by virtue of the law designated in accordance with paragraph 1, to obtain maintenance from the debtor, or***

b) where the creditor ***so requests and this law is the law of the country on whose territory the debtor is habitually resident.***

3. ***The laws designated in accordance with the previous paragraphs shall be disregarded when, by virtue of those laws, the creditor is unable to obtain maintenance, and if it appears from the circumstances as a whole that the maintenance obligation has a close connection with another country, in particular the country of the common nationality of the creditor and the debtor; in such a case, the law of the country with which the maintenance obligation has a close connection shall apply.***

1. ***Maintenance*** obligations shall be governed by the law of the country in whose territory the creditor is habitually resident.

2. The law of the forum shall apply:

(a) ***where it is the law of the country of the creditor's habitual residence, or***

(b) where the creditor ***is unable to obtain maintenance from the debtor by virtue of the law of the country of the creditor's habitual residence, or***

(c) ***unless the creditor requests otherwise and the court is satisfied that he or she has obtained independent legal advice on the question, where it is the law of the country of the debtor's habitual residence.***

3. ***Notwithstanding paragraph 1, the law of the forum may be applied, even where it is not the law of the country of the creditor's habitual residence, where it allows maintenance disputes to be equitably resolved in a simpler, faster and less expensive manner and there is no evidence of forum shopping.***

4. ***Alternatively, where the law of the country of the creditor's habitual residence or the law of the forum does not enable the***

creditor to obtain maintenance from the debtor or where it would be inequitable or inappropriate to apply that law, the maintenance obligations shall be governed by the law of another country with which the maintenance obligation is closely connected, in particular, but not exclusively, that of the country of the common nationality of the creditor and the debtor.

Justification

See the justifications to the amendments to Recitals 14 and 15.

Amendment 35
Article 14, letter (a)

(a) at the time the court is seised, *designate expressly or otherwise in an unequivocal manner the law of the forum for as the law applicable to the maintenance obligation, for the purpose of these proceedings;*

(a) at the time the court is seised, *provide an agreement in writing designating the law of the forum in an unequivocal manner;*

Justification

The text as it stands is incomprehensible. Obviously, the procedural rules which apply are inevitably those of the court seised.

Amendment 36
Article 14, paragraph 1a (new)

The foregoing is subject to the proviso that the court seised is satisfied that any choice of court or choice of law has been freely agreed after obtaining independent legal advice.

Amendment 37
Article 15

Article 15

deleted

Non-application of the designated law at the request of the debtor

1. In the case of maintenance obligations other than those in respect of children and vulnerable adults and between spouses or ex-spouses, the debtor may oppose a claim by the creditor on the ground that there is no such obligation under the law of their common nationality or, in the absence of a common nationality, under the law of the country in which the debtor is habitually resident.

2. In the case of maintenance obligations between spouses or ex-spouses, the debtor may oppose a claim by the creditor on the ground that there is no such obligation under the law of the country with which the marriage has the closest connection.

Justification

This provision seems to conflict with the principle of mutual recognition and to be discriminatory.

Amendment 38

Article 17

1. The law applicable to a maintenance obligation shall determine in particular:

(a) whether, ***to what extent*** and from whom a creditor may claim maintenance;

(b) ***the extent to which*** the creditor may claim retroactive maintenance;

(c) the calculation and indexation of the maintenance obligation;

(d) limitation periods and time limits on the institution of proceedings;

(e) the right of a public body which has provided benefits for a creditor to obtain reimbursement of those benefits and the extent of the obligation of the debtor.

2. *Whatever the contents of the applicable law, the needs of the creditor and the resources of the debtor shall be taken into account in determining the amount of*

1. The law applicable to a maintenance obligation shall determine in particular:

(a) whether, ***for what term and in what amount*** and from whom a creditor may claim maintenance;

(b) ***for what term and in what amount*** the creditor may claim retroactive maintenance;

(c) the calculation and indexation of the maintenance obligation;

(d) limitation periods and time limits on the institution of proceedings;

(e) the right of a public body which has provided benefits for a creditor to obtain reimbursement of those benefits and the extent of the obligation of the debtor.

2. *Notwithstanding paragraph 1, in determining the amount of maintenance, the court seised shall take as its basis the actual and present needs of the creditor*

maintenance.

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.

Justification

This amendment seeks to tighten up the wording of the Commission's text. It is important to make it clear that the actual needs of the creditor are of paramount importance and to take account of the fact that the debtor may be under a duty already to pay maintenance to, for instance, a previous partner.

Amendment 39
Article 20

The application of a provision of the law designated by this Regulation may be refused only if such application is manifestly incompatible with the public policy ('*ordre public*') of the forum. ***However, the application of a provision of the law of a Member State designated by this Regulation shall not be refused on such a ground.***

The application of a provision of the law designated by this Regulation may be refused only if such application is manifestly incompatible with the public policy ('*ordre public*') of the forum.

Justification

In matters of public policy, no distinction should be made between Member and non-Member States.

Amendment 40
Article 21

Where a State comprises several territorial units each of which has its own rules on maintenance obligations, each territorial unit is regarded as a country for the purposes of the determination of the applicable law according to this Regulation.

A State within which different territorial units have their own rules of law in respect of maintenance obligations shall not be bound to apply this Regulation to conflicts solely between the laws of such units.

Justification

This provision reproduces the corresponding provision of Rome II. Member States comprising several territorial units with their own legal rules should be left to decide whether the provisions of the Regulation should apply as between those territorial units.

Amendment 41
Article 22

1. In proceedings before a court, the document instituting the proceedings or an equivalent document shall be served on the defendant by one of the following methods:

Service of documents shall be governed by the provisions of Regulation XXX/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the addressee;

b) personal service attested by a document signed by the competent person who effected the service stating that the addressee has received the document or refused to receive it without any legal justification, and the date of the service;

c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee;

d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee.

2. The defendant shall have at least 30 days for the preparation of his or her defence following the day of receipt of the document served in accordance with paragraph 1.

3. The Member States shall inform the Commission within six months following the entry into force of this Regulation of the methods of service which are applicable. They shall communicate to the Commission any changes to this

information.

The Commission shall make this information publicly available.

Amendment 42
Article 29

An applicant, who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure for enforcement, to benefit from the ***most favourable*** legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedure for enforcement, to benefit from legal aid ***in accordance with the provisions of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes***¹ or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

¹ *OJL 26, 31.1.2003, p. 41.*

Amendment 43
Article 33

The partial or total refusal or suspension of the enforcement of the decision of the court of origin may at the request of the debtor be granted only in the following cases:

(a) ***the debtor asserts new circumstances or circumstances which were unknown to the court of origin when its decision was given;***

(b) ***the debtor has applied for the review of the decision of the court of origin in accordance with Article 24 and no new decision has yet been given;***

(c) the debtor has already satisfied his or her debt;

(d) the claim is totally or partially extinguished by the effect of prescription or the limitation of actions;

(e) the decision of the court of origin is

The partial or total refusal or suspension of the enforcement of the decision of the court of origin may at the request of the debtor be granted only in the following cases:

(a) ***it is asserted that the enforcement order or the procedural documents are flawed;***

(c) the debtor has already satisfied his or her debt;

(d) the claim is totally or partially extinguished by the effect of prescription or the limitation of actions;

(e) the decision of the court of origin is

irreconcilable with a decision given in the Member State of enforcement or which fulfils the conditions necessary for its recognition in the Member State of enforcement.

irreconcilable with a decision given in the Member State of enforcement or which fulfils the conditions necessary for its recognition in the Member State of enforcement.

Justification

With regard to point (a), it is not possible to re-open at the enforcement stage a discussion on matters which have already been subject to a final ruling. Enforcement can be halted only for reasons relating to enforcement itself, and not for reasons which resulted in the decision being enforced (see Article 45(2) of Regulation (EC) No 44/2001.

With regard to point (b), no special process should be introduced. Differing procedural rules increase the difficulties involved and can delay, rather than speed up or facilitate, the process of resolving such problems.

The possibility of a review in the state of origin would introduce an anomalous appeals system.

Amendment 44 Article 34, paragraph 2

2. An order for monthly direct payment may only be given if the decision has been served to the debtor ***by one of the methods referred to in Article 22.***

2. An order for monthly direct payment may only be given if the decision has been served to the debtor ***in accordance with the provisions of Regulation XXX/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.***

Justification

No special process should be introduced. Differing procedural rules increase the difficulties involved and may slow down, rather than speed up and facilitate, the process of resolving problems.

Amendment 45 Article 35 a (new)

Article 35a

Other enforcement orders

The court seised may order all such other measures of enforcement as are provided

for in its national law which it considers appropriate.

Justification

This court in which enforcement is sought should not be limited to the orders listed in the Regulation. Whereas Member States should be encouraged to consider novel means of enforcement including those that have been used to great effect in non-EU jurisdictions, courts should certainly use the full panoply of measures available to them under their national law.

Amendment 46
Article 38, paragraph 1

1. *Provisions* of Chapter VI shall apply as appropriate to the recognition and enforcement of authentic instruments and agreements between the parties that are enforceable. The competent authority of a Member State in which an authentic instrument or an agreement between the parties is enforceable shall issue, **at the request of any interested party**, an extract of act using the standard form in Annex II of this Regulation.

1. *The provisions* of Chapter VI shall apply as appropriate to the recognition and enforcement of authentic instruments and agreements between the parties that are enforceable. The competent authority of a Member State in which an authentic instrument or an agreement between the parties is enforceable shall issue **automatically to the parties** an extract of act using the standard form in Annex II of this Regulation.

Justification

The provisions of the Regulation should operate with a minimum of formality.

Amendment 47
Article 50

Any amendment to the Annexes of this Regulation shall be adopted in accordance with the **consultative** procedure set out in Article 51(2).

Any amendment to the Annexes of this Regulation shall be adopted in accordance with the **advisory** procedure set out in Article 51(2).

Amendment 48
Article 51

1. The Commission shall be assisted by **a committee, composed of representatives of the Member States and chaired by the representatives of the Commission.**

1. The Commission shall be assisted by **the committee provided for by Article 75 of Regulation (EC) No 44/2001.**

2. Where reference is made to this

2. Where reference is made to this

paragraph, *the advisory procedure laid down in* Articles 3 of Decision 1999/468/EC shall apply, *in compliance with Article 7 (3)* thereof.

paragraph, Articles 3 *and* 7 of Decision 1999/468/EC shall apply, *having regard to the provisions of Article 8* thereof.

PROCEDURE

Title	Jurisdiction and cooperation in maintenance obligations		
References	COM(2005)0649 - C6-0079/2006 - 2005/0259(CNS)		
Committee responsible	LIBE		
Opinion by Date announced in plenary	JURI 14.3.2006		
Enhanced cooperation - date announced in plenary	6.7.2006		
Drafts(wo)man Date appointed	Diana Wallis 30.5.2006		
Discussed in committee	3.10.2006	11.4.2007	3.5.2007
Date adopted	4.10.2007		
Result of final vote	+: 24	-: 0	0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Cristian Dumitrescu, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Gary Titley, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Mogens N.J. Camre, Charlotte Cederschiöld, Kurt Lechner, Marie Panayotopoulos-Cassiotou, József Szájer, Jacques Toubon		
Substitute(s) under Rule 178(2) present for the final vote	Iles Braghetto, Genowefa Grabowska, Michael Cashman, Lily Jacobs		

PROCEDURE

Title	Jurisdiction and cooperation in maintenance obligations			
References	COM(2005)0649 - C6-0079/2006 - 2005/0259(CNS)			
Date of consulting Parliament	23.2.2006			
Committee responsible Date announced in plenary	LIBE 14.3.2006			
Committee(s) asked for opinion(s) Date announced in plenary	JURI 14.3.2006			
Associated committee(s) Date announced in plenary	JURI 6.7.2006			
Rapporteur(s) Date appointed	Genowefa Grabowska 1.6.2006			
Legal basis disputed Date of JURI opinion	JURI 30.1.2007			
Discussed in committee	5.10.2006	5.6.2007	17.7.2007	20.11.2007
Date adopted	20.11.2007			
Result of final vote	+: 37	-: 0	0: 0	
Members present for the final vote	Philip Bradbourn, Kathalijne Maria Buitenweg, Giuseppe Castiglione, Giusto Catania, Carlos Coelho, Elly de Groen-Kouwenhoven, Esther De Lange, Panayiotis Demetriou, Bárbara Dührkop Dührkop, Armando França, Roland Gewalt, Jeanine Hennis-Plasschaert, Lívia Járóka, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Roselyne Lefrançois, Sarah Ludford, Dan Mihalache, Javier Moreno Sánchez, Bogusław Rogalski, Martine Roure, Inger Segelström, Károly Ferenc Szabó, Søren Bo Søndergaard, Vladimir Urutchev, Manfred Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Edit Bauer, Simon Busuttil, Gérard Deprez, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Mary Lou McDonald, Marianne Mikko, Hubert Pirker			
Substitute(s) under Rule 178(2) present for the final vote	Louis Grech			