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

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

The key amendments adopted in committee are as follows:

- it considered that the proposal ought to be dealt with under the codecision procedure;

- the scope of the Regulation should be extended to cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity or from relations which have comparable effects under the applicable national law, in order to guarantee equal treatment of maintenance creditors. Such obligations should be construed in the widest possible sense covering, in particular, all orders relating to periodic payments, payments of lump sums, transfer of ownership in property and property adjustment, fixed on the basis of the parties' respective needs and resources and being in the nature of maintenance;

- the Regulation should also apply to a public body which seeks reimbursement of maintenance benefits it has provided in lieu of the debtor, provided that the law to which it is

subject provides for such reimbursement;

- it should take account of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The aim of this Regulation is to introduce procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair. Regard should be had to the United Nations Convention on the Rights of the Child of 20 November 1989;

- the report also clarifies the meaning of 'maintenance obligation'. Some legal systems distinguish between the duty of maintenance and a more limited duty to contribute to family support. The proposed rule should cover both definitions;

- in proceedings involving lis pendens and related proceedings, and in the case of provisional - including protective - measures, Articles 27, 28, 30 and 31 of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general shall apply;

- with this in mind, Articles 8 on related actions, 9 on seising of a court, 10 on provisional including protective measures and 11 on examination as to jurisdiction have been deleted as they duplicate almost word for word the text of Regulation (EC) No 44/2001;

- the report states that the court seised must be satisfied that any choice of law has been agreed after obtaining independent legal advice. All choice-of-law agreements should be in writing;

- the court seised must be satisfied that any prorogation of jurisdiction has been freely agreed after obtaining independent legal advice and that it takes account of the situation of the parties at the time of the proceedings. Article 4 of the proposal concerning the prorogation of jurisdiction shall not apply if the debtor is a child below the age of 18 or an adult lacking legal capacity;

- the law of the country of the habitual residence of the maintenance creditor should be dominant, as in the existing international instruments, although the law of the forum may be applied even where it is not the law of the creditor's habitual residence, where it allows disputes in this area to be equitably resolved in a simpler, faster and less expensive manner and there is no evidence of forum shopping;

- where the law of the country of the maintenance creditor's habitual residence or the law of the court seised does not enable the maintenance creditor to obtain maintenance from the debtor or where it would be inequitable or inappropriate to apply that law, it should remain possible to apply the law of another country with which the maintenance obligation is closely connected, in particular, but not exclusively, that of the country of the parties' common nationality;

- in determining the amount of maintenance, the court seised shall take as its basis the actual and present needs of the creditor and the actual and present resources of the debtor, taking account of the latter's reasonable needs and any other maintenance obligations to which he or she may be subject;

- in accordance with the proportionality principle, the determination of which personal data should be processed should be made on a case-by-case basis on the basis of the available information and should only be allowed if necessary to facilitate enforcement of maintenance obligations. Moreover, MEPs request that biometrics data such as fingerprints or DNA data shall not be processed;

- lastly, the committee believes that special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.