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

2005/0259(CNS) - 13/12/2007 - Text adopted by Parliament, 1st reading/single reading

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

The main amendments were as follows:

- Parliament felt that the legal base should be Article 61(c), and that the co-decision procedure should apply;

- the Regulation should apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity or relationships deemed by the law applicable to such relationships as having comparable effects;

- a new clause is added stating that the term 'maintenance obligation' shall mean a duty laid down by law – including in cases where the extent of the obligation and means of complying with it are established by a judicial decision or contract – to provide any form of maintenance or at least means of subsistence in respect of a person currently or previously linked to the debtor by a family relationship. Such obligations shall be construed in the widest possible sense as covering, in particular, all orders, decisions or judgments of a competent court relating to periodic payments, payments of lump sums, transfer of ownership in property and property adjustment, fixed on the basis of the parties" respective needs and resources and being in the nature of maintenance;

- a new Article is added with regard to the application of the regulation to public bodies. The Regulation shall apply to a public body which seeks reimbursement of maintenance benefits it has provided in lieu of the debtor, provided that the law to which it is subject provides for such reimbursement.;

- in applying the Regulation, regard should be had to the United Nations Convention on the Rights of the Child of 20 November 1989, which provide that : in all actions concerning children, the best interests of the child shall be a primary consideration; every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development ; the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development ; and States should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child. The Regulation should also take account of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance;

- in proceedings involving lis pendens and related proceedings, and in the case of provisional – including protective – measures, Articles 27, 28, 30 and 31 of Regulation (EC) No 44/2001 shall apply. Parliament deleted Article 8 (related actions), Article 9 (seising of a court) Article 10 (provisional, including protective, measures) and Article 11 (examination as to jurisdiction);

- Parliament also deleted Article 15 (non-application of the designated law at the request of the debtor);

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

- an agreement conferring jurisdiction shall be in writing. Parliament deleted the clause stating that any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing";

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

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

- an additional part recital states that novel and effective means of enforcement of maintenance decisions should be encouraged;

- in determining the amount of maintenance, the court 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 the enforcement of maintenance obligations. Biometrics data such as fingerprints or DNA data shall not be processed;

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