

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

2005/0259(CNS) - 21/10/2008 - Amended legislative proposal for reconsultation

The Council reached agreement on a draft Regulation on the rules relating to jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

The 6 guiding principles which were the subject of agreement concern:

1. scope,
2. definition,
3. jurisdiction,
4. recognition and enforceability,
5. application,
6. review clause.

Before proceeding with the formal adoption of the Regulation, and in view of the amendments which were made to the Commission's initial proposal, the European Parliament is now being consulted upon for a 2nd reading, as requested by the Council.

The revised draft Regulation covers all existing forms of maintenance obligation in the Member States, first and foremost those involving children. It shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.

The Regulation is an instrument of particular significance for establishing a European judicial area for European citizens. The Regulation sets the rules on jurisdiction. Furthermore, most Member States will apply harmonised conflict-of-law rules.

The Regulation will remove the remaining obstacles to recovery of maintenance claims within the European Union. In particular, **the exequatur procedure will be abolished between all Member States which apply harmonised conflict-of-law rules.** Accordingly, decisions on maintenance obligations will be able to circulate freely between practically all Member States without any form of control on the substance in the Member State of enforcement. This will significantly speed up the recovery of maintenance owed.

These improvements will pave the way for a legal environment in line with the legitimate expectations of maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order which will be able to circulate freely throughout the European judicial area and will ensure regular payment of the amounts due.

The Regulation also provides for free legal aid for all proceedings concerning a parent's maintenance obligations in respect of a child below the age of 21.

Lastly, a system of administrative cooperation between Member States' Central Authorities will enable the persons concerned to benefit from practical assistance, in particular through exchange of information (for the purposes of locating debtors, for instance).