

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

2005/0259(CNS) - 18/12/2008 - Final act

PURPOSE: to ensure that a maintenance creditor should be able to obtain easily, in a Member State, a decision that will be automatically enforceable in another Member State, without further formalities.

LEGISLATIVE ACT: Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

CONTENT: the Regulation **combines in a single instrument** all of the measures required for recovery of maintenance claims in the European Union in cross-border disputes. It thus includes provisions on conflicts of jurisdiction, on conflicts of law, on enforceability and enforcement of foreign decisions and on cooperation between Member States' judiciaries.

The scope of this Regulation covers **all maintenance obligations arising from a family relationship, parentage, marriage or affinity**.

The Regulation removes the remaining obstacles to the recovery of maintenance claims in the European Union. In particular, **the exequatur procedure shall 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.

In order to take account of the various ways of resolving maintenance obligation issues in the Member States, this Regulation **should apply both to court decisions and to decisions given by administrative authorities**, provided that the latter offer guarantees with regard to, in particular, their impartiality and the right of all parties to be heard.

In order to remedy, in particular, situations of denial of justice this Regulation should provide a **forum necessitates** allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State.

In order to increase **legal certainty**, predictability and the autonomy of the parties, this Regulation should enable the parties to choose the competent court by agreement on the basis of specific connecting factors. To protect the weaker party, such a choice of court should not be allowed in the case of maintenance obligations towards a child under the age of 18.

The Regulation also provides for **free legal aid** for all procedures concerning maintenance obligations arising from a parent-child relationship towards a person under 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 example to: (i) help locate the debtor or the creditor; (ii) help obtain information concerning the income and other financial circumstances of the debtor or creditor, including the location of assets; (iii) encourage amicable solutions with a view to obtaining voluntary payment of maintenance; (iv) facilitate the collection and expeditious transfer of maintenance payments.

By 18 September 2010, the Member States shall **communicate** to the Commission the names and contact details of their Central Authorities, as well as other information. That information should be made available to practitioners and to the public through publication in the Official Journal of the European Union or through electronic access to the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

By five years from the date of application, the Commission shall submit a **report on the application of this Regulation**, including an evaluation of the practical experiences relating to the cooperation between Central Authorities and an evaluation of the functioning of the procedure for recognition, declaration of enforceability and enforcement applicable to decisions given in a Member State not bound by the 2007 Hague Protocol. If necessary, the report shall be accompanied by proposals for adaptation.

Recall that, in the framework of **The Hague Conference on Private International Law**, the Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance (the 2007 Hague Convention) and the Protocol on the Law Applicable to Maintenance Obligations (the 2007 Hague Protocol). Both those instruments should therefore be taken into account in this Regulation.

ENTRY INTO FORCE: 30/01/2009.

APPLICATION: from 18/06/2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, this Regulation shall apply from the date of application of that Protocol in the Community. Note that certain provisions shall apply from 18/09/2010.