

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

2005/0259(CNS) - 15/12/2005 - Legislative proposal

PURPOSE : to solve the difficulties met by maintenance creditors in the EU.

PROPOSED ACT : Council Regulation.

CONTENT : this proposal falls within the political mandate set out by the Tampere European Council in 1999 and the mutual recognition programme adopted by the Council and the Commission at the end of 2000. The value of this programme was confirmed by the Hague Programme (2004) and the subsequent plan of action (2005).

The proposed Regulation aims to eliminate all obstacles which prevent the recovery of maintenance within the EU. It will not abolish the economic and social precariousness which afflicts certain debtors and deprives them of employment and of regular income, preventing them from fulfilling their obligations, but it will enable the creation of a legal environment adapted to the legitimate expectations of the maintenance creditors. The latter should be able to obtain easily, quickly and, generally, free of charge, an enforcement order capable of circulation without obstacles in the European area of justice and enabling regular payment of the amounts due.

This new European legal order requires an action which cannot be limited solely to the fine tuning of the current mechanisms; ambitious measures have to be taken in all relevant areas of the civil judicial cooperation: jurisdiction, applicable law, recognition and enforcement, cooperation and elimination of obstacles for the good conduct of proceedings. The solutions to this multifaceted problem shall be contained in a single instrument.

The three main objectives are :

1) Simplifying the citizens' life : simplifying life for maintenance creditors means, first and foremost, giving them access to local courts. The current rules of international jurisdiction, which already enable a maintenance creditor to take his claim to a local authority, will be improved and certain ambiguities will be removed from the existing provisions.

Once a decision is given in a Member State, it must have the same force in any Member State as it has in the State of origin, automatically and without formality. Intermediate measures such as the exequatur procedure, which currently delay the process of recovering maintenance claims, will be abolished.

More generally, at each stage of the process of recovering maintenance claims, the creditor will have access to aid and assistance in forms currently unavailable. In particular he will be able to take all the requisite steps from the place where he lives, including enforcement measures, for instance to have wages and salaries or bank accounts attached, trigger cooperation mechanisms or gain access to information so that he can locate the debtor and assess his assets.

The concern for simplicity means putting an end to the diversity of sources of law in these matters. The future regulation will replace the existing Community Regulations and take precedence over such international conventions as remain in force.

2) Strengthening legal certainty : the rules determining the applicable law will be harmonised, but not the substantive law. This will guarantee a degree of foreseeability in the law without encroaching on the Member States' legal traditions. The effect of the rules determining the applicable law is that the court will give a decision based on the substantive law with which the case is most closely connected. This will help to avoid the most unfair situations: a maintenance creditor will be able to obtain a satisfactory response to his situation and the decision will be all the less open to challenge as it will have been given in accordance with a law designated in accordance with harmonised rules. The harmonisation of the rules governing the applicable law will thus strengthen mutual trust between legal systems.

3) Ensuring effectiveness and continuity of recovery : only the improvement of effective recovery of maintenance is likely to improve substantially and permanently the current situation. This implies making it possible for the creditor to obtain a decision enforceable throughout the territory of the European Union which could then benefit from a simple and harmonised enforcement system. Three requirements have to be met. The first one is to generalise and make automatic the provisional enforcement of all maintenance decisions. The second one consists in abolishing the intermediate measures needed for recognition and enforcement in a Member State of a decision given in another Member State. The third requirement is to adopt a number of measures relating to the enforcement itself: access to information on the situation of the debtor, introducing legal provisions enabling direct deductions of maintenance from wages or bank accounts, strengthening of the ranking of maintenance claims.