

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 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations - COM(2005) 0649 of 15 December 2005.

1- POLICY OPTIONS AND IMPACTS

The Commission examined four policy options.

1.1- Option 1: status quo: 17 Member States have ratified the 1973 Hague Convention and a range of cross-border agreements already exist. The Hague Conference has addressed many of the issues in the administrative cooperation recognition and enforcement. However, should the status quo option be selected, there will be no improvement in the numbers of successful claims and enforcements.

1.2- Option 2: non-legislative action: The aim will be to develop measures to address the problem of enforcement in both internal and cross-border cases and within national boundaries. This option should improve cooperation between the competent authorities within each Member State and enable creditors more effective access to justice through the provision of advice and legal aid.

1.3- Option 3: increased EU harmonization: In addition to the non-legislative actions outlined in option 2, option 3 will include the development of a full set of conflict-of-laws rules, covering the scope of all maintenance claims within the EU, including the determination of relationships that constitute a maintenance obligation, statutory limitations, duration of the obligation and the recovery of arrears. The option increases the likelihood that definitional issues will be resolved; however, there will still be no compulsion on a Member State to recognise a maintenance claim brought in another Member State.

1.4- Option 4: complete mutual recognition: The objective of improving recovery of maintenance payments cannot be achieved effectively by the Member States acting alone. Firstly, there is a need to ensure a maintenance decision given in a Member State is recognised and enforceable in any other Member State without any further procedure being required (abolition of exequatur) and to improve cooperation between national authorities. Secondly, citizens' access to the enforcement procedures of maintenance decisions in all Member States needs to be simplified by establishing minimum common standards.

Arguments against Option 4: Concern about the rights of the debtor in terms of maintaining their rights to privacy (data protection) and to a fair trial have been expressed.

CONCLUSION: option 4 seems to be the most appropriate for the population concerned: vulnerable lone parent families who are at high risk of economic poverty and social insecurity.

IMPACTS

The potential impacts of the proposal can be summarised as follows.

The ‘status quo’ (**option 1**), will not meet the policy objectives outlined in the Programme of Measures to address the problems associated with the enforcement of maintenance claims in the EU. Issues such as tracking down the location of debtors, the ability for competent agencies to gain information on the assets of debtors, the provision of advice and legal aid in order to pursue a claim will not be improved. The lack of cooperation between Member States’ agencies will also persist and there would be no greater guarantee that maintenance creditors would succeed in having a judgment recognised or enforced due to the existing structures and their associated problems remaining unchanged.

The implementation of non-legislative action, (**option 2**) is largely focused on improving, rather than changing the current systems. As such, it will address some of the problems in the current situation, but not all of them. It will improve the systems of transfer and the actions of this option will lead to institutional learning and improvement (a peer learning forum and a working party). Its impact on the abilities of the competent authorities to work within the current system may have benefits but it will not address the barriers to greater harmonisation and mutual recognition.

Option 3, increased EU harmonization, will, in addition to leading to improvements in the administration and learning capacity of the competent authorities, also serve to resolve the complexities associated with the different concepts of maintenance which exist among EU Member States. It will not address the issue of procedural delays resulting from intermediate measures, nor will it lead to guarantees that maintenance claims will be recognised and enforced; it will simply make that eventuality more likely.

These considerations point to the policy **option 4** as the preferred option to achieve the policy objectives and address the problems identified. It is in effect the most ambitious iteration of the other three policy options and so therefore represents the furthest development of the four in terms of the issues that it is designed to address. It represents a considerable cost in terms of direct and indirect costs such as ‘transition costs’ associated with implementation, but not considerably more than options 2 or 3. In contrast, in the long-term, the implementation of option 4 could reduce legal costs dramatically because cases will no longer have to enter into a legal procedure.

2- FOLLOW-UP

Given that major elements to the introduction of a programme of complete mutual recognition will include working towards greater cooperation between central authorities, and the setting up of systems to facilitate this, the collection of data on a number of key indicators should be able to be more effectively shared and coordinated between authorities. This could then be assessed and made available on a periodic (yearly) basis in the form of progress reports.

Specific indicators could include:

- An evaluation of the success of the development of collaborative mechanisms between Member States’ agencies.
- An indication of the success of increasing awareness of creditors’ rights regarding advice and the provision of legal aid could be revealed indirectly by taking account of any increase in the number of claims brought within each Member State. Indirectly, this could be seen as indicative of the removal of the disincentives associated with the current system and the willingness of maintenance creditors’ to take a claim forward.

- Comparison between the number of successfully enforced claims for maintenance before implementation and at periodic points after implementation.
- Comparison of data on the speed at which claims are processed and enforced before and after implementation.
- Monitoring the monetary value of the amount of maintenance payments recovered.