



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.2005  
COM(2005) 649 final

2005/0259 (CNS)

Proposal for a

**COUNCIL REGULATION**

**on jurisdiction, applicable law, recognition and enforcement of decisions and  
cooperation in matters relating to maintenance obligations**

(presented by the Commission)

{SEC(2005) 1629}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. General context

##### 1.1.1. *Within the European Union*

At its meeting in Tampere on 15 and 16 October 1999, the European Council asked in matters relating to maintenance obligations for the establishment of special common procedural rules to simplify and accelerate the settlement of cross-border disputes and for the removal of intermediate measures needed for the recognition and enforcement in one Member State of a judgment given in another Member State.

The Mutual Recognition Programme in Civil Matters, adopted on 30 November 2000<sup>1</sup>, calls for elimination of the *exequatur* procedure in matters related to maintenance obligations, which are already covered by the Council Regulation (EC) n° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (hereafter: 'Brussels I')<sup>2</sup>. In addition, this programme suggests in general that it will "*sometimes be necessary, or even essential, to lay down a number of procedural rules at European level, which will constitute common minimum guarantees*", or even "*to be directed towards a certain harmonisation of the procedures*". It envisages the adoption of ancillary measures of mutual recognition aiming at "*seeking to make more efficient the enforcement, in the requested State, of judgments delivered in another Member State*", in particular by allowing "*precise identification of a debtor's assets in the territory of the Member States*" so that mutual recognition can operate in the context of "*enhancing cooperation between Member States' courts*", and finally measures for the "*harmonisation of conflict-of-law rules*".

The relevance of this programme was reaffirmed by the European Council in November 2004 at the time of the adoption of 'the Hague programme'<sup>3</sup>, in which it is underlined that "*continued implementation of the programme of measures on mutual recognition must therefore be a main priority in the coming years to ensure its completion by 2011*".

The Council and the Commission adopted, on 2 and 3 June 2005, a common Action Plan which translates the Hague programme in concrete actions and which mentions, as regards judicial cooperation in civil matters, the adoption in 2005 of "*proposals on maintenance obligations*"<sup>4</sup>.

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<sup>1</sup> OJ C 12 of 15 January 2001.

<sup>2</sup> OJ L 12 of 16 January 2001.

<sup>3</sup> JO C 53 of 3 March 2005.

<sup>4</sup> Document of the Council of the European Union n° 9778/2/05 REV 2 JAI 207.

### *1.1.2. At the international level*

The Hague Conference of Private International Law<sup>5</sup> also launched work on maintenance obligations so as to modernise the rules in the existing Conventions<sup>6</sup>. Three meetings of a Special Commission were devoted to the preparation of a new general convention on maintenance obligations in May 2003, June 2004 and April 2005. A fourth meeting of this Special Commission is envisaged for June 2006, possibly followed by a diplomatic session during the first half of 2007. The European Community takes an active part in these negotiations.

The relationships between the negotiations undertaken in The Hague and Community work should be seen in terms of the search for possible synergies between them; these two exercises are not contradictory, but consistent and complementary, as it was pointed out by the European Council in the Hague Programme.

The Community should thus be in a position to adopt a coherent strategy in the international negotiations and in parallel has to continue its efforts to build, among its Member States, a genuine area of freedom, security and justice.

The Hague Conference represents for the Community an international forum for the development of a policy of cooperation in the area of civil justice with the world at large. The discussion forum that it provides is an inestimable source of inspiration for the work being done in the Community. Moreover it is not excluded that in certain specific matters the negotiations in The Hague could produce results which might prove transposable within the European Union.

However, the different level of integration between the Member States when compared with non-member countries and the scale of the objectives pursued by the European Union necessitates seeking specific Community solutions. The cooperation between the Member States, which have at their disposal not only a more consistent and complete system of jurisdiction rules and rules on recognition of judgments, but also a functioning European Judicial Network, can without doubt be much closer than with non-member countries.

## **1.2. Objectives**

The ambition of the proposal is to eliminate all obstacles which still today prevent the recovery of maintenance within the European Union. It will certainly 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

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<sup>5</sup> Web Site: <http://www.hcch.net>.

<sup>6</sup> The Hague Convention of 24 October 1956 on the Law Applicable to Maintenance Obligations Towards Children; The Hague Convention of 15 April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children; The Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations, which replaces the Convention of 24 October 1956 in relations between the States that are Parties to it; The Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, which replaces the Convention of 15 April 1958 in relations between the States that are Parties to it. To this list it is necessary to add the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance, concluded in the United Nations.

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.

Three requirements shall guide this action:

#### *1.2.1. Simplifying the citizens' life*

Simplicity is sought in the first place in the conduct of the proceedings necessary for the establishment of the maintenance claim. The rules on jurisdiction laid down in the Brussels I Regulation already allow the maintenance creditor to bring an action before an authority close to him or her, but the situation can still be improved and certain ambiguities eliminated. Once the decision was given, measures have to be taken to give that decision the same force that it has in the Member State of origin, without any further formality. Thus the objective consisting in removing the “intermediate measures” will be achieved.

In a more general way, support and assistance, which today are still insufficient, must be given to the creditor for each stage in the process of recovery of maintenance. The creation of cooperation mechanisms between the Member States pursues this objective. Following the same objective, the possibility of taking all the necessary steps at the place of the creditor's habitual residence must also be mentioned which includes measures at the enforcement stage itself, in particular the possibility to obtain attachment on wages or on a bank account, to trigger the cooperation mechanisms or to have access to information making it possible to locate the debtor and to evaluate his assets. That is also why it is envisaged to reinforce the guarantees of access to justice by means of a system of legal representation of the maintenance creditors' interests by the central authorities of the Member States.

Finally, simplicity implies putting an end to the diversity of sources of the law in this field, since today there is no perfectly harmonised set of rules as regards recognition and enforcement of maintenance decisions within the European Union.

Indeed Article 71 of the Brussels I Regulation maintains the application of “*conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments*”. The last paragraph of that Article states that: “*Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition and enforcement of judgments, those conditions shall apply.*” In the ‘particular matter’ of maintenance obligations, 17 Member States out of 25 are parties to the Hague Convention of 2 October 1973 Concerning Recognition and Enforcement Relating to Maintenance Decisions. Between these Member States, it is therefore the ‘conditions’ laid down by the 1973 Convention, prior to the Brussels I Regulations, which continue to be applicable.

In accordance with Article 26 of this Convention, any Contracting State may reserve the right not to recognise or enforce several types of decisions, notably those which concern maintenance between adults or between persons related collaterally or by affinity. The

majority of Member States which are Parties to the 1973 Hague Convention<sup>7</sup> have made one or more reservations on the basis of this provision. The result is an uneven landscape as regards the recognition of maintenance decisions.

This discord mirrors certain differences between Member States regarding the concept of maintenance. The reservations set out in the 1973 Convention allow unlimited expression of these differences. They make it possible to oppose the recognition of certain maintenance decisions on a basis of a certain ‘general clause of *ordre public*’. Public policy is no longer used on a case by case basis, *a posteriori*; it is used in a general way, and *a priori*, by the means of a reservation to the 1973 Convention which has priority over Community law.

Such discrepancies should no longer be acceptable within the European Union which has decided, at the highest political level, to favour the free movement of maintenance decisions. They do, however, require a reflection on the way how to meet the concerns of those Member States which had in the previous system expressed the wish to limit such movement.

### *1.2.2. Strengthening legal certainty*

The main goal of the harmonisation of conflict-of-law rules is to make possible for the creditors to act with full knowledge of the situation, without being subjected to the diversity of national systems. It thus guarantees certain ‘legal predictability’.

On the basis of the rules determining the applicable law, the competent court shall give a decision based on the substantive law which has the closest connection with the case. This also allows avoiding the most unfair situations: the maintenance creditor will obtain a result adapted to his or her situation, without having to suffer from the disparity of the conflict-of-law rules.

Thus, the conflict-of-law rules accompany and facilitate the elimination of ‘intermediate measures’ at the stage of recognition: the decision is less problematic to accept if it is given in accordance with a law designated according to harmonised rules.

Moreover, and in a more direct way, the conflict-of-law rules shall in certain situations put an end to certain applications based on maintenance relationships which are not accepted universally (between brothers and sisters, for example). The conflict-of-law rules are a ‘safety net’, in the area of free movement of decisions; they reassure Member States which have a restrictive approach to the concept of maintenance.

The conflict-of-law rules do not therefore aim at rejecting these differences; this by no means implies harmonisation of the concepts which mirror national needs, whether they are social, economic or cultural, but intends to make sure that no decision will be given on the basis of a law lacking a sufficient connection with the family relationship concerned.

### *1.2.3. 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

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<sup>7</sup> 17 Member States: Germany, Denmark, Spain, Estonia, Finland, France, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Czech Republic, United Kingdom, Slovakia, Sweden.

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.

All of the objectives pursued by the proposal will be reached with full respect of the fundamental rights guaranteed by the European Union. A balance shall be ensured between maintenance creditors' and debtors' rights; in particular, debtors shall always have the right to a fair trial and the right to the protection of personal data.

## 2. CONSULTATION OF INTERESTED PARTIES

The Commission carried out a study on the recovery of maintenance claims in the Member States of the European Union<sup>8</sup>.

The first meeting of experts was organised on 3 November 2003 in order to identify the principal aspects for the inclusion in a future Green Paper on maintenance obligations.

The Green Paper on maintenance obligations was adopted by the Commission on 15 April 2004<sup>9</sup>. The first responses were the subject of a public hearing organised on 2 June 2004. Other responses arrived at a later date<sup>10</sup>.

On the basis of another discussion paper drawn up by the services of the Commission which included three preliminary drafts of legislative proposals, a second meeting of Member States' experts was organised on 12 May 2005. This meeting made it possible to examine all the questions concerning maintenance obligations within the European Union: applicable law, conflict of jurisdiction, recognition, enforceability and enforcement of decisions, harmonisation of certain rules of procedure, cooperation between central authorities, access to information, etc.

The participants at this meeting were then invited to submit to the Commission written comments on the discussion paper and the three draft legislative proposals.

The Commission has undertaken an impact assessment, the conclusions of which appear in a working paper annexed to this proposal. Throughout the impact assessment, contributions of the consulted experts, made within the framework of the Green Paper and afterwards, have been analysed. Several options have been contemplated: the Status Quo, a non legislative action and several modalities of a legislative initiative of the Community. It results from this study that, in order to solve the various problems of maintenance creditors, it is necessary for

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<sup>8</sup> This study can be consulted on the Directorate-General's site "Justice Freedom and Security" at the following address:

[http://europa.eu.int/comm/justice\\_home/doc\\_centre/civil/studies/doc\\_civil\\_studies\\_en.htm](http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc_civil_studies_en.htm)

<sup>9</sup> COM (2004) 254 final.

<sup>10</sup> The responses are published at the following address:

[http://europa.eu.int:8082/comm/justice\\_home/ejn/maintenance\\_claim/maintenance\\_claim\\_ec\\_en.htm](http://europa.eu.int:8082/comm/justice_home/ejn/maintenance_claim/maintenance_claim_ec_en.htm)

the Community to foresee a very ambitious action which will cover all the possible spheres of activity.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The subject-matter covered by this proposal is within the ambit of Article 65 of the Treaty establishing the European Community; the legal basis for this proposal is Article 61(c) of the Treaty.

Article 65 attributes legislative powers to the Community with regard to judicial cooperation in civil matters having cross-border implications in so far as necessary for the proper functioning of the internal market.

The measures envisaged in this proposal relate to those which are expressly mentioned in the non exhaustive list set out in Article 65: conflict of jurisdiction, conflict of laws, recognition and enforcement of decisions, elimination of obstacles to the good functioning of civil proceedings, by promoting the compatibility of the rules on civil procedure.

With respect to the internal market requirement, there is a margin of appreciation for the Community institutions in determining whether a measure is necessary for the proper functioning of the internal market. With respect to this proposal, the proper functioning of the internal market is facilitated, because the adoption of a new legal environment intended to improve the recovery of maintenance claims will contribute to eliminating the obstacles to free movement of persons who, currently, suffer from the persistent differences between the Member States in the recovery of maintenance.

Concerning the cross-border requirement, this proposal contains measures on the establishment and enforcement of a decision in situations which all include an international element. The conflict-of-jurisdiction and conflict-of-law rules concern, by definition, international situations, bringing into play legal elements coming from various countries. Provisions on recognition and enforcement of decisions are intended to allow a decision given in a Member State to be automatically enforceable in any other Member State. Some measures for a minimum harmonisation of certain rules on procedure are ancillary to these provisions. The measures on enforcement which are envisaged in the proposal aim at facilitating the enforcement in a Member State of a decision given in another Member State. Finally, provisions on cooperation and exchange of information shall operate only between two different Member States.

This Regulation will be adopted according to the procedure provided for in Article 67 (2) of the Treaty, under the terms of which the Council acts unanimously after consulting the European Parliament. The Commission is indeed of the opinion that this proposal relates to family law, in accordance with Article 67 (5) second indent.

This interpretation legally prevails over any other, taking into consideration the very close connections which link maintenance obligations to family law, but such a classification is not without disadvantage. It does not take sufficiently into account the hybrid nature of the concept of maintenance – familial by its roots, but pecuniary in its implementation, like any other debt.

Besides, the Community has considered until now that maintenance obligations could be seen as included in matters related to civil judicial cooperation outside of the sphere of family law. The Brussels I Regulation, following the structure of the Brussels Convention of 27 September 1968, excludes family law, but includes maintenance obligations within its scope of application. In contrast, Council Regulation (EC) n° 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (hereafter: ‘new Brussels II Regulation’)<sup>11</sup>, covers an essential part of family law (divorce, parental responsibility), but excludes maintenance obligations. Lastly, Regulation (EC) n° 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims<sup>12</sup> (hereafter: ‘EEO Regulation’) includes the maintenance claims and was adopted according to the co-decision procedure.

Obviously this proposal is submitted in a very different context, since it is exclusively devoted to maintenance obligations which in the previous instruments constituted an ancillary part of their scope. Consequently, the Commission has to respect the terms of the Treaty and observe that this proposal relates to family law and cannot fall therefore within the co-decision procedure.

The disadvantages previously mentioned can be avoided should the Council decide to place maintenance obligations within the scope of the non-family civil judicial cooperation. In accordance with Article 67 (2), second indent of the Treaty, the Council, acting unanimously after consulting the European Parliament, may take a decision with a view to providing for all or parts of the areas covered by title IV of the third part of the Treaty to be governed by the procedure referred to in Article 251. It is therefore possible to transfer maintenance obligations from unanimity to co-decision.

The Commission recommends that the Council take such a decision; this would be appropriate in view of both the specific nature of maintenance obligations and the legislative context in which the Community had worked in this area until now.

### **3.2. Proportionality and subsidiarity**

The objectives of this proposal cannot be accomplished by the Member States themselves. Jurisdiction rules and conflict-of-law rules, as well as rules concerning recognition and enforcement of decisions, have indeed to be identical in order to facilitate the functioning of the internal market. Only an action at the Community level can guarantee the equivalence of rules applicable, as it was the case previously, for example with the Brussels I Regulation. The same reasoning is pertinent for the rules on cooperation: central authorities which are designated have to comply with the same obligations for mutual assistance within the European Union.

This proposal is fully consistent with the principle of proportionality in that it is strictly limited to what is necessary in order to reach these objectives. Conflict-of-law rules, in particular, render the harmonization of the substantial law unnecessary. The rules concerning jurisdiction, and recognition and enforcement of decisions have very little effect on national procedural norms.

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<sup>11</sup> OJ L 338 of 23 December 2003, pp. 1 – 29.

<sup>12</sup> OJ L 143 of 30 April 2004, pp. 15 – 39.



The form chosen for the instrument – a regulation – is warranted by a number of considerations. The Member States cannot be left with the discretion not only to determine rules of jurisdiction, the purpose of which is to achieve certainty in the law for the benefit of individuals and economic operators, but also the procedures for the recognition and enforcement of decisions, which must be clear and uniform in all Member States. The same applies for the conflict-of-law rules. The proposal contains indeed uniform rules on applicable law which are detailed, precise and unconditional and require no implementation in national law. If Member States had, on the contrary, margin of appreciation for the implementation of these rules, one would reintroduce legal uncertainty that this proposal is specifically intended to eliminate.

In a more general way, transparency is a vital objective in this context; the rules applicable in the Community should be easily and uniformly understood without the need to seek the provisions of national law that transpose the content of the Community instrument, bearing in mind that national law will very often be foreign to the plaintiff. Opting for a Regulation enables the Court of Justice to ensure that it is applied uniformly throughout the Member States.

### **3.3. Position of the United Kingdom, Ireland and Denmark.**

Title IV of the Treaty, which applies to the matters covered by this proposal for a Regulation, is not applicable in the United Kingdom and Ireland, unless they ‘opt in’ in the manner provided by the Protocol annexed to the Treaty.

Title IV of the Treaty is likewise not applicable in Denmark, by virtue of the relevant Protocol.

Proposal for a

**COUNCIL REGULATION**

**on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61 c) and Article 67 (2) thereof,

Having regard to the proposal from the Commission<sup>13</sup>,

Having regard to the opinion of the European Parliament<sup>14</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Whereas:

- (1) The Community has set itself the objective of maintaining and of developing the European Union as an area of freedom, security and justice in which free movement of persons is ensured. For the gradual establishment of such a space, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (2) In this respect, the Community has among other measures already adopted Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>16</sup>, Council Regulation (EC) n° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>17</sup>, Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters<sup>18</sup>, Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters<sup>19</sup>, Council Regulation (EC) n° 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) n°

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<sup>13</sup> OJ C , , p. .

<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ L 160, 30.6.2000, p. 37.

<sup>17</sup> OJ L 12, 16.1.2001, p. 1.

<sup>18</sup> OJ L 174, 27.6.2001, p. 25.

<sup>19</sup> OJ L 174, 27.6.2001, p. 1.

1347/2000<sup>20</sup>, and Regulation (EC) n° 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims<sup>21</sup>.

- (3) The European Council in Tampere on 15 and 16 October 1999 called on the establishment of special common procedural rules to simplify and accelerate the settlement of cross-border disputes concerning, in particular, maintenance claims. Among other things it recommended abolishing intermediate measures needed for the recognition and enforcement in one Member State of a judgment given in another Member State.
- (4) A programme of measures for the enforcement of the principle of mutual recognition of decisions in civil and commercial matters, common to the Commission and to the Council, was adopted on 30 November 2000<sup>22</sup>.
- (5) The European Council, at its meeting held in Brussels on 4 and 5 November 2004, adopted a new programme, known as “The Hague Programme” on “strengthening freedom, security and justice in the European Union”.
- (6) The Council and the Commission adopted, on 2 and 3 June 2005, a common action plan which implements The Hague Programme in concrete actions and which mentions the necessity to adopt proposals on maintenance obligations.
- (7) It should be made possible for a maintenance creditor to obtain easily, in a Member State, a decision which will be automatically enforceable in any other Member State and the enforcement of which will be simplified and accelerated.
- (8) In order to achieve this goal and to guarantee to the citizens better access to the applicable legal rules, it is relevant to bring together in a single instrument all the measures necessary to the recovery of maintenance obligations within the Community. This Regulation should therefore contain provisions on jurisdiction, conflict of laws, enforceability and enforcement of foreign decisions and cooperation.
- (9) The scope of the Regulation should cover all maintenance obligations arising from family relationships or from relations which have comparable effects, in order to guarantee an equal treatment of maintenance creditors.
- (10) The rules on jurisdiction differ somewhat from those which are currently applicable, such as they result from Regulation (EC) n° 44/2001. In order to ensure as much as possible the protection of the interests of maintenance creditors and to encourage a proper administration of justice within the European Union, these rules should be clarified and cover now all the cases in which there is a sufficient link between the parties and a Member State. The fact that the defendant is habitually resident in a non-member State of the European Union should no longer be a reason for non-application of Community rules and for reference to national law.

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<sup>20</sup> OJ L 338, 23.12.2003, p. 1.

<sup>21</sup> OJ L 143, 30.4.2004, p. 15.

<sup>22</sup> OJ C 12 of 15 January 2001.

- (11) The parties should be able to agree on the competent court, except for maintenance obligations in respect of a minor child, in order to protect the “weaker party”.
- (12) It is necessary to maintain a clear and effective mechanism for resolving cases of *lis pendens* and related actions.
- (13) The rules on conflict of laws should apply only to maintenance obligations and should not determine the law applicable to the establishment of the family relationships on which the maintenance obligations are based.
- (14) The law of the country of the habitual residence of the maintenance creditor should remain predominant, as in the existing international instruments, but the law of the forum should come in second rank, because it often allows, in this specific area, to resolve disputes in a simpler, faster and less expensive manner.
- (15) Where none of the laws referred to above enables the creditor to obtain maintenance from the debtor, it should remain possible to apply the law of another country with which the maintenance obligation is closely linked. It can be, in particular, but exclusively the country of the common nationality of the parties.
- (16) Parties should be authorized, under certain conditions, to choose applicable law. They should be able to choose the law of the forum for the purposes of particular proceedings. Moreover, they should be entitled to agree on the applicable law prior to any dispute, but only when maintenance obligations involved are other than those in respect of children or vulnerable adults; furthermore, any such choice should be limited to the designation of certain laws only.
- (17) The debtor should be protected from the application of the law designated where the family relationship on which the maintenance obligation is based is not universally considered as being worthy to be honoured. It should be the case, in particular, for relations between persons related collaterally or by affinity, descendants’ maintenance obligations with regard to their ascendants, or maintenance after the dissolution of marriage.
- (18) Decisions given in a Member State relating to maintenance obligations should be recognised and enforceable in all the other Member States without any procedure being necessary. In order to abolish any intermediate measure, a minimum harmonisation of procedure should be carried out. It should guarantee the compliance with the requirements of fair trial according to common standards in all the Member States.
- (19) Once a maintenance decision has been given in a Member State, it should be enforced quickly and effectively in any other Member State. The maintenance creditors should benefit, in particular, from direct deductions from wages and bank accounts of the debtors.
- (20) Authentic instruments and agreements between parties which are enforceable in a Member State should be treated as equivalent to decisions.
- (21) Central authorities should be set up in the Member States in order to cooperate both in general matters and in specific cases, to facilitate the recovery of maintenance claims.

They should exchange information in order to locate debtors and evaluate their assets and incomes, and respect fully all the requirements relating to the protection of individuals with regard to the processing of personal data, in accordance with the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>23</sup>.

- (22) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, it seeks to ensure full respect for private and family life, personal data protection, the rights of the child and the guarantees of effective remedy before an independent and impartial court, in accordance with Articles 7, 8 24 and 47 of the Charter.
- (23) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>24</sup>, measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.
- (24) This Regulation should replace the Community instruments adopted previously and covering the same field. It shall prevail, in addition, over other applicable international instruments applicable between the Member States in the same matters, in order to unify and simplify the legal rules in force.
- (25) Since the objectives of the action to be taken, namely the creation of a series of measures to ensure the effective recovery of maintenance claims within European Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article this Regulation does not go beyond what is necessary to achieve those objectives.
- (26) [The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.]
- (27) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

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<sup>23</sup> OJ L 281, 23.11.1995, p. 31-50

<sup>24</sup> OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

## Chapter I

### Scope and definitions

#### *Article 1*

##### *Scope of application*

1. This Regulation shall apply to maintenance obligations arising from family relationships or relationships deemed by the law applicable to such relationships as having comparable effects.
2. In this Regulation, the term ‘Member State’ shall mean Member States with the exception of Denmark [, the United Kingdom and Ireland].

#### *Article 2*

##### *Definitions*

For the purposes of this Regulation:

- (1) the term ‘court’ shall cover all the authorities in the Member States with jurisdiction in matters relating to maintenance obligations;
- (2) the term ‘judge’ shall mean the judge or an official having powers equivalent to those of a judge in matters relating to maintenance obligations;
- (3) the term ‘decision’ shall mean a decision given in matters relating to maintenance obligations by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as the decision determining the costs or expenses by an officer of the court;
- (4) the term ‘authentic instrument’ shall mean:
  - a) document which has been formally drawn up or registered as an authentic instrument in matters related to maintenance obligations, and the authenticity of which:
    - i) relates to the signature and the content of the instrument; and
    - ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates, or

- b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;
- (5) the term ‘Member State of origin’ shall mean the Member State in which the decision was given;
- (6) the term ‘Member State of enforcement’ shall mean the Member State in which the enforcement of the decision is sought;
- (7) the term ‘court of origin’ shall mean the court which has given the decision to be enforced;
- (8) the term ‘creditor’ shall mean any natural person to whom maintenance is owed or is alleged to be owed,
- (9) the term ‘debtor’ shall mean any natural person who owes or who is alleged to owe maintenance.

## **Chapter II**

### **Jurisdiction**

#### *Article 3*

##### *General jurisdiction*

The following courts shall have jurisdiction in a Member State in matters relating to maintenance obligations:

- a) the court for the place where the defendant is habitually resident,
- b) the court for the place where the creditor is habitually resident, or
- c) the court which has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
- d) the court which has jurisdiction to entertain proceedings concerning parental responsibility, under the Regulation (EC) n° 2201/2003, if the matter relating to maintenance is ancillary to those proceedings.

## *Article 4*

### *Prorogation of jurisdiction*

1. If the parties, one or more of whom is habitually resident in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in matters relating to maintenance obligations, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise.
2. An agreement conferring jurisdiction shall be in writing. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
3. When such an agreement is concluded by parties, none of whom is habitually resident in a Member State, the courts of other Member States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.
4. This article shall not apply to a dispute relating to a maintenance obligation towards a child below the age of 18.

## *Article 5*

### *Jurisdiction based on the appearance of the defendant*

Apart from jurisdiction derived from Articles 3 and 4, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction or where another court has exclusive jurisdiction by virtue of Article 4.

## *Article 6*

### *Residual jurisdiction*

Where no court of a Member State has jurisdiction pursuant to Articles 3 to 5, the following courts shall have jurisdiction:

- a) the courts of the Member State of the common nationality of the creditor and the debtor, or
- b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State of was the last common habitual residence of the spouses provided such habitual residence had still existed at least one year before the institution of the proceedings.



## *Article 7*

### *Lis Pendens*

1. Where proceedings involving the same maintenance obligation are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

## *Article 8*

### *Related actions*

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

## *Article 9*

### *Seising of a court*

For the purposes of this Chapter, a court shall be deemed to be seised:

- a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
- b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

## *Article 10*

### *Provisional, including protective, measures*

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

## *Article 11*

### *Examination as to jurisdiction*

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

## **Chapter III**

### **Applicable law**

## *Article 12*

### *No effect on the existence of family relationships*

The provisions of this Chapter shall determine only the law applicable to maintenance obligations and shall not prejudice the law applicable to any of the relationships referred to in Article 1.

## *Article 13*

### *General rules*

1. The maintenance obligations shall be governed by the law of the country in whose territory the creditor is habitually resident.
2. The law of the forum shall apply:
  - a) if the creditor is unable, by virtue of the law designated in accordance with paragraph 1, to obtain maintenance from the debtor, or
  - b) where the creditor so requests and this law is the law of the country on whose territory the debtor is habitually resident.

3. The laws designated in accordance with the previous paragraphs shall be disregarded when, by virtue of those laws, the creditor is unable to obtain maintenance, and if it appears from the circumstances as a whole that the maintenance obligation has a close connection with another country, in particular the country of the common nationality of the creditor and the debtor; in such a case, the law of the country with which the maintenance obligation has a close connection shall apply.

#### *Article 14*

##### *Choice of law by the parties*

Notwithstanding Article 13, the creditor and the debtor may:

- a) at the time the court is seised, designate expressly or otherwise in an unequivocal manner the law of the forum for as the law applicable to the maintenance obligation, for the purpose of these proceedings,
- b) at any time agree in writing on the law applicable to the maintenance obligation, except for maintenance obligations in respect of a child below the age of 18 or of an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interests (hereafter, “a vulnerable adult”), provided that they designate one of the following laws:
  - i) the law of their common nationality at the time of designation;
  - ii) the law of the country of their common habitual residence or the country on whose territory the creditor or the debtor is habitually resident at the time of designation;
  - iii) in the case of a maintenance obligation between two persons who are or were married or in a relation which has similar effects under the law applicable to it, the law applicable to their property relations at the time of designation.

#### *Article 15*

##### *Non-application of the designated law at the request of the debtor*

1. In the case of maintenance obligations other than those in respect of children and vulnerable adults and between spouses or ex-spouses, the debtor may oppose a claim by the creditor on the ground that there is no such obligation under the law of their common nationality or, in the absence of a common nationality, under the law of the country in which the debtor is habitually resident.
2. In the case of maintenance obligations between spouses or ex-spouses, the debtor may oppose a claim by the creditor on the ground that there is no such obligation under the law of the country with which the marriage has the closest connection.

## *Article 16*

### *Law applicable to public institutions*

The right of a public body to seek reimbursement of benefits provided for the creditor shall be governed by the law to which the body is subject.

## *Article 17*

### *Scope of applicable law*

1. The law applicable to a maintenance obligation shall determine in particular:
  - (a) whether, to what extent and from whom a creditor may claim maintenance;
  - (b) the extent to which the creditor may claim retroactive maintenance;
  - (c) the calculation and indexation of the maintenance obligation;
  - (d) limitation periods and time limits on the institution of proceedings;
  - (e) the right of a public body which has provided benefits for a creditor to obtain reimbursement of those benefits and the extent of the obligation of the debtor.
2. Whatever the contents of the applicable law, the needs of the creditor and the resources of the debtor shall be taken into account in determining the amount of maintenance.

## *Article 18*

### *Application of the law of a non-Member State*

The law designated by this Regulation shall be applied whether or not it is the law of a Member State.

## *Article 19*

### *Renvoi*

1. Subject to paragraph 2, the application of the law of any country designated by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.
2. When this Regulation specifies the application of the law of a non-Member State and the private international law rules of that State designate the law of another country, the court seised shall apply its internal law.

## *Article 20*

### *Public policy*

The application of a provision of the law designated by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*'ordre public'*) of the forum. However, the application of a provision of the law of a Member State designated by this Regulation shall not be refused on such a ground.

## *Article 21*

### *States with more than one legal system*

Where a State comprises several territorial units each of which has its own rules on maintenance obligations, each territorial unit is regarded as a country for the purposes of the determination of the applicable law according to this Regulation.

## **Chapter IV**

### **Common procedural rules**

## *Article 22*

### *Service of documents*

1. In proceedings before a court, the document instituting the proceedings or an equivalent document shall be served on the defendant by one of the following methods:
  - a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the addressee;
  - b) personal service attested by a document signed by the competent person who effected the service stating that the addressee has received the document or refused to receive it without any legal justification, and the date of the service;
  - c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee;
  - d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee.
2. The defendant shall have at least 30 days for the preparation of his or her defence following the day of receipt of the document served in accordance with paragraph 1.

3. The Member States shall inform the Commission within six months following the entry into force of this Regulation of the methods of service which are applicable. They shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

### *Article 23*

#### *Examination as to admissibility*

1. Where a defendant habitually resident in a Member State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in accordance with Article 22 or that all necessary steps have been taken to this end.
2. Where a defendant habitually resident in a non Member State does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
3. Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

### *Article 24*

#### *Decision and review*

1. Where the defendant has not entered an appearance and
  - a) it has not been shown that the defendant has effectively received the document instituting the proceedings or an equivalent document or
  - b) where the defendant was prevented from contesting the maintenance claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his or her part,a decision may be given but the defendant shall have the right to apply for a review of the decision before the court of origin.
2. The time limit to apply for a review shall run from the day the defendant is notified of the decision and is able to react and at the latest from the day the defendant is informed of the decision by the competent authority of the Member State of enforcement. This time limit shall not be less than 20 days.

3. An application for review shall suspend all the measures for enforcement taken in a Member State.

## **Chapter V**

### **Enforceability of decisions**

#### *Article 25*

##### *Enforceability*

A decision given in a Member State that is enforceable in that Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

#### *Article 26*

##### *Provisional enforcement*

A decision given in a Member State shall be enforceable by operation of law notwithstanding any appeal provided for by national law. A security shall not be imposed.

## **Chapter VI**

### **Enforcement**

#### *Article 27*

##### *Enforcement proceedings*

Subject to the provisions of this Regulation, the procedure for the enforcement of decisions issued in another Member State shall be governed by the law of the Member State of enforcement.

#### *Article 28*

##### *Documents*

A party applying in a Member State for the recognition or enforcement of a decision given in another Member State shall produce a copy of the decision which satisfies the conditions

necessary to establish its authenticity, as well as an extract established by the competent authority using the standard form in Annex I to this Regulation.

No translation shall be required by the competent authorities of the Member State of enforcement.

#### *Article 29*

##### *Legal aid*

An applicant, who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in the procedure for enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

#### *Article 30*

##### *Security, bond or deposit*

No security, bond or deposit, however described, shall be required of a party who in a Member State applies for enforcement of a decision given in another Member State on the ground that he or she is a foreign national or that he or she is not domiciled or resident in the State in which enforcement is sought.

#### *Article 31*

##### *Legalisation or other similar formality*

No legalisation or other similar formality shall be required in respect of the documents referred to in Article 28.

#### *Article 32*

##### *No review as to the substance of a decision*

1. Under no circumstances may a decision given in a Member State be reviewed as to its substance in another Member State during the enforcement procedure.
2. However, the competent authority of the Member State of enforcement may decide, at its own initiative, to limit the enforcement of the decision of the court of origin to a part of the maintenance claim if the complete enforcement would have an impact on a part of the debtor assets which is not attachable according to the law of the Member State of enforcement.



### *Article 33*

#### *Refusal or suspension of enforcement*

The partial or total refusal or suspension of the enforcement of the decision of the court of origin may at the request of the debtor be granted only in the following cases:

- a) the debtor asserts new circumstances or circumstances which were unknown to the court of origin when its decision was given;
- b) the debtor has applied for the review of the decision of the court of origin in accordance with Article 24 and no new decision has yet been given;
- c) the debtor has already satisfied his or her debt;
- d) the claim is totally or partially extinguished by the effect of prescription or the limitation of actions;
- e) the decision of the court of origin is irreconcilable with a decision given in the Member State of enforcement or which fulfils the conditions necessary for its recognition in the Member State of enforcement.

### *Article 34*

#### *Order for monthly direct payment*

1. At the request of the creditor, the court of origin may give an order for monthly direct payment which is to be addressed to the debtor's employer in another Member State or to the bank in another Member State in which the debtor has a bank account. The order for monthly direct payment shall be enforceable in the Member State addressed as a decision in accordance with articles 25 and 26.
2. An order for monthly direct payment may only be given if the decision has been served to the debtor by one of the methods referred to in Article 22.
3. The application and the order for monthly direct payment shall be in conformity with the standard form set out in Annex III to this Regulation.
4. The order for monthly direct payment shall be notified by the court of origin, by postal service attested by an acknowledgement of receipt:
  - a) either to the debtor's employer, or to a bank in which the debtor has an account, and
  - b) at the latest five days later, to the debtor, together with the decision of the court of origin and the information note in conformity with the standard form set out in Annex III a to this Regulation.

5. As from such a receipt, the addressee of an order for monthly direct payment shall proceed with the first direct payment. If the addressee is absolutely unable to proceed with the direct payments, he or she shall inform the court of origin at the latest within 30 days following the acknowledgment of receipt or the last direct payment.
6. After an order for monthly direct payment was issued, a debtor is required to inform the creditor and the court of origin of any changes of employer or bank account.

### *Article 35*

#### *Order for temporary freezing of a bank account*

1. A creditor may ask the court seised as to the substance to deliver an order for temporary freezing of a bank account which is to be addressed to the bank in another Member State in which the debtor has an account. The application and the order for temporary freezing of a bank account shall be in conformity with the standard form set out in the annex IV to this Regulation.
2. The court shall give a decision within 8 days on the creditor's application, without notice of the application to the debtor and without providing him an opportunity to be heard. The court shall deliver the order for temporary freezing where it considers that the request of the creditor is not manifestly unfounded and where there is a serious risk of non execution from the debtor.
3. An order for temporary freezing of a bank account:
  - a) shall be notified by the court, by postal service attested by an acknowledgement of receipt, to the bank in which the debtor has an account;
  - b) shall prohibit as from the date of such a receipt any movement on the bank account which would render impossible the payment by its holder of the amount determined by the order for temporary freezing of a bank account.
4. The creditor and the debtor shall be notified of the decision of the court by postal service attested by an acknowledgement of receipt, once the order has acquired the effect described in paragraph 3 (b).
5. The debtor may ask the court to set aside the order for temporary freezing and the court shall give its decision within 8 days. The court may accept the request and may require, if necessary, that the debtor shall constitute a security.
6. The order for temporary freezing shall cease to have effect as soon as the court so decides or if the court has not given its decision within 8 days and at the latest when a decision is given on the substance. The order for temporary freezing may also be replaced by an order for monthly direct payment as soon as the court gives a decision on the substance, if the creditor so requests in accordance with Article 34.

The decision withdrawing the order for temporary freezing shall be notified to the bank by postal service attested by an acknowledgement of receipt.

## *Article 36*

### *Ranking of maintenance claims*

Maintenance claims shall be paid in preference to all the other debts of a debtor, including the debts arising from expenses of the enforcement of maintenance decisions.

## **Chapter VII**

### **Authentic instruments and agreements**

## *Article 37*

### *Enforceability of authentic instruments and agreements*

Authentic instruments registered and enforceable in a Member State and agreements between the parties that are enforceable in a Member State shall be recognised and enforceable as decisions in accordance with Article 25.

## *Article 38*

### *Enforcement of authentic instruments and agreements*

1. Provisions of Chapter VI shall apply as appropriate to the recognition and enforcement of authentic instruments and agreements between the parties that are enforceable. The competent authority of a Member State in which an authentic instrument or an agreement between the parties is enforceable shall issue, at the request of any interested party, an extract of act using the standard form in Annex II of this Regulation.
2. A creditor who wishes for making use of provisions of Articles 34 and 35 may seise the court for the place where he or she is habitually resident.

## Chapter VIII

### Cooperation

#### *Article 39*

##### *Central authorities*

1. Each Member State shall designate one or more central authorities to assist with the application of this Regulation and shall specify the geographical or functional jurisdiction of each.
2. Where a Member State has designated more than one central authority, communications shall normally be sent direct to the relevant central authority with jurisdiction. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and for informing the sender accordingly.
3. The Member States shall communicate to the Commission within six months following the entry into force of this Regulation:
  - a) the names, addresses and means of communication for the central authorities designated pursuant to this Article;
  - b) the languages accepted for communications to central authorities.

The Member States shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

#### *Article 40*

##### *General functions*

The central authorities shall communicate information on national laws and procedures and take measures to improve the application of this Regulation and strengthening their cooperation. For this purpose the European Judicial Network in civil and commercial matters created by Decision n° 2001/470/EC shall be used.

## *Article 41*

### *Cooperation in specific cases*

1. The central authorities shall cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps to:
  - a) collect and exchange information on:
    - i) the situation of the creditor and of the debtor, making use in particular of Articles 44 to 47;
    - ii) any procedures under way; or
    - iii) any decisions taken;
  - b) provide information and assistance to creditors involved in proceedings on their territory;
  - c) facilitate agreement between creditors and debtors, through mediation or other means, and facilitate cross-border cooperation to this end.
2. At his or her request, a creditor who is habitually resident in a Member State shall be represented by:
  - a) the central authority of the Member on the territory of which the court seised in a matter relating to maintenance is located, or
  - b) the central authority of the Member State of enforcement.

For the purposes of this paragraph, the representation shall include all the necessary steps needed to obtain a maintenance decision or to recover effectively a maintenance claim.

## *Article 42*

### *Working method*

1. A central authority of a Member State may receive an application under Article 41 from a creditor who proceeds directly or through the central authority of the Member State on whose territory he or she is habitually resident.

The creditor may lodge an application with the court for the place where he or she is habitually resident; that court shall take the necessary steps to ensure the transmission and execution of the request, in cooperation with the central authority of its Member State.

2. The request for assistance shall be accompanied by all available information relevant for its execution.

3. Subject to paragraph 4, the assistance provided by the central authorities, public authorities or other bodies in accordance with Article 41 or by the persons they have designated shall be free of charge.
4. At the request of a central authority, a creditor shall contribute to the costs of representation in accordance with Article 41 (2). However, no contribution may be required from a creditor who, in the Member State in which he or she is habitually resident, fulfils the conditions to benefit from legal aid.
5. Each central authority shall bear its own costs.

#### *Article 43*

##### *Meetings*

1. In order to facilitate the application of this Regulation, central authorities shall meet regularly.
2. These meetings shall be convened in compliance with Decision N° 2001/470/EC establishing a European Judicial Network in civil and commercial matters.

#### *Article 44*

##### *Access to information*

1. The central authorities shall give access to the information which can facilitate the recovery of maintenance claims under the conditions laid down in this Chapter. This information is provided in order to achieve the following objectives:
  - a) to locate the debtor;
  - b) to evaluate the debtor's assets, in particular the amount and the nature of his or her income;
  - c) to identify the debtor's employer;
  - d) to identify the bank accounts of the debtor.
2. The information referred to in paragraph 1 shall include at least the information held by the administrations and authorities which are responsible in the Member States for the following areas:
  - a) taxes and duties,
  - b) social security, including the social security contributions of employers,
  - c) population registers,
  - d) land registers,

e) registration of the motor vehicles,

f) central banks.

3. Access to the information referred to in this Article shall in no circumstances entail the creation of new records in a Member State.

#### *Article 45*

##### *Transmission of information*

1. A creditor may seise the central authority of the Member State in which he or she is habitually resident through the court for the place where he or she is habitually resident; that court shall send the application of the creditor if it considers that this request is consistent with the conditions laid down in this Chapter.
2. An application for the transmission of information shall be submitted by a central authority to another central authority using the standard form in Annex V to this Regulation.
3. An application to obtain information referred to in Article 44 (1) (a) may be introduced at any time. An application to obtain the information referred to in Article 44 (1) (b), (c) or (d) may be introduced when the creditor is able to produce an extract of a decision pursuant to Article 28 or an extract of an act pursuant to Article 38 (1).
4. In addition to the form referred to in paragraph 1, the requested central authority may ask the requesting central authority to provide for supplementary documents to be able to achieve either of the objectives referred to in Article 44 (1).
5. A translation of the supplementary documents shall be produced unless the requested Member State dispenses with this requirement. Member States shall inform the Commission, at the latest six months after the entry into force of this Regulation, of their decision to require translations under this paragraph or not.

The Commission shall make this information publicly available.

If the application for the transmission of information is made at the initiative of a creditor having benefited from complete or partial legal aid, the translation shall be provided for by the requesting authority, free of charge for the creditor.

6. Information shall be communicated by the requested authorities to the requesting authorities. If the requested authority is not able to provide information, it shall inform without delay the requesting authority, by specifying the grounds for this impossibility.

## *Article 46*

### *Use of information*

1. The requesting central authority having received information shall transmit it without delay to the court which has forwarded the application under Article 45 (1). The requesting central authority shall erase such information after having forwarded it to the court.
2. Information transmitted in accordance with this Regulation may be utilised only by a court and only to facilitate the recovery of maintenance claims. However, a court may send this information, without disclosing it to the creditor, to the competent authorities in charge of the service of documents or to the competent authorities in charge of the enforcement of a decision. This information shall be erased by those authorities as soon as they have made use of it.
3. A court shall not store information communicated in accordance with this Regulation for a longer period than the one necessary to facilitate the recovery of a maintenance claim. This period shall not exceed one year.

## *Article 47*

### *Information to the debtor*

The requested central authority shall notify the debtor:

- a) of the information which has been transmitted and the manner in which that information was obtained;
- b) of the identity of the addressees of that information;
- c) of the conditions under which that information may be utilized in accordance with this Regulation;
- d) of the rights and remedies of the debtor in accordance with national law implemented in application of the Directive 95/46/EC;
- e) of the contact details of the supervisory authority set up in application of the Directive 95/46/EC, in the Member State of the requesting central authority as well as in the Member State of the requested central authority;

unless the requesting central authority has indicated in the application for the transmission of information submitted in accordance with Article 45 (2) that this notification of the debtor might prejudice the effective recovery of a maintenance claim; in such a case, the requested central authority shall postpone the notification of the debtor for a period which cannot exceed 60 days.



## Chapter IX

### General and final provisions

#### *Article 48*

##### *Relations with other Community instruments*

1. In matters relating to maintenance obligations, this Regulation shall replace Regulation (EC) n° 44/2001 and Regulation (EC) n° 805/2004.
2. Article 19 of Regulation (EC) n° 1348/2000 shall not apply in matters relating to maintenance obligations.
3. Subject to paragraph 2, this Regulation shall not affect the application of Regulation (EC) n° 1348/2000 and of Regulation (EC) n° 1206/2001.

#### *Article 49*

##### *Relations with other instruments*

This Regulation shall, in relations between Member States, take precedent over the conventions and treaties which concern matters governed by this Regulation and to which Member States are parties.

#### *Article 50*

##### *Amendments to the Annexes*

Any amendment to the Annexes of this Regulation shall be adopted in accordance with the consultative procedure set out in Article 51 (2).

#### *Article 51*

##### *Committee*

1. The Commission shall be assisted by a committee, composed of representatives of the Member States and chaired by the representatives of the Commission.
2. Where reference is made to this paragraph, the advisory procedure laid down in Articles 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 (3) thereof.

## *Article 52*

### *Transitional provision*

1. The provisions of this Regulation shall only apply to proceedings instituted, to documents formally drawn up or registered as authentic instruments and to agreements concluded after its entry into application.
2. However:
  - a) Articles 12 to 21 on applicable law shall apply to proceedings pending at the date of the entry into application of this Regulation if all the parties so agree expressly or otherwise in an unequivocal manner;
  - b) Articles 27 to 36 on enforcement shall apply to decisions and authentic instruments which have been declared enforceable in accordance with Regulation (EC) n° 44/2001 or which have been certified as European Enforcement Orders in accordance with Regulation (EC) n° 805/2004 by the date of the entry into application of this Regulation;
  - c) Articles 39 to 47 on cooperation shall apply to proceedings pending at the date of the entry into application of this Regulation.

## *Article 53*

### *Entry into force*

1. This Regulation shall enter into force on 1 January 2008.
2. This Regulation shall apply from 1 January 2009, with the exception of Articles 22 (3), 39 and 45 (5) which shall apply from the entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*

**ANNEX**  
***ANNEX I***

**EXTRACT OF A MAINTENANCE DECISION**

(Article 28 of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>25</sup>)

**1. Member State**

AT  BE  CY  CZ  DE  EE  EL  ES  FI  FR  HU  [IE ] IT  LT  LU  LV   
MT  NL  PL  PT  SE  SI  SK  [UK ]

**2. Court**

2.1. Name:

2.2. Street and number/PO box:

2.3. Place and postal code:

**3. Applicant**

3.1. Name:

3.2. Street and number/PO box:

3.3. Place and postal code:

3.4. Country:

3.5. Tel. (\*):

3.6. E-mail (\*):

---

<sup>25</sup> OJ L...

**4. Defendant**

4.1. Name:

4.2. Street and number/PO box:

4.3. Place and postal code:

4.4. Country:

4.5. Tel. (\*):

4.6. E-mail (\*):

(\*) Optional item.

**5. Decision**

**5.1. Amount of maintenance:**

**Currency:**  Euro  [ Pound Sterling ]  Cypriot Pound  Czech Koruna

Estonian Kroon  Hungarian Forint  Maltese Lira  Latvian Lats

Lithuanian Litas  Slovak Koruna  Swedish Crown  Slovenian Tolar

Polish Zloty  Other (please specify): .....

**5.2. Periodicity of payments**

5.2.1. Amount to be entirely paid in one sum .....

5.2.2. Amount to be partially paid in one sum .....

In this case, please indicate the amount to be paid in one sum:

5.2.3. Amount to be paid periodically (specify the amount if it is not identical with the amount of maintenance given under item 5.1.):

Once a week .....

Once a month .....

Other (to be specified) .....

**5.3. Indexation**

If the amount given under item 5.2.3 is subject to indexation, please indicate the rate:

Indexation applicable as from:

**Date:**

**Signature and/or stamp of the competent authority:**

*ANNEX II*

**EXTRACT OF AN ACT IN MATTERS RELATED TO MAINTENANCE**

(Article 38 of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>26</sup>)

**1. Member State**

AT  BE  CY  CZ  DE  EE  EL  ES  FI  FR  HU  [IE ] IT  LT  LU  LV   
MT  NL  PL  PT  SE  SI  SK  [UK ]

**2. Nature of the act**

2.1. Authentic instrument.....

Drawn up by (function and seat):

Date:

2.2. Agreement between parties.....

Concluded at (place):

Date:

**3. Creditor**

3.1. Name:

3.2. Street and number/PO box:

3.3. Place and postal code:

3.4. Country:

3.5. Tel.(\*):

3.6. E-mail (\*):

(\*) Optional item

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<sup>26</sup> OJ L...

**4. Debtor**

4.1. Name:

4.2. Street and number/PO box:

4.3. Place and postal code:

4.4. Country:

4.5. Tel. (\*):

4.6. E-mail (\*):

(\*) Optional item.

**5. Contents of the act**

**5.1. Amount of maintenance:**

**Currency:**  Euro  [ Pound Sterling ]  Cypriot Pound  Czech Koruna

Estonian Kroon  Hungarian Forint  Maltese Lira  Latvian Lats

Lithuanian Litas  Slovak Koruna  Swedish Crown  Slovenian Tolar

Polish Zloty  Other (please specify): .....

**5.2. Periodicity of payments**

5.2.1. Amount to be entirely paid in one sum .....

5.2.2. Amount to be partially paid in one sum .....

In this case, please indicate the amount to be paid in one sum:

5.2.3. Amount to be paid periodically (specify the amount if it is not identical with the amount of maintenance given under item 5.1.):

Once per week .....

Once a month .....

Other (to be specified) .....

**5.3. Indexation**

If the amount given under item 5.2.3 is subject to indexation, please indicate the rate:

Indexation applicable as from:

**Date:**

**Signature and/or stamp of the competent authority:**

*ANNEX III*

**ORDER FOR MONTHLY DIRECT PAYMENT**

(Article 34 of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>27</sup>)

**1. Member State**

AT  BE  CY  CZ  DE  EE  EL  ES  FI  FR  HU  [IE ] IT  LT  LU  LV   
MT  NL  PL  PT  SE  SI  SK  [UK ]

**2. Court**

2.1. Name:

2.2. Street and number/PO box:

2.3. Place and postal code:

**3. Applicant**

3.1. Name:

3.2. Street and number/PO box:

3.3. Place and postal code:

3.4. Country:

3.5. Tel. (\*):

3.6. E-mail (\*):

3.7. Banking details:

International Banking Account Number (IBAN):

Bank Identification Code (BIC):

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<sup>27</sup> OJ L...

**4. Debtor**

4.1. Name:

4.2. Street and number/PO box:

4.3. Place and postal code:

4.4. Country:

4.5. Tel. (\*):

4.6. E-mail (\*):

(\*) Optional item.

**5. Request****5.1. Date of the decision which established the amount of maintenance:****5.2. Amount to be paid monthly:****Currency**  Euro  [ Pound Sterling ]  Cypriot Pound  Czech Koruna Estonian Kroon  Hungarian Forint  Maltese Lira  Latvian Lats Lithuanian Litas  Slovak Koruna  Swedish Crown  Slovenian Tolar Polish Zloty  Other (please specify): .....**5.3. Indexation**

If the amount given under the item 5.2 is subject to indexation, please indicate the rate:

Indexation applicable as from:

**5.4. Addressee**

5.4.1. Debtor's bank:

International Banking Account Number (IBAN):

Bank Identification Code (BIC):

5.4.2. Debtor's employer:



**6. Order**

**The request was rejected.**

**Order is given to:**

*(Addressee under the item 5.4)*

**to deduct every month from wage from the bank account of:**

*(Debtor as mentioned in item 4)*

**the amount of:**

*(Amount as determined in item 5.2)*

**to the benefit of:**

*(Applicant as mentioned in item 3).*

**If you are unable to proceed with the direct payments, you shall inform the court mentioned in item 2 within 30 days at the latest from the acknowledgment of receipt of this document or from the last direct payment carried out (Article 33 (5) of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations).**

**Date:**

**Signature and/or stamp of the competent authority:**

*ANNEX III a*

**INFORMATION NOTE OF THE DEBTOR AGAINST WHICH  
AN ORDER FOR MONTHLY DIRECT PAYMENT WAS ISSUED**

(Article 34 (4)(b) of the Council Regulation ... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>28</sup>

**1. Possibility of Review**

An order for monthly direct payment was issued against you. This order and the decision of the court of origin have been served to you together with this information note.

You are entitled to ask for the review of the decision of the court of origin if you did not enter an appearance before that court and:

- a) if you have not received the document instituting the proceedings or an equivalent document, or
- b) if you were prevented from contesting the maintenance claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on your part.

This right to ask for the review may be exercised within..... days from the day of receipt of this information note.

**2. Enforcement**

If you are not entitled to ask for the review of the decision of the court of origin under item 1 or do not want to do so, and you oppose the enforcement of this decision, you may decide to apply under Article 33 of the Council Regulation ... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations to the competent authorities of the State in which the enforcement takes place.

**Date:**

**Signature and/or stamp:**

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<sup>28</sup> OJ L...

*ANNEX IV*

**ORDER FOR TEMPORARY FREEZING OF A BANK ACCOUNT**

(Article 35 (1) of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>29</sup>)

**1. Member State**

AT  BE  CY  CZ  DE  EE  EL  ES  FI  FR  HU  [IE ] IT  LT  LU  LV   
MT  NL  PL  PT  SE  SI  SK  [UK ]

**2. Court**

2.1. Name:

2.2. Street and number/PO box:

2.3. Place and postal code:

**3. Applicant**

3.1. Name:

3.2. Street and number/PO box:

3.3. Place and postal code:

3.4. Country:

3.5. Tel. (\*):

3.6. E-mail (\*):

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<sup>29</sup> OJ L...

**4. Debtor**

4.1. Name:

4.2. Street and number/PO box:

4.3. Place and postal code:

4.4. Country:

4.5. Tel. (\*):

4.6. E-mail (\*):

(\*) Optional item.

**5. Request**

**5.1. Justification of the request (explain the serious risks of non execution by the debtor):**

**5.2. Amount to be frozen:**

**Currency**  Euro  [ Pound Sterling ]  Cypriot Pound  Czech Koruna

Estonian Kroon  Hungarian Forint  Maltese Lira  Latvian Lats

Lithuanian Litas  Slovak Koruna  Swedish Crown  Slovenian Tolar

Polish Zloty  Other (please specify): .....

**5.3 Addressee (debtor's bank)**

5.3.1. Bank:

5.3.2. International Banking Account Number (IBAN) :

**6. Order**

**The request was rejected.**

**Order is given to:**

*(Addressee given under item 5.3)*

**to prohibit on the bank account of:**

*(Debtor as mentioned in item 4)*

**any movement which would render impossible the payment by its holder of the amount of:**

*(Amount as determined in item 5.2)*

**Date:**

**Signature and/or stamp:**

*ANNEX V*

**APPLICATION FOR THE TRANSMISSION OF INFORMATION**

(Article 45 of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>30</sup>)

**1. Member State**

AT  BE  CY  CZ  DE  EE  EL  ES  FI  FR  HU  [IE ] IT  LT  LU  LV   
MT  NL  PL  PT  SE  SI  SK  [UK ]

**2. Applicant**

**2.1. Requesting Central Authority**

2.1.1. Name:

2.1.2. Street and number/PO box:

2.1.3. Place and postal code:

2.1.4. Tel.:

2.1.5. E-mail:

**2.2. Acting at the request of the following court:**

2.2.1. Name:

2.2.2. Street and number/PO box:

2.2.3. Place and postal code:

2.2.4. Tel.:

2.2.5. E-mail address:

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<sup>30</sup> OJ L...

**3. Addressee - Requested Central Authority**

3.1. Name:

3.2. Street and number/PO box:

3.3. Place and postal code:

3.4. Country:

3.5. Tel.:

3.6. E-mail:

**4. Requested information**

**4.1. Debtor concerned**

4.1.1. Name:

4.1.2. Last known address:

4.1.3. Other useful information (description, previous employer, address of family members, debtor's vehicle, debtor's real estate)

Photography annexed.....

**4.2. Requested data**

4.2.1. Debtor's address.....

4.2.2. Debtor's employer .....

4.2.3. Details of a debtor's bank account.....

4.2.4. Evaluation of the debtor's assets .....

4.2.5. Amount of debtor's incomes .....

**5. Documents required for the information mentioned in items 4.2.2 to 4.2.5 (copy enclosed)**

5.1. Decision .....

5.2. Authentic instrument.....

5.3. Agreement between parties .....

**IMPORTANT** (Article 47 of the Council Regulation... on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations):

**The debtor must not be informed of the transmission of data before the requesting Central Authority reports to the requested Central Authority**

**The debtor can be informed of the transmission of data .....**

**Date:**

**Signature and/or stamp of the competent authority:**