

Latest Issues of the Matters Relating to Maintenance Obligations in European Private International Law

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Although Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation) already provided for direct rules of jurisdiction on maintenance and for a simple system of recognition and enforcement, Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (the EC Maintenance Regulation) was adopted in order to simplify and accelerate the settlement of maintenance claims between creditors and debtors and to facilitate cross-border recovery of maintenance.

The EC Maintenance Regulation makes significant use of the ideas and the wording adopted by the Convention on the international recovery of child support and other forms of family maintenance (the Hague Convention) concluded 23 November 2007, for administrative cooperation, legal aid, public bodies, and restrictions on the jurisdiction where a debtor can use to modify or make a new decision. Also, the EC Maintenance Regulation provides on the direct rules of jurisdiction and abolition of *exequatur* not covered by the Hague negotiations and utilizes the Protocol on the law applicable to maintenance obligations (the Hague Protocol) concluded 23 November 2007, by indicating that the European Community will be a party to it and that those Member States bound by the Protocol will benefit from the abolition of *exequatur*.

The EC Maintenance Regulation shall cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors. This shows that the EC Maintenance Regulation has a much wider scope than the Hague Convention. A Central Authority should bear its own costs, except in specifically determined cases, and should provide assistance for all applicants residing in its Member State to facilitate cross-border recovery of maintenance claims. On account of the costs of proceedings it is appropriate to provide for a very favorable legal aid scheme, that is, full coverage of the costs relating to proceedings concerning maintenance obligations in respect of children under the age of 21 initiated via the Central Authorities.

The scope of the direct rules of jurisdiction was extended in the EC Maintenance obligations compared to Brussels I Regulation. Jurisdiction shall lie in with the court for the place where either the defendant or the creditor is habitually resident, or the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person or parental responsibility 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. In order to increase legal certainty, predictability and the autonomy of the parties, the parties can choose the competent by agreement on the basis of specific connecting factors. To protect the weaker party, such a choice of court shall not be allowed in the case of maintenance obligations toward a child under the age of 18. While jurisdiction based on the appearance of the defendant is allowed, the right of a defendant who did not enter an appearance in the court of origin of a Member State bound by the Hague Protocol to apply for a review of the decision given against him shall be guaranteed at the stage of enforcement.

The circumstance that the defendant is habitually resident in a third State shall no longer entail the non-application of Community rules on jurisdiction, and there shall no longer be any referral to national law. The EC Maintenance Regulation shall therefore determine the cases in which a court in a Member State may exercise subsidiary jurisdiction. In order to remedy, in particular, situations of denial of justice this Regulation provides a *forum necessitatis* allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State. However jurisdiction based on *the forum necessitatis* shall be exercised only if the dispute has a sufficient connection with the Member State of the court seized. In order to ensure swift and efficient recovery of a maintenance obligation and to prevent delaying actions, decisions in matters relating to maintenance obligations given in a Member State shall in principle be provisionally enforceable. On the other hand, there is no international *lis pendens* or *forum non conveniens* rule in the EC Maintenance Regulation.

An additional rule of jurisdiction provides that, except under specific conditions, proceedings to modify an existing maintenance decision or to have a new decision given can be brought by the debtor only in the State in which the creditor was habitually resident at the time the decision was given and in which he remains habitually resident.

The EC Maintenance Regulation, adopting two tracks for dealing with recognition, enforceability and enforcement, abolishes *exequatur* on the basis of harmonised rules on ap-

plicable law and the protection of the rights of the defence is ensured through the special review procedure which applies once the judgment has been issued. A maintenance creditor shall obtain easily, in a Member State bound by the Hague Protocol, a decision which will be recognized and regarded as enforceable in all the other Member States without any procedure being necessary and without any form of control on the substance in the Member State of enforcement. A decision on maintenance obligations given in a Member State not bound by the Hague Protocol shall be applied to a procedure for recognition and declaration of enforceability in EC Maintenance Regulation, which is modeled on the procedure and the grounds for refusing recognition set out in Brussels I Regulation. The substantive difference between two tracks shows that a decision under the non-Protocol track can still be declared not to be enforceable because it is manifestly contrary to public policy.