

Directorate-General Internal Policies
Policy Department C
Citizens Rights and Constitutional Affairs

MAINTENANCE OBLIGATIONS AND WHAT TRAINING FOR JUDGES TO DEAL WITH CROSS BORDER ISSUES (ESPECIALLY FOCUSED ON THE RELATIONSHIP BETWEEN THE COMMUNITY DRAFT INSTRUMENTS AND THE WORKS DONE IN THE FRAMEWORK OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW)

BRIEFING PAPER

Abstract: The Proposal for a Regulation on maintenance obligations (PRMO) and the Preliminary Draft Hague Convention and Protocol on family maintenance (PDC and PDP) have a different scope, both substantive and personal. Limited interference between the PRMO and the PDC may occur in respect of jurisdiction rules since the latter does not provide rules of direct jurisdiction. The indirect rules of jurisdiction of the PDC will have an impact at the phase of recognition and enforcement of a decision given in a Member State. As concerns the designation of the applicable law, both instruments allow a limited party autonomy and aim at the protection of the maintenance creditor, that usually is the weaker party. Nevertheless, due account is taken of the interest of the debtor. Should the Community and its Member States decide to become parties to the PDP, difficulties may arise in this field in case of inconsistencies between the two sets of rules since both will apply *erga omnes*. In respect to recognition and the enforcement of judgments some interference between the two systems is possible in particular cases notwithstanding Article 49. It appears that the EC and the Member States will share the external competence to enter into the Hague instruments.

P/C/LIBE/FWC/2007-xx

This note was requested by: The European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

This paper is published in the following languages: EN, FR.

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Manuscript completed in September 2007

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Brussels, European Parliament

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I. STATE OF PLAY

A common harmonised system of conflicts of laws rules on maintenance obligations covering jurisdiction, recognition and enforcement of decisions as well as the applicable law is currently lacking within the European Union. Actually, Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “Brussels I Regulation”) provides for an *ad hoc* rule on jurisdiction on maintenance claims as well as for the automatic recognition and a simplified enforcement procedure for maintenance decisions, substantially based upon the 1968 Brussels Convention. A very swift track for enforcement is provided by Regulation (EC) No 805/2004 creating a European Enforcement Order (EEO) for uncontested claims, that abolishes the *exequatur* completely. However, no choice-of-law rule exists yet since maintenance obligations are explicitly excluded from the 1980 Rome Convention on the law applicable to contractual obligations.

Following a request of the Council that dates back to 1999, the Commission has presented a proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (hereinafter, “PRMO”) that is presently undergoing the legislative process before the Council and the European Parliament¹.

The Community process runs parallel to the works of the Hague Conference on Private International Law, that a few years ago undertook the task of reviewing the 1956, 1958 and 1973 Conventions on maintenance obligations² as well as of the New York Convention of 20 June 1956 on the recovery abroad of maintenance, to which many EU Member States are parties³. After a meeting of the Special Commission held at the end of June, a Preliminary Draft Convention on the international recovery of child support and other forms of family maintenance (PDC) was drafted together with a Preliminary Draft Protocol on the law applicable to maintenance obligations (PDP)⁴. Both drafts will be submitted to the Twenty-First Session of the Hague Conference that will convene in November.

¹ COM(2005)649, which is completed by a Communication calling on the Council to provide for measures relating to maintenance obligations taken under Article 65 of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, COM(2005)648. See also the Commentary on the articles of the proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, COM(2006)206, as well as the Green Paper on maintenance obligations, COM(2004)254.

² Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children; Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children; Hague Convention of 2 October 1973 on the law applicable to maintenance obligations; Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations. The 1958 and the 1973 (enforcement) Hague Conventions qualify as “conventions on particular matters” under Article 71 of the Brussels I Regulation and they continue to apply parallel to the Regulation.

³ It is worth recalling that in 1990 the then twelve EC Member States adopted the text of a convention on a simplified procedure for the recovery of maintenance that never entered into force.

⁴ Respectively, Prel. Doc. No 29, and Prel. Doc. No 30. See also the Draft Explanatory Report (provisional version) of Borrás and Degeling on the Preliminary Draft Convention (Prel. Doc. No 32) and the Explanatory Report (provisional version) of Bonomi on the Preliminary Draft Protocol (Prel Doc. No 33).

As mentioned above, the EU Member States are not bound by any Community instrument or *inter se* convention providing for conflict-of-law rules in this field. Only some of the Member States are parties to the 1956 and 1973 (applicable law) Hague Conventions.

II. THE RELATIONSHIP BETWEEN THE PRMO AND THE PDC

1. The notion of “maintenance obligations”

(a) The PRMO

The PRMO “shall apply to maintenance obligation arising from family relationship or relationships deemed by the law applicable to such relationships as having comparable effects” (Article 1). This provision does not impose a common definition of the notion of maintenance obligations since it might not be acceptable for all Member States. However, a general autonomous notion is clearly present in EC law as interpreted by the Court of Justice, that adopted a broad view, ruling that they cover obligations *ex lege* as well as obligations established by a court, irrespective of the form of the payment (lump sum or periodical payment) and of the method of payment. The aim of the obligation, i.e. to ensure a predetermined level of income, based on the respective needs and resources of the parties, plays a major role⁵. Consequently, with reference to maintenance awarded after divorce, “[i]f this shows that a provision awarded is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be concerned with maintenance”⁶.

The PRMO does not provide for the definition of “family relationship” or “relationship having comparable effects” either, that are to be determined under the law applicable to them according to choice-of-law rules. In case maintenance is requested upon the dissolution of a marriage, the future regulation amending Regulation (EC) No 2201/2003 on matrimonial matters (DARMM) will apply, but according to the Council the existence of the marriage will be assessed under the *lex fori*⁷.

As regards personal scope, the PRMO will apply irrespective of the nationality or the residence of the parties in a Member State. This approach is completely different from that followed in the Brussels I Regulation, that applies only if the defendant is domiciled in a Member State and leaves room for the application of national jurisdiction rules towards defendants domiciled in third States.

The future Community instrument will cover jurisdiction, applicable law, recognition and enforcement of decisions and administrative cooperation.

(b) The PDC and PDP

The PDC has a much more limited scope of application, which differs according to the quality of the creditor and to the activity at stake. It is divided into chapters, on administrative cooperation (chapter II), applications through central authorities (chapter III), recognition and enforcement (chapter V), enforcement by the requested State (chapter VI) and it does not provide for any rule on direct jurisdiction. It will apply to maintenance obligations arising from a parent-child relationship

⁵ E.C.J., 6 March 1980, case 120/79, *de Cavel*, E.C.R., 1980, 731. See Bariatti, *Principles of interpretation and characterisation in EC private international law and family matters*, in Meeusen, Pertegás, Straetmans, Swennen (eds.), *International Family Law in the European Union*, Antwerpen-Oxford, 2007, 385.

⁶ E.C.J., 27 February 1997, case C-220/95, *van den Boogaard*, E.C.R., 1997, 1147, § 22.

⁷ Which would probably imply the application of the choice-of-law rules of the forum. See the Press Release 8364/07 of the JHA Council meeting of 19-20 April 2007.

towards a child under the age of 21 and to spousal support, but the latter will not be subject to chapters II and III.

The Contracting States will have the right to extend the application of the PDC in general to any maintenance obligations arising from a family relationship, parentage, marriage or affinity through a declaration that will have reciprocal effect, in the sense that it shall give rise to obligations between Contracting States “only in so far as their declarations cover the same maintenance obligations and parts of the Convention” (Article 2(2)).

The PDC will also apply to claims of a public body in respect of any of the maintenance obligations indicated above.

The scope of the PDP on the law applicable to maintenance obligations is somewhat broader, since it concerns maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child who is not legitimate.

No definition has been provided of “maintenance” and “maintenance obligations” so far. While the latter notion may still find a place either in the text or in the Explanatory Report, the former was not considered necessary. Nor are the notions of “family relationship”, “parentage”, “marriage” and “affinity” defined. Apparently, maintenance obligations arising from relationships distinct from the traditional notion of marriage (cohabitation, registered partnership, same-sex marriages) are excluded even if they are currently accepted in the legal systems of some Member States, with the only possible exception that they are the object of specific reciprocal declarations under Article 2(2).

(c) Assessment and effects on the distribution of the external competence between the EC and its Member States

The PRMO, on one side, and the PDC and PDP, on the other side, have a different scope, both substantive and personal. Apparently, the scope of the latter is narrower since some of its parts are not mandatory for the Contracting Parties and not all maintenance obligations are covered. Moreover, the possibility of an optional and differentiated reciprocal/bilateral application in respect of certain maintenance obligations creates different circles and sets of international obligations among the Contracting States with the aim of attracting ratifications through flexibility. However, the Preliminary Hague Drafts do not appear to fall entirely within the scope of the PRMO, which would otherwise establish the exclusive external competence of the EC according to the extensive approach taken by the ECJ in its Opinion given on the Lugano Convention⁸. Therefore, it appears that the EC and the Member States will share the external competence in this case.

This conclusion applies even if the future Hague Convention is signed and ratified by the EC and the Member States before the adoption of the PRMO. In fact, in the Opinion on the Lugano Convention the ECJ has stated that the external Community competence arises also from “future developments, insofar as it is *foreseeable* at the time of that analysis” that a Community instrument will be adopted, as it might be the case after the presentation of the proposal for PRMO.

2. Jurisdiction

(a) The PRMO

As mentioned above, EC Member States are already bound by a common jurisdiction rule in the field of maintenance under Article 5(2) of Regulation No 44/2001, that confers jurisdiction to the court of the creditor’s place of domicile or habitual residence; if the maintenance claim is ancillary to proceedings concerning the status of a person, the court that has jurisdiction under

⁸ Opinion 1/03, paragraph 126.

national rules over the latter may decide upon the former as well, unless that jurisdiction is based solely on the nationality of one of the parties. The general forum of the domicile of the defendant applies as well (Article 2).

The general jurisdiction rule of Article 3 PRMO excludes any relevance of the domicile of the parties, taking into consideration only the habitual residence, but substantially confirms the jurisdiction criteria of the Brussels I Regulation. It grants the plaintiff an additional general forum before the court designated under Regulation No 2201/2003 in case the maintenance claim is ancillary to a proceedings concerning parental responsibility.

The PRMO also gives the parties the possibility to designate the competent court by common agreement for all maintenance claims with the exception of maintenance obligation towards children below the age of 18 (Article 4). Generally speaking, the same approach of Article 23 of the Brussels I Regulation is taken, i.e. such jurisdiction shall be exclusive unless the parties agree otherwise. As to formal requirements, the agreement shall be in writing or by any electronic means that provides a durable record of the agreement (Article 4(2)). No specific provision is foreseen concerning the time of conclusion of the agreement and no special connection between the parties and the court is required.

Jurisdiction may be based on appearance of the defendant as well, except where such appearance is aimed at contesting jurisdiction or where the parties have entered into an agreement conferring exclusive jurisdiction to another court (Article 4).

As mentioned above, the PRMO provides additional grounds of jurisdiction in order to reach the result to cover all the cases in which there is a sufficient link between the parties and a Member State. Consequently, no room is left for national jurisdiction provisions that under Regulation No 44/2001 apply where the defendant is domiciled outside the EU. According to Article 6 PRMO, where no Member State has jurisdiction under Articles 3-5, residual jurisdiction is granted generally to the Member State of the common nationality of the creditor and the debtor and, in the case of maintenance obligations between spouses or ex-spouses, to the Member State of their last common habitual residence, provided that such habitual residence had still existed one year before the proceedings commenced.

The PRMO provides also for certain rules on *lis pendens*, related actions and provisional and protective measures, that substantially mirror the corresponding provisions of the Brussels I and the Brussels II-a Regulations.

(b) The PDC

The PDC does not include any direct rule of jurisdiction since no consensus was reached within the Special Commission. It only provides indirect rules as bases for recognition and enforcement of a decision in another Contracting State.

However, a provision affecting the establishment of jurisdiction is foreseen at Article 15 in case the debtor wants to start proceedings in order to modify a decision on maintenance already given in a Contracting State or to make a new decision: if such previous decision was given in the Contracting State where the creditor was and still is habitually resident, the debtor may not bring the new proceedings in any other Contracting State. Thus, it is actually a “negative” jurisdiction rule that prevents a Contracting State from exercising jurisdiction in this case. This provision does not apply (a) if the parties agree in writing upon the jurisdiction of a different court (except for maintenance obligations towards children), (b) if the defendant appears in court without contesting the jurisdiction, (c) if the court that gave the previous decision cannot, or refuses to, exercise jurisdiction, or (d) where the previous decision cannot be recognised or enforced in the Contracting State where the debtor brought the proceedings.

(c) Assessment

Interference between the PRMO and the PDC may result from the rule limiting proceedings of Article 15 of the latter since a court of a Member State could not found its jurisdiction to modify a previous decision on maintenance on a jurisdiction criterion of the former. Therefore, a similar rule in the PRMO would be most welcome as it has been suggested at the Civil Law Committee of the Council.

The indirect rules of jurisdiction of the PDC will have an impact at the phase of recognition and enforcement of a decision given in a Member State (see below).

3. Designation of the applicable law

(a) The PRMO

The PRMO grants the parties (i.e. the creditor and the debtor) a limited autonomy in deciding the law applicable to the dispute through an agreement. If the agreement is reached when the claim is brought to court, the parties may designate the *lex fori* as the law applicable to the specific dispute. The agreement may be in writing or in any unequivocal manner (Article 14(a)). This provision applies to all maintenance obligations without any exception.

The parties may also agree in writing that future disputes on maintenance be governed (i) by the law of the State of common nationality, or (ii) by the law of the State of the common residence, of the residence of the creditor or of the residence of the debtor. The connecting factor has to exist at the time of designation. Moreover, the parties are allowed to choose in writing the law applicable to their property relations at the time of designation in the case of a maintenance dispute between two persons who are or were married or in a relation which has similar effects under the law applicable to it. (Article 14(b)). These provisions do not apply as regards to maintenance obligation towards children and vulnerable adults.

Article 13 PRMO provides a general rule, according to which the law of the habitual residence of the creditor applies. The *lex fori* may come into consideration only if the creditor is unable to obtain maintenance from the debtor under the law of the State where is habitual resident, or if the creditor requests that it be applied and the debtor is habitually resident in the State of the forum. If the law applicable according to these connecting factors denies awarding maintenance to the creditor and the maintenance obligation has a close connection with another country, the law of this other State shall apply. A close connection may in particular exist with the country of the common nationality of the creditor and the debtor.

These rules follow the traditional principles of *favor creditoris* that is well known in all Member States and in the previous Hague Conventions. However, the interests of the debtor are taken into consideration in Article 15, except for maintenance obligation in respect of children. In case of a maintenance claim 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. In all other cases (mainly maintenance claims arising from relations between collaterals or in-laws), the debtor may oppose a claim by the creditor invoking that there is no such obligation under the law of their common nationality or, lacking such common nationality, the law of the debtor's habitual residence. It may be noticed that the title of this provisions ("*Non-application of the designated law at the request of the debtor*") is ambiguous since it leaves the outcome unclear: on one side, the opposition of the debtor should lead to the rejection of the claim, while on the other side the title suggests that the law designated under Article 3 and 4 does not apply but a subordinated law might come into play, which should not be the case.

Article 12 PRMO clarifies that the following provisions determine only the law applicable to maintenance obligations and do not prejudice the law applicable to any of the relationships from

which the maintenance obligations arises. Thus, the existence of the relationship will be governed by the law designated by the choice-of-law rules of the *lex fori*, lacking any Community provision on these matters. Specific provisions will be added to the Brussels II-a Regulation as the dissolution of the marriage and separation in the near future.

Further, a specific rule covers cases where a public body seeks reimbursement of a benefit provided to a creditor in lieu of maintenance and it provides for the application of the law to which the public body is subject (Article 16).

The rules of the PRMO on the applicable law are of universal application (Article 18), i.e. they designate both the law of Member States and the law of third States. The application of a foreign law may be discarded on public policy grounds only if the applicable law is the law of a non-Member State (Article 20). When the applicable law is the law of a Member State, as the Commission explains, the provision of Article 15 appears sufficient in order to protect debtors against the claims of certain maintenance creditors and thus neutralise the undesirable effects of the laws of certain Member States when they are applied in other Member States. Furthermore, a general rule having substantive nature is provided in Article 17(2) that imposes to take into account the needs of the creditor and the resources of the debtor in determining the amount of the maintenance, whatever the content of the applicable law.

(b) The PDP

Within the Hague Conference, a specific working group of the Special Commission has drafted a separate, optional instrument on the law applicable to maintenance obligations since it proved impossible to reach an agreement on a set of general rules that would be acceptable to a large number of States.

According to Article 3 PDP, the general rules designates the law of the country of creditor's habitual residence. Special rules are then provided for maintenance obligations in respect of children and of spouses and ex-spouses. As concerns the former, a subsidiary connection to the law of the forum and to the law of the common nationality of the parties (if any) is granted in the event that the creditor is unable to obtain maintenance on the basis of the law of the State of his habitual residence or on the basis of the law of the forum. Furthermore, if the creditor has brought the claim in the State of the debtor's habitual residence, the law of the forum applies, setting aside the law of the creditor's residence. Regarding the latter, three options are on the table for discussion, that provide a subsidiary connection to the law of the last habitual residence, subject to certain circumstances.

Like the PRMO, the PDP allows the parties to choose the law applicable to their dispute under certain conditions. If the choice is made at the time of the dispute, whatever the maintenance obligation at stake, the parties may designate the *lex fori*. If the claim concerns maintenance obligations other than in respect of children (and possibly of vulnerable adults), the parties may choose the applicable law even before the claim is brought, provided that it is (a) the law of the nationality of either party at the time of designation, or (b) the law of the State of the habitual residence of either party at the time of designation, or (c) the law applicable to either the property regime between the parties, or (d) to their divorce or legal separation. Any such designation should be signed by both parties, in writing or through any electronic means that allows access for subsequent reference.

Article 9 PDP mirrors Article 16 PRMO stating that where a public body seeks reimbursement of a benefit provided to a creditor in lieu of maintenance, the law to which the public body is subject applies.

Finally, Article 6 PDP provides for a rule similar to Article 15 PRMO, except that in order to successfully object the claim the maintenance obligation should not exist under both the law of the habitual residence of the debtor and the law of the common nationality of the parties, if there is one.

Also the provisions of the PDP have universal nature and apply even if the law designated is the law of a non Contracting State. The application of a foreign law may be discarded only if its effects would be manifestly contrary to the public policy of the forum (Article 12(1)). A general rule mirroring Article 17(2) DRMP is contained in Article 12(2) PDP, that imposes to take into account the needs of the creditor and the resources of the debtor in determining the amount of the maintenance, whatever the content of the applicable law.

(c) Assessment

The possibility given to the parties in both systems to agree on the applicable law is most welcome and it is in line with legislative developments in many States and in other fields of law. The same may be said in respect to the broader application of the *lex fori*, that enables maintenance creditors to obtain swifter and faster decisions.⁹

Should the Community and its Member States decide to exercise the opting-in and become parties to the future optional Protocol, difficulties may arise in this field in case of inconsistencies between the two sets of rules since both will apply *erga omnes*. In many cases the application of the PRMO would lead to the infringement of the PDP and vice versa. The provision of Article 49 PRMO - according to which the Community instrument takes precedence, in relations between the Member States, over international conventions and treaties on the same subject matter – does not help much in this field since it entails the application of the Community instrument in all the cases that would fall both under the PRMO and the PDC.

Among such difficulties it is worth mentioning an issue relating to *renvoi*, that in principle is excluded by both instruments (Article 19(1) PRMO and Article 11 PDP). However, Article 19(2) PRMO provides that if the law applicable under the previous provisions is the law of a non-Member State which designates the of another country, the law of the forum (that is the law of a Member State) applies. It did not seem appropriate to the Commission that the court of a Member State apply the law of a non-Member State which would not apply in an identical situation. Consequently, the application of Article 19(2) would go counter the expectations of the parties under Article 11 PDP.

The solution proposed in Article 19(2), that may appear reasonable in other fields of law, should be better analysed since it applies automatically without considering the result that would be reached should the law of that other country be applied, that could be more favourable to the creditor. Moreover, the application of the law of the other State is excluded *a priori* even if under the *lex fori* the creditor is unable to obtain maintenance and if the other State is a Member State. Other problems may arise in connection with the Rome III proposal, which falls outside the scope of this paper.

4. Recognition and the enforcement of decisions

(a) The PRMO

In this respect the PRMO abolishes the *exequatur* as a prerequisite to the enforcement of a foreign order (Article 25) and replaces both the Brussels I Regulation and the EEO Regulation. Articles 34 and 35 go even further and provide that, respectively, attachments-of-earnings orders and freezing orders against bank accounts made in one Member State are directly enforceable in another Member State.

Article 33 PRMO provides for an exhaustive list of the grounds on which the enforcement of a decision can be refused or suspended. The majority of them is very typical of maintenance

⁹ Cf. Pertegás, *Beyond nationality and habitual residence: other connecting factors in European private international law in family matters*, in Meeusen, Pertegás, Straetmans, Swennen (eds.), *International Family Law*, cited above, at 339.

obligations and mainly relate to new circumstances that it was not possible to take into consideration when the decision was given, or to the fact that the debtor has already satisfied the debt, or to the operation of prescription or limitation rules. Recognition and enforcement may be denied also where the decision is irreconcilable with a decision given or recognisable in the requested State.

Further, the partial or total refusal or suspension of the enforcement may be granted if the debtor has applied for the review of the decision in the court of origin if he/she could not contest the maintenance claim at the first stage because he/she was not aware of the proceedings or because of force majeure.

The requested court may not scrutinise the service of the document instituting the proceedings to the respondent in case of judgment given by default since common procedural rules are provided in Article 22, that prevail over Regulation No 1348/2000. Nor is it possible to refuse recognition and the enforcement on public policy grounds.

(b) The PDC

Quite obviously, the Community solution may not be exported to a wider group of States, such as the Hague Conference. The PDC refers to the domestic law of the requested State and allows that an application be presented through the Central Authorities. The requested Central Authority may proceed to recognition and the enforcement if it is the competent authority under national law (Article 20).

Article 17 PDC provides for the indirect rules of jurisdiction, some of which may be the object of a reservation. The general criteria are (a) the habitual residence of the respondent, (b) the voluntary submission on the merits to the court of origin, and (d) the habitual residence of the child, provided that the respondent has lived with the child in that State or has resided there and provided support to the child there. The optional criteria refer (c) generally to the habitual residence of the creditor, (e) to the prorogation of the jurisdiction of the court of origin (except for maintenance in respect of children), and (f) to the case where the decision was made by an authority in the course of a proceedings on personal status or personal responsibility, unless its jurisdiction was based solely on the nationality of one of the parties.

The grounds for refusal of recognition and the enforcement of Article 19 are quite “traditional” (i.e., public policy, procedural fraud, pending of the same proceedings in the requested State, violation of the rights of the defence, incompatibility with a decision rendered between the same parties and having the same purpose in the requested State or in another State, if it is recognisable in the former). Furthermore, recognition and the enforcement may be refused if the court of origin has decided in violation of Article 15 (see above).

(c) Assessment

Since the geographical scope of the DRMP is not limited to intra-EU cases, the provision of Article 49 is appropriate in this field since it guarantees that the swifter Community procedures apply to the recognition and the enforcement of decision made in the Member States. Actually, the PRMO would constitute an *inter se* instrument equal to “the law of the State addressed” under Article 20(1) PDC. The PDC would then apply when the applicant seeks the recognition or the enforcement of a decision given in a Contracting State of the PDC that is not a EU Member State.

However, some interference between the two systems is possible in particular cases. For example, on one hand, a decision of a non-Member State would be recognised in a Member State if the court of origin based its jurisdiction on Article 17(d) PDC (cohabitation of the child and the respondent or provision of support in the State of residence of the child), that has no correspondence in the PRMO. Moreover, under Article 33(e) such decision would hinder the

recognition and the enforcement of a decision made in a Member State if the two decisions are irreconcilable.

On the other hand, a decision of a Member State would not be recognised in a Contracting Party of the PDC that is not a EU Member State if the court of origin based its jurisdiction on Article 6 PRMO. The consequences of the reservations permitted under Article 17(2) need further consideration, also in the light of the possible interplay with the future amendments to Regulation No 2201/2003 (Rome III proposal).

5. Administrative cooperation

Both the PRMO and the PDC provide for rules on administrative cooperation, that require the designation of one or more central authorities to assist with the application of the respective instruments and discharge the duties imposed on them. The relevant provisions address the functions and tasks of the central authorities, that differ mainly for the higher degree of integration and cooperation within the PRMO. The Community system will use the European Judicial Network in civil and commercial matters.

It is possible that the central authorities of the Member States will have to follow different procedures or perform different tasks for requests concerning other Member States and those concerning non-Member States. However, this does not seem to lead to inconsistencies that might endanger the application of the PRMO.

III. Recommendations for the training of judges

As a preliminary consideration it should be pointed out that in some Member States the relevant activities for the assessment of the existence and the recovery of maintenance obligations is performed by administrative authorities rather than by courts. Therefore, in this paragraph we will refer to both judicial and administrative authorities.

The main obstacles and difficulties that prevent or delay the correct and swift application of international and Community law in this field concern access to information on the legal instrument to be applied. The authorities do not always know the exact content of the international conventions and the EC rules in force, and prior to this may have difficulties in determining which legal instrument applies to the case at stake, given the number of conventions that are presently in force. Moreover, in this field, where a greater cooperation between authorities is of crucial importance, it is necessary to gather information on the case law of the other States and to share best practices.

A second difficulty comes from the fact that in many States the administrative authorities and even the judges are reluctant to apply a foreign law, also due to the fact that it may be practically arduous to know its content to a sufficient degree.

Another obstacle consists of the difference in the substantive national legislations as to the relationships that give right to maintenance, the amounts, forms of payments, etc. It may prove impossible to enforcement a payment order in another State if the relationship that gives rise to the maintenance obligation is not recognised in the requested State.

Apart from improvements to the internal organisation of the courts and the administrative authorities, these difficulties may be reduced and solved through a number of measures aimed at providing specific training on the application of international and EC rules in this area of law, such as:

- the establishment of specific permanent documentation centres providing information on the relevant legal rules, within the European Judicial Network;

- the organisation of training seminars aimed at promoting a better knowledge of international instruments, to be customised according to the professional qualifications of the participants;
- the organisation of conferences and workshops, which allow a practical approach to problems often encountered by national judicial and administrative authorities;
- the adequate diffusion of the decisions of the courts of other Member States and of the Contracting States of the future Hague Conventions that are non Members of the EU, as well as of the ECJ and the CFI.