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Committee on Legal Affairs

2005/0259(CNS)

5.10.2007

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
(COM(2005)0649 – C6-0079/2006 – 2005/0259(CNS))

Draftswoman (*): Diana Wallis

(*) Procedure with associated committees – Rule 47 of the Rules of Procedure

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SHORT JUSTIFICATION

The draftswoman's chief concern in preparing these amendments to the proposal for a regulation has been to ensure that decisions relating to maintenance obligations, in the broadest sense of the expression, in cross-border cases are recognised and enforced across the Union in the quickest and most effective way at the lowest possible cost.

The solutions she proposes are pragmatic and intended to be acceptable to the broadest range of Member States. They may offend purists, but in her view the interests of litigants in having a speedy resolution of a problem which causes real hardship, also and in particular to children, must outweigh all other considerations, having due regard to the needs of maintenance debtors and the rights of the defence.

This opinion is also intended to prompt the Council into action and to give heart to the Commission. The problem which the Regulation sets out to tackle is a very real one for citizens in the Union. With the achievement of the internal market, cross-border movements of persons have increased considerably – and with them the problems which are liable to beset the partners of migrants particularly in the new Member States, whose citizens are taking the fullest possible advantage of free movement. Moreover, account must be taken of the fact that divorce and separation is on the increase all over the Union.

The Union should take responsibility for ensuring that its citizens have an effective right to have maintenance obligations enforced when the freedom of movement enshrined in the Treaty is exercised and Member States have every interest in ensuring that partners and children do not have to fall back on social security benefits.

While suggesting improvements to the provisions of the proposed regulation, the rapporteur takes the opportunity of calling on the Member States to consider novel forms of enforcement of maintenance decisions which have been found to be highly effective in non-EU jurisdictions.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
Amendment 1 Citation 1	
Having regard to the Treaty establishing the	Having regard to the Treaty establishing the

[1] OJ C 242, 7.10.2006, p. 0020-0026.

European Community, and in particular Article 61 *c)* ***and Article 67 (2)*** thereof,	European Community, and in particular Article 61*(c)* thereof,

Justification

When consulted by the Committee on Civil Liberties, Justice and Home Affairs on the legal basis for the proposed regulation, the Legal Affairs Committee considered that the proposal ought to be dealt with under the codecision procedure.

Amendment 2
Citation 3

Having regard to the opinion of the European Parliament,	***deleted***

Justification

See the justification to the amendment to Citation 1.

Amendment 3
Citation 4 a (new)

	Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Justification

See the justification to the amendment to Citation 1.

Amendment 4
Recital 9

(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.	(9) The scope of the Regulation should cover all maintenance obligations arising from ***a family relationship, parentage, marriage or affinity*** or from relations which have comparable effects ***under the applicable national law,*** in order to guarantee equal treatment of maintenance creditors. ***Such obligations should be construed in the widest possible sense as covering, in particular, all orders relating to periodical payments, payments of lump sums, transfer of ownership in property***

	and property adjustment, fixed on the basis of the parties' respective needs and resources and being in the nature of maintenance.

Justification

It is necessary to provide some guidance as to the meaning and scope of the expression "maintenance obligations". It is important to specify that civil partnerships and partnerships between couples of the same sex are also covered.

Amendment 5
Recital 10

(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.***	(10) The rules on jurisdiction differ somewhat from those which are currently applicable, such as they result from Regulation (EC) *No* 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.

Justification

In view of the negotiation of the Convention on the international recovery of child support and other forms of family maintenance in the Hague Conference, to which the European Community acceded on 3 April 2007, this sentence is better omitted.

Amendment 6
Recital 11

(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".	(11) The parties should be able to agree on the competent court, except for maintenance obligations in respect of a minor child ***or an adult lacking legal capacity***, in order to protect the "weaker party".

Amendment 7
Recital 14

(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.	(14) The law of the country of the habitual residence of the maintenance creditor should ***be dominant***, as in the existing international instruments, ***although*** the law of the forum ***may be applied, even where it is not the law of the creditor's habitual residence, where it allows disputes in this area to be equitably resolved*** in a simpler, faster and less expensive manner ***and there is no evidence of forum shopping***.

Justification

The Regulation's aim of enabling maintenance creditors easily to obtain a decision which will be automatically enforceable in another Member State would be frustrated if a solution were to be adopted which obliged courts to apply foreign law where the dispute could be resolved simpler, faster and more economically by applying the law of the forum. Application of foreign law tends to prolong proceedings and lead to additional costs being incurred in procedures which often involve an element of urgency and in which litigants do not necessarily have deep pockets. Moreover, in some cases application of the law of the creditor's country of habitual residence could give rise to an undesirable result, as in the case where the creditor seeks a maintenance order in the country of which she is a national having sought refuge there after leaving the country in which she had been habitually resident with her husband who is of the same nationality, who is still resident there.

On these grounds, this amendment provides for the discretionary application of the law of the forum, whilst safeguarding against forum shopping.

Amendment 8
Recital 15

(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***.	(15) Where ***the law of the country of the maintenance creditor's habitual residence or the law of the court seised does not enable the maintenance*** creditor to obtain maintenance from the debtor ***or where it would be inequitable or inappropriate to apply that law***, it should remain possible to apply the law of another country with which the maintenance obligation is closely ***connected***, in particular, but ***not*** exclusively***,***

	that of the country of the ***parties'*** common nationality.

Justification

This amendment allows for the application of a law other than that of the country of the maintenance creditor's habitual residence or that of the court seised, also in order to avoid forum shopping.

Amendment 9
Recital 16

(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.	(16) Parties should be ***allowed***, under certain conditions, to choose *the* 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 ***the*** 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. ***The court seised must be satisfied that any choice of law has been agreed after obtaining independent legal advice. All choice-of-law agreements should be in writing.***

Amendment 10
Recital 17

(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.	***deleted***

Justification

This recital is unclear and seems to conflict with the principle of mutual recognition and to be discriminatory. Moreover, the fact that the draftswoman's amendment to Article 20 preserves the public-policy safeguard would seem to make such a recital unnecessary.

Amendment 11
Recital 19

(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.	(19) ***The aim of this Regulation is to introduce procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair.*** Once a maintenance decision has been given in a Member State, it should be enforced quickly and effectively in any other Member State. ***Maintenance*** creditors should benefit, in particular, from direct deductions from wages and bank accounts of the debtors. ***Novel and effective means of enforcement of maintenance decisions should be encouraged.***

Justification

In common with the draft Hague Convention, the Regulation should pursue the objective of promoting accessible, prompt, efficient, cost-effective, responsive and fair procedures.

Enforcement of maintenance decisions is problematic in many jurisdictions. Member States should therefore actively consider novel means of enforcement that have been used to great effect in non-EU jurisdictions, such as confiscation of driving licences.

Amendment 12
Recital 22

(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	(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.	and 47 of the Charter. ***In applying this Regulation, regard should be had to Articles 3 and 27 of the United Nations Convention on the Rights of the Child of 20 November 1989, which provide that***
	– in all actions concerning children the best interests of the child shall be a primary consideration,
	– every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,
	– the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and
	– States should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child.

Justification

Regard should be had to the rights of children as set forth in the relevant UN Convention.

Amendment 13
Recital 23

(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[1]***, measures for the implementation of this Regulation should be adopted by use of the advisory procedure provided for in Article 3 of that Decision***.	(23) ***The measures necessary for the implementation of this Regulation should be adopted in accordance with*** Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[1].
[1] OJ L 184, 17.7.1999, p. 23.	[1] OJ L 184, 17.7.1999, p. 23. ***Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).***

Justification

The comitology provisions have been adjusted to take account of the amendment of the 1999 Comitology Decision. See also the amendments to Articles 50 and 51.

Amendment 14
Recital 24

(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.	(24) This Regulation should replace the Community instruments adopted previously and covering the same field. It ***should*** 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. ***It should be compatible with the Hague Convention on the international recovery of child support and other forms of family maintenance.***

Justification

It is important to make it clear that the Regulation is intended to be compatible with the forthcoming Hague Convention.

Amendment 15
Article 1, paragraph 1

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.	1. This Regulation shall apply to maintenance obligations arising from ***a*** family ***relationship, parentage, marriage or affinity*** or ***from*** relationships deemed by the law applicable to such relationships as having comparable effects.

Justification

See the justification to the amendment for Recital 9.

Amendment 16
Article 2, paragraph -1 (new)

	-1. 'Maintenance obligation' shall mean a duty laid down by law – including in cases

	where the extent of the obligation and means of complying with it are established by a judicial decision or a contract – to provide any form of maintenance or at least means of subsistence in respect of a person currently or previously linked to the debtor by a family relationship. Such obligations shall be construed in the widest possible sense as covering, in particular, all orders relating to periodical payments, payments of lump sums, transfer of ownership in property and property adjustment, fixed on the basis of the parties' respective needs and resources and being in the nature of maintenance.

Justification

The meaning of 'maintenance obligation' should be defined: some legal systems distinguish between the duty of maintenance and a more limited duty to contribute to family support. The proposed rule should cover both definitions.

Amendment 17
Article 2, paragraph 2

(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;	***deleted***

Justification

This paragraph is superfluous, since a judge is one of the 'authorities (...) with jurisdiction in matters relating to maintenance obligations', as defined in subparagraph 1.

Amendment 18
Article 2, point (8)

(8) the term 'creditor' shall mean any natural person to whom maintenance is owed or is alleged to be owed,	(8) the term 'creditor' shall mean any natural person to whom maintenance is owed or is alleged to be owed ***or a public body which has assumed the position of the creditor for the purpose of enforcement***,

Amendment 19
Article 2, point (9)

(9) the term 'debtor' shall mean any natural person who owes or who is alleged to owe maintenance**.**	(9) the term 'debtor' shall mean any natural person who owes or who is alleged to owe maintenance ***or a public body which has taken over the obligation of the debtor to maintain the creditor,***

Amendment 20
Article 2, point (9 a) (new)

	(9a) the term 'proceedings concerning the status of a person' shall mean any proceedings relating to divorce, legal separation, marriage annulment or affiliation.

Justification

It is necessary to specify what is meant by the expression "proceedings concerning the status of a person". The definition coincides with the definition of jurisdiction contained in Regulation No 2201/2003, but is expanded to include affiliation proceedings.

Amendment 21
Article 3, point (c)

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***;	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;

Justification

This limitation does not seem to serve any useful purpose.

Amendment 22
Article 3, point (d)

d) the court which has jurisdiction to	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.	entertain proceedings concerning parental responsibility, under Regulation (EC) *No* 2201/2003, if the matter relating to maintenance is ancillary to those proceedings ***and parental-responsibility proceedings are already pending before that court or are brought before that court at the same time as an application for maintenance***.

Justification

This clarification seems worthwhile.

Amendment 23
Article 4, paragraph 2

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'.***	2. An agreement conferring jurisdiction shall be in writing.

Justification

This provision is excessively vague: it could cover, say, an exchange of e-mails.

Amendment 24
Article 4, paragraph 2 a (new)

	2a. The court seised must be satisfied that any prorogation of jurisdiction has been freely agreed after obtaining independent legal advice and that it takes account of the situation of the parties at the time of the proceedings.

Justification

See the justification of the amendment to Recital 11.

Amendment 25
Article 4, paragraph 4

4. This *article* shall not apply ***to a dispute relating to a maintenance obligation towards*** a child below the age of 18.	4. This *Article* shall not apply ***if the debtor is*** a child below the age of 18 ***or an adult lacking legal capacity***.

Justification

To protect those entitled to maintenance who are not in a position to exercise free will, there should be no possibility of prorogation of jurisdiction in such cases.

Amendment 26
Article 6, point (b)

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.	b) in the case of maintenance obligations between spouses or ex-spouses, the courts of the Member State ***in whose territory*** the last common habitual residence of the spouses ***was situated,*** provided ***that*** such habitual residence still existed at least one year before the institution of the proceedings.

Amendment 27
Article 7, paragraph 1

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***.	1. ***In cases involving lis pendens and related actions, and in the case of provisional – including protective – measures, Articles 27, 28, 30 and 31 of Regulation (EC) No 44/2001 shall apply***.

Justification

The rules laid down in this and the following articles replicate existing provisions of Community law contained in Regulation (EC) No 44/2001, to which reference should be made.

Amendment 28
Article 7, paragraph 2

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.	***deleted***

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 29
Article 8

Article 8	***deleted***
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.	

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 30
Article 9

Article 9	***deleted***
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.

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 31
Article 10

Article 10	***deleted***
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.	

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 32
Article 10a (new)

Article 10a

Where maintenance proceedings have been brought by way of application for interim relief, Articles 7 and 8 shall not operate so as to cause the law applicable to the application for interim relief necessarily to apply to any subsequent application for maintenance or variation of maintenance

	brought in connection with substantive proceedings for divorce, annulment of marriage/civil partnership or legal separation.

Justification

In the absence of such a provision, it could be held that where a woman applied for maintenance by way of interim measures in country A, where she sought refuge, the law of country A ought to be applied to all questions relating to maintenance obligations arising under divorce proceedings subsequently brought in country B, her country of origin where she resides with her spouse.

Amendment 33
Article 11

Article 11	***deleted***
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.	

Justification

This paragraph is superfluous, as it duplicates almost word for word the text of Regulation (EC) No 44/2001 which deals with jurisdiction in civil and commercial matters in general.

Amendment 34
Article 13

1. ***The maintenance*** obligations shall be governed by the law of the country in whose territory the creditor is habitually resident.	1. ***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:	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	(a) ***where it is the law of the country of the creditor's habitual residence***, or
b) where the creditor ***so requests and this law is the law of the country on whose territory the debtor is habitually resident***.	(b) where the creditor ***is unable to obtain maintenance from the debtor by virtue of the law of the country of the creditor's***

	habitual residence, or
	(c) unless the creditor requests otherwise and the court is satisfied that he or she has obtained independent legal advice on the question, where it is the law of the country of the debtor's habitual residence.
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***.	3. ***Notwithstanding paragraph 1, the law of the forum may be applied, even where it is not the law of the country of the creditor's habitual residence, where it allows maintenance disputes to be equitably resolved in a simpler, faster and less expensive manner and there is no evidence of forum shopping***.
	4. Alternatively, where the law of the country of the creditor's habitual residence or the law of the forum does not enable the creditor to obtain maintenance from the debtor or where it would be inequitable or inappropriate to apply that law, the maintenance obligations shall be governed by the law of another country with which the maintenance obligation is closely connected, in particular, but not exclusively, that of the country of the common nationality of the creditor and the debtor.

Justification

See the justifications to the amendments to Recitals 14 and 15.

Amendment 35
Article 14, letter (a)

(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;***	(a) at the time the court is seised, ***provide an agreement in writing designating the law of the forum in an unequivocal manner;***

Justification

The text as it stands is incomprehensible. Obviously, the procedural rules which apply are inevitably those of the court seised.

Amendment 36
Article 14, paragraph 1a (new)

	The foregoing is subject to the proviso that the court seised is satisfied that any choice of court or choice of law has been freely agreed after obtaining independent legal advice.

Amendment 37
Article 15

Article 15	***deleted***
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.	

Justification

This provision seems to conflict with the principle of mutual recognition and to be discriminatory.

Amendment 38

Article 17

1. The law applicable to a maintenance obligation shall determine in particular:	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;	(a) whether, ***for what term and in what amount*** and from whom a creditor may claim maintenance;
(b) ***the extent to which*** the creditor may claim retroactive maintenance;	(b) ***for what term and in what amount*** the creditor may claim retroactive maintenance;
(c) the calculation and indexation of the maintenance obligation;	(c) the calculation and indexation of the maintenance obligation;
(d) limitation periods and time limits on the institution of proceedings;	(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.	(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***.	2. ***Notwithstanding paragraph 1***, ***in determining the amount of maintenance, the court seised shall take as its basis the actual and present needs of the creditor and the actual and present resources of the debtor, taking account of the latter's reasonable needs and any other maintenance obligations to which he or she may be subject***.

Justification

This amendment seeks to tighten up the wording of the Commission's text. It is important to make it clear that the actual needs of the creditor are of paramount importance and to take account of the fact that the debtor may be under a duty already to pay maintenance to, for instance, a previous partner.

Amendment 39
Article 20

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***	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.

***Regulation shall not be refused on such a ground**.*

Justification

In matters of public policy, no distinction should be made between Member and non-Member States.

Amendment 40
Article 21

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.	***A State within which different territorial units have their own rules of law in respect of maintenance obligations shall not be bound to apply this Regulation to conflicts solely between the laws of such units.***

Justification

This provision reproduces the corresponding provision of Rome II. Member States comprising several territorial units with their own legal rules should be left to decide whether the provisions of the Regulation should apply as between those territorial units.

Amendment 41
Article 22

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:	***Service of documents shall be governed by the provisions of Regulation XXX/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.***
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.

Amendment 42
Article 29

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.	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 legal aid ***in accordance with the provisions of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes***[1] or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

[1] ***OJ L 26, 31.1.2003, p. 41.***

Amendment 43
Article 33

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:	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***;	(a) ***it is asserted that the enforcement order or the procedural documents are flawed***;
(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;	(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;	(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.	(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.

Justification

With regard to point (a), it is not possible to re-open at the enforcement stage a discussion on matters which have already been subject to a final ruling. Enforcement can be halted only for reasons relating to enforcement itself, and not for reasons which resulted in the decision being enforced (see Article 45(2) of Regulation (EC) No 44/2001.

With regard to point (b), no special process should be introduced. Differing procedural rules increase the difficulties involved and can delay, rather than speed up or facilitate, the process of resolving such problems.

The possibility of a review in the state of origin would introduce an anomalous appeals system.

Amendment 44
Article 34, paragraph 2

2. An order for monthly direct payment may	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***.	only be given if the decision has been served to the debtor ***in accordance with the provisions of Regulation XXX/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters***.

Justification

No special process should be introduced. Differing procedural rules increase the difficulties involved and may slow down, rather than speed up and facilitate, the process of resolving problems.

Amendment 45
Article 35 a (new)

	Article 35a
	Other enforcement orders
	The court seised may order all such other measures of enforcement as are provided for in its national law which it considers appropriate.

Justification

This court in which enforcement is sought should not be limited to the orders listed in the Regulation. Whereas Member States should be encouraged to consider novel means of enforcement including those that have been used to great effect in non-EU jurisdictions, courts should certainly use the full panoply of measures available to them under their national law.

Amendment 46
Article 38, paragraph 1

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	1. *The 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 ***automatically to the parties*** an extract of act using the standard form in Annex II of this

this Regulation.	Regulation.

Justification

The provisions of the Regulation should operate with a minimum of formality.

Amendment 47
Article 50

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

Amendment 48
Article 51

1. The Commission shall be assisted by ***a*** committee***, composed of representatives of the Member States and chaired by the representatives of the Commission***.	1. The Commission shall be assisted by ***the*** committee ***provided for by Article 75 of Regulation (EC) No 44/2001***.
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.	2. Where reference is made to this paragraph***,*** Articles 3 ***and 7*** of Decision 1999/468/EC shall apply, ***having regard to the provisions of Article 8*** thereof.

PROCEDURE

Title	Jurisdiction and cooperation in maintenance obligations
References	COM(2005)0649 - C6-0079/2006 - 2005/0259(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 14.3.2006
Enhanced cooperation - date announced in plenary	6.7.2006
Drafts(wo)man Date appointed	Diana Wallis 30.5.2006
Discussed in committee	3.10.2006 11.4.2007 3.5.2007
Date adopted	4.10.2007
Result of final vote	+: 24 –: 0 0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Cristian Dumitrescu, Monica Frassoni,

	Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Gary Titley, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Mogens N.J. Camre, Charlotte Cederschiöld, Kurt Lechner, Marie Panayotopoulos-Cassiotou, József Szájer, Jacques Toubon
Substitute(s) under Rule 178(2) present for the final vote	Iles Braghetto, Genowefa Grabowska, Michael Cashman, Lily Jacobs