EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

Committee on Legal Affairs

PROGRAMME

Joint Public Hearing

LIBE and JURI

on

European Civil Law cooperation
- Maintenance obligations
- Divorce and legal separation

Tuesday 11 September 2007

10:00 – 12:30
15:00 – 18:30

Paul-Henri Spaak Building (PHS) - Room 5B001

Brussels

PART I

MAINTENANCE OBLIGATIONS

INTRODUCTION

What is currently lacking in the European Union is a common, harmonised system of recognition and enforcement of maintenance decisions. Already the Conclusions of the European Council in Tampere called for the establishment of special common procedural rules to simplify and accelerate the settlement of cross-border disputes on maintenance obligations issues and requested for the removal of intermediate measures needed for the recognition and enforcement in one Member State of a judgment given in another Member State. Also the mutual recognition Programme in Civil Matters of 30 November 2000,[1] calls i.e. for the elimination of the *exequator* procedure in matters related to maintenance obligations. The relevance of this programme was reaffirmed by the European Council in November 2004 with 'the Hague Programme' followed by the common Action Plan which translates the Hague programme in concrete actions and which mentions 'maintenance obligations' as one of the issues. Therefore the Commission presented on 15 December 2005 a proposal for a regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.[2]

The main objective of the proposal is to eliminate legal obstacles preventing the recovery of maintenance from a citizen residing in another Member State. The regulation is aiming at the fast and (generally) free of charge recovery of maintenance. With the achievement of the internal market, cross-border movements of persons have increased considerably -and with them- problems which are liable to beset the partners of migrants, particularly in the new Member States, whose citizens do enjoy the rights of free movement of persons. At the same time, divorce and legal separation are on the increase all over the Union.

In preparing the position of the European Parliament on the draft regulation the work of the Hague Conference on Private International law is carefully watched an its provisions should be consistent and in parallel to the EU text. The rapporteurs, however, want to stress that at the same time, the EU in their view needs its own regulation on this matter. Given the scope of the problems on maintenance obligations recovery and its tendency to increase, it is clear that the EU needs a mechanism to properly address these problems in the EU in an efficient way.

The proposal meets a real need of modern society namely to improve the position of maintenance creditors, who are first and foremost children. The growing number of couples separating combined with an increasing mobility in the European Union, inevitably means more and more cross-border disputes regarding maintenance claims. More efficient recovery of maintenance claims will thus improve the living and educational conditions of many children. The proposal will facilitate for the maintenance creditor to take his/her claim to a competent court. Once the decision has been given, measures will be taken to ensure that it is

[1] OJ C 12 of 15 January 2001.
[2] COM(2005) 649 final.

automatically recognised in all the Member States without further formalities. What makes a big difference is that now the maintenance creditor will benefit from the help of the new Regulation in claiming citizens' rights.

10:00 - 10:25
OPENING SESSION

- **Mr Jean-Marie CAVADA**, Chair of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (5 min.)

- **Ms Genowefa GRABOWSKA,** rapporteur on maintenance obligations (10 min.)

- Ms Diana WALLIS, draftsman on maintenance obligations (10 min.)

10:25 - 11:35
SESSION I

STATE OF PLAY

This first session aims to present the current situation on maintenance obligation from a legal point of view. It deals with questions like: What is the object of the proposal for the regulation on maintenance obligations and what are its main provisions? How does the draft regulation relate to the framework of the Hague Conference, what parallels are there and where do they differ?

Legal framework

Presentation by **Ms Karen VANDEKERCKHOVE,** representative of the European Commission, on ***the most important elements of the proposal*** (10 min.)

Presentation by **Mr Paulo GUERRA,** the Chairman of the Committee on Civil Law Matters (maintenance obligations) of the Council**,** on ***the state of play in the Council and foreseen developments*** (10 min.)

Presentation by **Mr Joaquin BAYO DELGADO,** European Data Protection Assistant-Supervisor, on ***protection of personal data in exchange of information for maintenance obligations*** (10 min)

Presentation by **Professor William DUNCAN** of the Hague Conference of Private International Law on ***the developments in the framework of the Hague Conference*** (10 min.)

Presentation by **Professor Stefania BARIATTI,** University of Milan, on ***the relationship between the proposal on maintenance obligations and the work done in the framework of***

the Hague Conference of Private International Law (10 min)

Discussion (20 min.)

11:35 - 12:30
SESSION II

PRACTICAL SITUATION

Session II will focus on the practical situation regarding maintenance obligations. Maintenance obligations claims, unfortunately, in many cases are not executed. People due to pay maintenance sometimes seem to do everything to avoid the payment. On the other hand, the creditors often are living in very poor conditions and they do not have enough money to survive. These problems are even more difficult to tackle when the debtor lives abroad.

Presentation by **Ms Beate MIRSKA,** representative from a Polish NGO dealing with maintenance obligations claims, on ***practical problems with regard to maintenance obligations*** (10 min.)

Presentation by **Ms Anna SZUL-SZYWALA,** lawyer representing people with ***problems on maintenance obligations recovery*** (10 min.)

Presentation by **Mr Andrea WOELKE,** representative from the Law Society of England and Wales, Senior member of Resolution, London (10 min.)

Discussion (25 min.)

12:30 - 15:00 lunch break

PART II

DIVORCE AND LEGAL SEPARATION

INTRODUCTION

The increasing mobility of citizens within the European Union has resulted in an increasing number of "international" marriages where the spouses are of different nationalities or they live in different Member States or live in a Member State of which they are not nationals. In the event when an "international" couple decides to divorce, several laws may be invoked.

Up to now an 'international' couple wishing to divorce is subject to the rules of jurisdiction of

Regulation (EC) No 2201/2003 (known as 'Brussels II(a)' or 'Brussels II bis'), under which the spouses may choose among several different jurisdiction criteria. Once divorce proceedings are brought before the courts of a Member State, the law applicable is determined by national conflict-of-law rules. These national rules turn out to be extremely diverse.

To avoid this legal uncertainty and unpredictability, as well as "rush to the court", the European Commission came up with a proposal to redress those shortcomings, inter alia by establishing the option for the parties of choosing the court and the law applicable by a mutual agreement.

The opportunity to choose the court and the law applicable would obviously lead to increased efficiency and benefits for spouses who can agree on that. However, this could bring along some negative consequences, in particular for "vulnerable parties". The seminar examines a question of how to ensure that both parties are fully aware of consequences of their choice of the court and the law applicable.

Furthermore, the attention should be drawn to situations where there is no agreement between spouses. In this regard, the seminar focuses on criteria for choice of applicable law in absence of an agreement.

The 'Brussels II(a)' provides for a presumptive recognition of any judgment given in a Member State. However, there are several grounds of non-recognition foreseen in this Regulation. One of them, which is also overtaken in the new proposal, is public policy clause. The seminar touches upon the role of this public policy clause in proceedings of divorce and legal separation.

15:00 - 15:20
OPENING SESSION

- Ms Evelyne GEBHARDT, rapporteur on divorce and legal separation (10 min.)

- Mr Carlo CASINI, draftsperson on divorce and legal separation (10 min.)

15:20 - 15:55
SESSION III

STATE OF PLAY

This session focuses on shortcomings of the current situation in matrimonial matters and possible solutions offered by the proposal.

Moreover, specific legal problems will be pointed out, in particular examination of situations when there is no an agreement between parties wishing to divorce. The principle of the proposal is to ensure that there is a close link between the both parties and the jurisdiction and

applicable law. The session aims at discussing how to guarantee this link, meanwhile maintaining necessary flexibility and access to the court. Should criteria be alternative or hierarchic? If hierarchic, in which order they should be listed?

Taking into account disparities of different legal systems, as well as different traditions, the proposal provides for a public policy clause. This session examines the role of the public policy clause in the framework of a progressive establishing of common area of freedom, security and justice.

Presentation by **Mr Olivier TELL,** representative of the European Commission, on ***the most important elements of the proposal*** (10 min.)

Presentation by **Ms Helena BOLIEIRO**, the Chairwoman of the Committee on Civil Law Matters (Rome III) of the Council, on ***the state of play in the Council and foreseen developments*** (10 min.)

Presentation by **Professor Bruno NASCIMBENE,** University of Milan, on ***the criteria for a choice of applicable law and the competent court*** (10 min.)

Presentation by **Professor Stefania BARIATTI**, University of Milan, on ***a comparative analyse of the two proposals on maintenance obligations and on divorce and legal separation*** (10 min.)

Discussion (30 min.)

16:30 - 17:30
SESSION IV

PRACTICAL APPLICABILITY

The proposal gives to parties a limited possibility to choose a jurisdiction and applicable law. However, it is important to ensure that there is no abuse of this possibility of choice. The session focuses to possible safeguards which could be introduced in order to protect "weaker parties" from the abuse.

The proposal on divorce matters is closely linked with the proposal on maintenance obligations. Therefore, at the end of this session there is a short comparative analyse of both proposals.

Presentation by **Professor dr. Katharina BOELE-WOELKI**, UCERF, Molengraaff Institute for Private Law, on ***how to ensure that both parties are fully aware of the consequences of their choice of applicable law and the competent court*** (10 min.)

Presentation by **Dr Matteo BONINI BARALDI**, University of Bologna, on ***the role of public policy clause in relation to proceedings concerning divorce and legal separation*** (10 min.)

Presentation by **Professor Stefania BARIATTI,** University of Milan, on ***the impact of divorce to other law fields*** (10 min.)

Discussion (30 min.)

17:30 - 18:30
SESSION V

JUDICIAL TRAINING

This session will deal with issues on how to raise the awareness of people (practitioners, judges i.e.) about their rights in order to make the instruments more efficient, could the European Judicial Training network fulfil a role as they are key in providing training opportunities for practitioners in the EU?

Presentation by **Ms Benedetta VERMIGLIO, Coordinator of exchanges between trainers and training institutions within the European Judicial Training Network** (10 min.)

Discussion (30 min.)

Conclusions by the rapporteurs (20 min.)

ANNEX

PRACTICAL GUIDELINES FOR THE DEBATE

The floor will be given to Members in the order in which requests are received. Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French) in advance to the secretariat (email: ip-libe@europarl.europa.eu).These documents will be circulated during the meeting.

IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE HEARING

This seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the seminar secretariat (ip-libe@europarl.europa.eu) by 6 September. It is essential to provide us with your full name, address and date of birth. Without this information, the Security Service will not provide entry passes.

Simultaneous interpretation will be available in the following languages : EN, FR, DE, IT, NL, ES, HU, EL, PT, RO, SV, PL

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