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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur (*) : Genowefa Grabowska

(*) Associated committees – Rule 47 of the Rules of Procedure

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION 5

EXPLANATORY STATEMENT.....26

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2005)0649),

– having regard to Article 61 c) and Article 67 (2) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0079/2006),

– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

– having regard to Rules 51 and 35 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0000/2007),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 1 Citation 1
Having regard to the Treaty establishing the European Community, and in particular Article 61 *c) **and Article 67 (2)*** thereof,	Having regard to the Treaty establishing the 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, ***such as civil partnerships,*** 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.***

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 in order to protect the "weaker party". ***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. All choice-of-court***

agreements should be in writing.

Justification

It is important that the court seised should satisfy itself that any choice-of-court agreement has been freely agreed after obtaining legal advice and is still relevant having regard to the situation of the parties at the time when the proceedings take place.

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, but ***it should also be possible to apply*** the law of the forum***, 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	(15) Where ***the law of the country of the maintenance creditor's habitual residence or the law of the court seised does not***

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***.	***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	***deleted***

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.

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 18 a (new)

(18a) Special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, political party or trade union membership, sexual orientation or health should be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

Amendment 12
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 13
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 and 47 of the Charter.	(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. ***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 14
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 last 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 15
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 also be compatible with the fothcoming 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 16
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***, such as civil partnerships***.

Justification

See the justification to the amendment for Recital 9.

Amendment 17
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 18
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 19
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 20
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 21
Article 3, point (d)

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.	d) the court which has jurisdiction to 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 22
Article 4, paragraph 2

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

Justification

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

Amendment 23
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 24
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.

Justification

Affects the English version only.

Amendment 25
Article 10, paragraph 1 a (new)

	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 26
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***	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***.

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.	
	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 27
Article 14, paragraph 1a (new)

	provided 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 28
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 29
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 30
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 Regulation shall not be refused on such a ground.***	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.

Justification

This safeguard needs to be maintained.

Amendment 31
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 32
Article 22, paragraph 3

3. ***The Member States shall inform the Commission within six months following***	3. ***Service may also be effected on a defendant's representative***.

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.

Justification

The methods of service provided for correspond to those provided for in Regulation No 1896/2006 on the European order for payment procedure, which makes no provision for changing the applicable methods of service. For the sake of simplicity, consideration should be given to making a reference merely to Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

The new paragraph 3 allows service to be made on the defendant's legal representative in accordance with a provision included in Regulation No 1896/2006.

Amendment 33
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 34
Article 33, point (a)

a) the debtor asserts new circumstances or circumstances which were unknown to the court of origin when its decision was given;	***deleted***

Justification

This provision leaves too much latitude to a maintenance debtor wishing to evade his obligations. Provision is already made in point (b) for the situation where the debtor has applied for review in the court of origin. Moreover, it is unclear how the enforcing court will be in a position to review the decision of the court of origin: not all court decisions contain an exhaustive statement of their grounds and the court where enforcement is sought does not receive the case-file.

Amendment 35
Article 35, paragraph 1

1. A creditor may ask the court seised as to the substance to deliver an order for temporary freezing of a bank account which is to be addressed to the bank in another Member State in which the debtor has an account. The application and the order for temporary freezing of a bank account shall be in conformity with the standard form set out in the annex IV to this Regulation.	1. A creditor may ask the court seised as to the substance to deliver an order for temporary freezing of a bank account ***to the amount needed for the maintenance obligation to be met***; which is to be addressed to the bank in another Member State in which the debtor has an account. The application and the order for temporary freezing of a bank account shall be in conformity with the standard form set out in the annex IV to this Regulation

Amendment 36
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 37
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 this Regulation.	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***, an extract of act using the standard form in Annex II of this Regulation.

Justification

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

Amendment 38
Article 44, paragraph 1

1. The central authorities shall give access to the information which can facilitate the recovery of maintenance claims under the conditions laid down in this Chapter. This information is provided in order to achieve the following objectives:	1. The central authorities shall give access to the information which can facilitate ***in a specific case*** the recovery of maintenance claims under the conditions laid down in this Chapter. This information is provided in order to achieve the following objectives:

Amendment 39
Article 44, paragraph 1, point (a)

a) to locate the debtor;	a) to locate the ***address of the*** debtor;

Amendment 40
Article 44, paragraph 1 a (new)

	1a. According to the proportionality principle it should be determined on a case-by-case basis which personal data should be processed within the scope of the available information and should only be allowed if necessary to facilitate enforcement of maintenance obligations.

Amendment 41
Article 44, paragraph 1 b (new)

1b. Biometrics data such as fingerprints or DNA data shall not be processed.

Amendment 42
Article 44, paragraph 1 c (new)

1c. Special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary and proportionate for the purpose of a specific case and in compliance with specific safeguards.

Amendment 43
Article 44, paragraph 2 a (new)

2a. Requests for information other than the items listed in paragraph 2 should be proportionate and necessary to obtain the objectives listed in paragraph 1.

Amendment 44
Article 46, paragraph 3

3. A court shall not store information communicated in accordance with this Regulation for a longer period than the one necessary to facilitate the recovery of a maintenance claim. ***This period shall not exceed one year.***	3. A court shall not store information communicated in accordance with this Regulation for a longer period than the one necessary to facilitate the recovery of a maintenance claim.

Justification

Information shall be available for as long as it is necessary, for the purpose for which it was collected or it is further processed. Indeed, in the case of maintenance obligations, information in some cases is likely to be needed for quite a long period of time, in order for the judge to be able to periodically reassess both, the subsistence of the legal grounds for

granting the maintenance obligations and properly quantify these obligations. Indeed, according to the information provided by the Commission, in the EU a maintenance claim is paid for 8 years on average.

Amendment 45
Article 48, paragraph 3 a (new)

	3a. This regulation respects Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and requires Member States to protect the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community.

Amendment 46
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 47
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.

EXPLANATORY STATEMENT

1. Introduction

What is currently lacking at the European Union level, is a common, harmonised system of recognition and enforcement of maintenance decisions.

The main objective of the proposal for the Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations is to eliminate legal obstacles preventing the recovery of maintenance from a citizen residing in another EU Member State.

This regulation is aiming at the fast, (generally) free of charge recovery of maintenance. It is a crucial and necessary regulation for EU citizens. 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 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.

In preparing the report the rapporteur contacted both, institutions dealing with maintenance obligations, and persons trying to obtain them. Following the consultations, she unfortunately discovered that the court orders in many cases are not executed. In Poland, for example, it is estimated that only 10 % of people obliged to pay maintenance obligations, fulfil this duty. The others who should pay to support their kids, do everything in order to avoid it, they transfer their property to close and distant family members, they officially do not work although they do have some kind of stable income, they do not pick up letters they get from a debt collector, they hide from the system of justice. To make one pay the maintenance obligations, the responsible institutions are forced even to take radical steps like withholding the driving licence. On the other hand, the creditors are living in very poor circumstances and they often do not even have enough money to survive.

One can imagine that these problems are even more difficult to tackle with when the debtor lives abroad. The way to obtain the maintenance claims is much longer, more complicated and in many cases even impossible to realise. Just to avoid these situations and therefore to make the EU Citizens life's easier, such a regulation was introduced.

To focus on this important issue and to encourage the Members States to deal with it and to conclude the work on the draft regulation quickly, she has decided to organise a public hearing on this issue, which is going to take place on the 11th of September.

2. **Legal framework**

The proposal of the Regulation is a result of a long-term Action Plan aiming at strengthening freedom, security and justice in the EU, adopted by the Heads of States and Governments at the European Council meeting in the Hague, in November 2004 (known as “The Hague Programme”). In this Programme, “the Commission is invited to submit a proposal of a draft instrument on the recognition and enforcement of decisions on maintenance, including

precautionary measures and provisional enforcement in 2005".

At the same time, since 1999, the Hague Conference on International Private Law (an international organisation whose members are all the Member States of the EU as well as 40 other states), have conducted works in parallel on a thorough reform of the international system of maintenance claims abroad. The works are to be finished in November 2007.

The Rapporteur is closely watching the works of the Hague Conference on International Private Law and believes that its provisions should be parallel to the EU proposals. At the same time, however, she is of the opinion that the EU needs a separate internal regulation on this matter. The large number of sources and the level of integration between the Member States is incomparable to non-EU countries, and also because the weight of the aims set by the EU are different, it is necessary to create a separate, more advanced system on recognition and enforcement of maintenance decisions. Of course a new system must correspond, as much as possible, to the framework of the Hague Conference on international Private Law, but it can be more advanced. It must also be emphasised that it takes a long time to ratify a convention, and sometimes States do not ratify them at all. Whereas taking into consideration the scope of the problem of maintenance obligations recovery and its tendency to increase, it is quite clear that we do need a new, quick and efficient mechanism in this respect within the EU.

3. Scope and content

The scope of the Regulation covers all maintenance obligations resulting from family relations (art. 1). The Rapporteur supports the direction of the solutions adopted in the proposal of the Regulation. However, she would like to bring into consideration the fact that because the term "maintenance obligation" is defined in every Member State in a different way, the scope of the Regulation should cover these maintenance obligations which are foreseen in the national law of every Member State.

The Commission presented, in one single instrument, all the mechanisms applicable to this matter: jurisdiction, applicable law, recognition and enforcement, cooperation and elimination of obstacles for the good conduct of proceedings.

This Regulation shall result in simplifying the citizens' lives. What we need most is simplifying the conduct of the proceedings necessary for establishing the maintenance liabilities. Following this, the Commission suggests that once the decision has been given, measures have to be taken to give that decision the same force that it has in the Member State of origin, without any further formalities.

In practice, the procedure of claiming maintenance would consist of one step only, i.e. the creditor would have to submit a notion in court. Next, an appointed central body in the creditor's state, on court's demand, would send an appropriate application to an appointed central body in the debtor's state, which would collect the information on the debtor necessary to define and enforce the maintenance obligation, and then it would send it back to the creditor's state.

The creditor would have the right to request a monthly direct payment via his/her court of

origin which is to be addressed to the debtor's employer in another Member State or to the bank in another Member State in which the debtor has a bank account. (art. 34). A creditor may ask the court seized for an order for temporary freezing of a bank account which is to be addressed to the bank in another Member State in which the debtor has an account (art. 35). As a general rule, the maintenance claims shall be paid in preference to all the other debts of a debtor (art. 36).

5. Conclusions

The Rapporteur supports the draft regulation and accepts the direction of the solutions proposed in it. The implementation will undoubtedly have positive social effects since it will help maintenance creditors living in one Member State to pursue their claims from the debtors residing in other Member States. Following this, the Regulation may facilitate the proper functioning of the internal market mainly through the elimination of the obstacles for the free movement of persons who now suffer from the discrepancies between the Member States in terms of maintenance obligations enforcement.

The proposal for a Regulation on maintenance obligations meets a real need of modern society: to improve the position of maintenance creditors, who are first and foremost children. The growing number of couples separating combined with 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 it for the maintenance creditor to take his/her claim to a competent court. And once the decision has been given, measures will be taken to ensure that it is automatically recognised in all the Member States without further formalities. What makes a big change, is that now the creditor will benefit from the immense help that the new Regulation will give in claiming citizens' rights.