

**Opinion of the European Economic and Social Committee 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) 649 final — 2005/0259 (CNS)

(2006/C 185/07)

On 13 February 2006, the Council decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 March 2006. The rapporteur was Mr Retureau.

At its 426th plenary session, held on 20 and 21 April 2006 (meeting of 20 April), the European Economic and Social Committee adopted the following opinion by 133 votes to three, with three abstentions.

## 1. Summary of the Committee opinion

1.1 The subject matter covered by this proposal for a regulation falls within the ambit of Article 65 of the Treaty establishing the European Community, while the legal basis is Article 61(c) of the same treaty. Given the specific features of maintenance claims — and the cross-border recovery of such claims — the proposal duly reflects the principles of proportionality and subsidiarity, both in relation to the courts and national law, and in respect of the litigants concerned.

1.2 This issue relates both to family law and to the recovery of claims; from a social angle, it involves poverty risks that also need to be addressed.

1.3 The draft also meets the requirements of clarity and legal certainty for the litigants, for any third parties involved and for the relevant administrative bodies. In addition, it protects personal data from being used for any purpose other than to settle the dispute and secure the debtor's compliance with the maintenance obligations.

1.4 The Committee endorses the Commission's legislative initiative — subject to some specific observations — and welcomes the efforts made to secure sound legislation, including the upstream consultation and preliminary impact assessment carried out ahead of the excellent legal drafting. The Committee is also pleased that a regulation has been selected as the appropriate instrument and endorses the legal basis that has been chosen, which is better suited to securing harmonisation in cases that have a European element, despite the differences — that are set to continue — between the various national legal provisions.

1.5 While few Member States have ratified the Hague Convention on the law applicable to maintenance obligations, most (17 out of 25) have done so for the Convention on the enforcement of decisions in this field. However, given the reservations expressed and the possibility of opposing *a priori*, on the basis of domestic public policy provisions, a judgement delivered in another Member State, it may prove impossible to secure application of such a decision even though it originates in another contracting state. This creates barriers to the free circulation of court judgements within the Community and these should be removed.

1.6 The Committee would therefore ask the Council to approve the proposed regulation, which will provide legal certainty and give maintenance creditors practical enforcement measures in cross-border cases, with concomitant benefits for men and women across Europe.

1.7 Furthermore, the Committee would ask the UK and Irish governments to consider opting into this regulation. It would also ask the Danish government to facilitate enforcement of maintenance decisions in line with the Hague Convention on the enforcement of decisions relating to maintenance obligations — which that country has ratified — and, when an application is made to it, to consider working together, on an ad-hoc basis, with the other Member States.

## 2. The Commission proposal

### 2.1 Background to the proposal, international dimension

2.1.1 The Mutual Recognition Programme in Civil Matters, adopted on 30 November 2000, calls for the elimination of the *exequatur* procedure in matters related to maintenance obligations, which would then be covered by the 'Brussels I' regulation<sup>(1)</sup> on the mutual recognition of judgements in civil and commercial matters. This programme also states that it may be necessary to lay down a number of common procedural rules in a bid to harmonise procedures and to seek to make more efficient the enforcement, in the requested state, of judgements delivered in another Member State, in particular through the identification of a debtor's assets.

2.1.2 Mutual recognition must also operate in the context of judicial cooperation between Member States and requires harmonised conflict-of-law rules.

2.1.3 The Hague Conference of Private International Law is working to modernise the existing conventions and the Commission feels that the Community approach dovetails with that being pursued at an international level. Thanks to the Hague initiative, it will be possible, at a later stage, to develop cooperation with countries outside the Union, and the initiative could produce results that might subsequently prove suitable for transposition within the European Union.

<sup>(1)</sup> Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

## 2.2 Purpose of the proposal for a regulation

2.2.1 The proposal seeks to eliminate all obstacles that prevent the recovery of maintenance claims in one EU Member State by a maintenance creditor domiciled in another Member State.

2.2.2 Creditors must be able to obtain, free of charge, a direct enforcement order valid across the European area of justice enabling them to secure regular payment of the amounts due.

2.2.3 A single, ambitious instrument covering all the relevant fields of judicial cooperation in civil matters is proving absolutely essential in this area given the absence of any uniform set of rules. The concepts of maintenance and maintenance creditor vary from one country to the next and non-enforcement of a decision is also a possibility under the reservations set out in Article 26 of the 1973 Hague Convention which currently takes precedence over Community law. The proposal is to abolish this exception — provided for in Article 71 of the Brussels I regulation — through an ad-hoc instrument for the recovery of maintenance claims.

## 2.3 Content of the proposed regulation

2.3.1 Harmonisation of conflict-of-law rules; using harmonised rules to determine applicable law facilitates the free movement of the decision concerned, which will be delivered under a system of law that has a sufficient and indisputable connection with the family relationship of the creditor and debtor.

2.3.2 Recognition and direct enforceability of the decision across the European Union.

2.3.3 Specific enforcement measures to be taken by the debtor's country of residence, including access to information about the debtor's financial situation and the introduction of legal provisions enabling maintenance to be deducted directly from wages or bank accounts.

2.3.4 Strengthening of the ranking of maintenance claims; enhanced judicial cooperation in civil matters: standard forms are appended to the regulation for this purpose.

## 3. General comments

3.1 The Committee considers the proposal for a specific regulation on the cross-border recovery of maintenance claims to be both necessary and proportionate. As a *lex specialis*, it takes precedence over the other general arrangements governing judicial cooperation in civil matters. It restores the primacy of Community law in an area which Member States

have so far wanted excluded, without, however, modifying Member States' domestic law.

3.2 The arrangements for determining the debtor's assets and for payment procedures guarantee respect for privacy and data confidentiality. However, the debtor is required to inform the creditor and the court of origin of any changes of employer or bank account.

3.3 The regulation provides remedies for the maintenance creditor without neglecting the debtor's right to contest the claim or to ask for a review of the amount before the court of origin; an application for a review suspends any enforcement measures.

3.4 The enforcement procedure is that of the Member State of enforcement, regardless of the Member State in which the judgement was delivered.

3.5 Thanks to a number of factors — the initial Green Paper <sup>(?)</sup> that had been published, the consultations and expert meetings that were held and the study of the situation in each Member State — the proposal on the table is coherent, clear and practical and should, as such, eliminate the persistent obstacles to the cross-border recovery of maintenance claims.

## 4. Specific comments

### 4.1 Article 3

The EESC feels that the first element determining the jurisdiction of the courts should be the place of the maintenance creditor's habitual residence and thus suggests the order of indents a) and b) be reversed.

### 4.2 Article 15

The Committee considers that the maintenance creditor should always benefit from the law conferring the right on him/her; therefore invoking a law which would withdraw this right should not be admissible, except for a compelling public-policy reason as provided for under this regulation.

### 4.3 Article 35

The Committee is of the opinion that the order for the temporary freezing of a bank account should not be total, but limited to the amounts needed for the maintenance obligation to be met; otherwise the account holder could be deprived of the means to survive for an indeterminate period, until a decision is reached on the content of the matter — a measure which the Committee feels would be clearly out of proportion to the objective in mind.

Brussels, 20 April 2006.

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

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<sup>(?)</sup> COM(2004) 254 final.