The entry into force of the new European provisions applicable to maintenance obligations

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Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of judgments and cooperation in matters relating to maintenance obligations entered into force on 18 June 2011.

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of judgments and cooperation in matters relating to maintenance obligations entered into force on 18 June 2011. This Regulation replaces, for proceedings committed to after this date in connection with maintenance obligations, the provisions of the so-called Brussels I Regulation, Council Regulation (EC) No 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

This Regulation proposes a series of measures for the effective recovery of maintenance in cross-border situations, with regard to maintenance obligations arising from family relationship or marriage.

Regarding the applicable law, the Regulation refers to the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations which, besides special rules, has a general rule applying the law of the State of the creditor's habitual residence.

Regarding the competent court, the Regulation sets out new criteria for jurisdiction. In general, the competent court shall be the court of the place where the defendant or creditor has his habitual residence or the court appointed if the claim for maintenance obligation is ancillary to a claim regarding the status of a person or parental responsibility (unless this jurisdiction is based on the nationality of the parties). The Regulation also includes specific jurisdiction criteria.

More precisely, with regard to recognition and enforcement of judgments, this Regulation makes a distinction depending on whether or not the judgment has been made in a Member State bound by the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

A decision made in a Member State bound by the Hague Protocol of 2007 shall be recognised and enforced in another Member State without it being possible to oppose its recognition and without a declaration of its enforceability being necessary. The exequatur procedure shall be totally abolished.

If the judgment has been made in a Member State not bound by the Hague Protocol of 2007 (as is the case for the United Kingdom and Denmark), in order to be enforced it must be declared enforceable in the Member State of enforcement. The procedure is close to that specified in the Brussels I Regulation. In order to do this, any interested party may submit an application for a declaration of enforceability to the court or competent authority of the Member State of enforcement. Once the formalities of the application have been completed, or at the latest 30 days after their completion, the decision shall be declared enforceable, without any check on the reasons for refusing recognition. Only on an appeal by either party against the decision on the declaration of enforceability will the court be invited to examine the reasons for refusal listed in the Regulation:

- if such recognition is manifestly contrary to public policy in the Member State in which recognition and enforcement are sought;

- where the decision was made in the absence of the defendant, who was not informed of the proceedings in good time;
- if it is incompatible with a judgment given in a dispute between the same parties in the Member State in which recognition and enforcement are sought;
- if it is incompatible with an earlier judgment given in another Member State or in a third country in a dispute between the same parties for the same causes.

Where a judgment is enforced in a Member State other than the Member State in which it was made, enforcement shall be governed by the law of that Member State. At the enforcement stage, the reasons for refusal or suspension shall be those included in the Regulation.

Finally, the Regulation takes care to specify that the recovery of expenses incurred in the application of the Regulation shall not take precedence over the recovery of the maintenance claim.

The Regulation also specifies that cooperation will be established between Central Authorities to facilitate the enforcement of judgments in maintenance obligation matters.

Each Member State has been invited to appoint a Central Authority, which will have the task of assisting the parties involved to establish and recover a maintenance claim. The Central Authorities shall carry out general and specific duties. In terms of their general duties, they shall cooperate with each other and promote cooperation between the competent authorities in the application of this Regulation and the resolution of the problems that arise. In terms of their specific duties, the Central Authorities shall supply assistance to the parties regarding the claims specified in the Regulation, particularly by transmitting and receiving these claims and introducing procedures to establish or amend the maintenance obligation or the enforcement of a judgment in the matter. At the request of the creditor and his Central Authority, the Central Authority of the debtor's Member State must, for example, help the creditor to find the debtor, find information on his income, facilitate the service of the documents involved (without prejudice to Regulation (EC) No 1393/2007) and even facilitate the enforcement and payment of the maintenance.

Consulting the Regulation [2]

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