

Regulation 4/2009

Maintenance obligations

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General issues

- On the legal empowerment given by art.67 and 81 Treaty
- It tries to unify all matter relating maintenance
- In the framework of the Hague Program
- Important at the current circumstances
- Basically:
 - 1)Jurisdiction
 - 2)Conflicts of Law
 - 3) Recognition and enforceability
 - 4) Legal aid
 - 5)Cooperation between MS

Objective and Scope

- **OBJECTIVE**

Simplify and accelerate
the settlement of cross-
border disputes
concerning maintenance
obligations

- **SCOPE**

- I-Material
- II-Spatial
- III-Personal
- IV-Temporary
- V- Systematic

Material scope

Maintenance in a wide sense of the term

It means those arising from a family relationship, parentage, marriage or affinity

Its include obligation between spouses or former spouses

Court of Justice: autonomous interpretation

SPACIAL SCOPE

- **Jurisdicción and Recognition:** E.U.
Included Ireland, UK and Denmark
- **Cooperation**
Denmark is not included
- **Applicable Law:** Hague Protocol
Not included UK, Ireland and Denmark

Personal scope

Important new: In order to apply this the defendant does not have to live in a MS

National forums are no longer applied

Temporary scope

Regulation 4/2009 has been into
force since **18/06/2011**

Systematic scope:relations with others instruments

- Replace to **R 44/2001**:
on the matter concerned
- Except for ongoing enforcements
- Coexists with **Directive 2003//7CE**
- Replace **R. 805 (EEO)**
except EEO issued in MS
not bound by the Hague Protocol
- **International Conventions:**
Shall not affect IC between MMSS
and others States
- Precedence in relations between MS

JURISDICTION: hierarchical structure of the forums

- First. **SUBMISSION CUP**(ART. 5)
- Second: **choice of court**(art 4) provided that a lot of fulfillment
- Third: **General provisions**(art.3):
 - Main action:habitually residence of defendant or creditor
 - As ancillary:court of the main action
- **Subsidiary Jurisdiction:**
 - Common nationality(art. 6)
 - Forum neccesitatis(art. 7)

Applicable Law

Art. 15 : Shall be determined in accordance with The Hague Protocol of 23 November 2007

- 1) Universal Application
- 2) General rule: Habitual residence of the creditor
- 3) Special rules (art. 4,5 y 6)
- 4) Choice of Court in case of agreement
- 5) Important subjects are involved: amount, legitimation, prescription and so on

Recognition, enforceability and enforcement of decisions

- Decisions given in a MS bound by the 2007 HP
- Decision given in a MS not bound by The 2007 HP

Decisions given in a MS bound

Abolition of exequatur .This means : Its a true EEO

The recognition doesn't need any procedure
A declaration of enforceability is neither needed

R 805/2004 is replaced in this matter by this chapter

Documents to be filed: art. 20

The **grounds of refusal** or **suspension** are limited to those laid down in art. 21:

Refusal: Prescription

irreconcilable

Suspension: Review has been seised in the Court MS

Decisions given in a MS not bound-I

- **Exequatur** remains valid, but in a soft version
- Refusal of recognition can only be declared at the **instance of party** (not by the own motion of the judge)
- **Grounds of refusal** of recognition:
 - manifestly contrary to public policy
 - given in default of appearance
 - irreconcilable

Decisions given in a MS not bound-II

• **Absence of opposition**

The creditor submit an application for a declaration of enforceability

- Decision of the Court
- Absence of opposition

With opposition

- The Court has to examine the grounds alleged
- Decision in time limited(art.30)
- Notice of the decision
- Possibility of appeal
- Second decision

Decisions given in a MS not bound-III exequator

- **Application and recognition**

- Inaudita parte (without hearing of the party): the party against whom enforcement is sought shall not, at this time of the proceeding, be entitled to make any submissions on the application
- The Court can revise the formal requirements but not the material ones
- Decision: 1) complete the requirements
2) declaration of enforceability

- **Opposition**

the debtor can in this stage submit his opposition with the limited grounds of refusal laid down in art. 24

- **Enforcement**

- It shall be governed by the rules of the State of enforcement
- So, new grounds of refusal can be added.

Others issues

- **ACCESS TO JUSTICE**

- As a general rule applicants are granted the legal aid

Entitlements to legal aid shall not be less than those available in domestic cases.

- No security, bond or deposit shall be required to guarantee the payment of costs and expenses in proceedings concerning maintenance obligations

- **COOPERATION BETWEEN CENTRAL AUTHORITIES**

- In similar terms to The Hague Convention of 2007
- Each MS shall designate a Central Authority to discharge the duties ruled in this Regulation.
- This CA can transmit and receive applications