



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION STAFF WORKING DOCUMENT**

**Annex to the**

**Proposal for a**

**COUNCIL REGULATION**

**on jurisdiction, applicable law, recognition and enforcement of decisions and  
cooperation in matters relating to maintenance obligations**

**IMPACT ASSESSMENT**

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# COMMISSION STAFF WORKING DOCUMENT

Annex to the

## **Proposal for a COUNCIL REGULATION on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations**

### **IMPACT ASSESSMENT**

This Impact Assessment has been made on the basis of a “Preparatory Study for an Impact Assessment on Maintenance Obligations” which has been prepared for the Commission by an external contractor.

#### **1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES.**

At its meeting of 15 and 16 October 1999, in Tampere (Finland), the European Council called on the Council to establish, on the basis of Commission proposals, special common procedural rules to simplify and accelerate the settlement of cross-border disputes concerning, in particular, maintenance claims.

A Programme of Measures created for the implementation of the principle of mutual recognition of decisions in civil and commercial matters, which refers to the Tampere conclusions, was adopted in November 2000. This Mutual Recognition Programme stresses that the question of maintenance obligations concerns the everyday lives of citizens and that guaranteeing effective recovery of claims is essential for the welfare of many people in Europe. It recommends the abolition of the *exequatur* procedure.

The Programme further states that “*It will sometimes be necessary, or even essential, to lay down a number of procedural rules at European level, which will constitute common minimum guarantees intended to strengthen mutual trust between the Member States' legal systems*” and even that “*discussions should be directed towards a certain degree of harmonisation of the procedures*”. It envisages the adoption of a “*series of ancillary measures [which] would consist in seeking to make more efficient the enforcement, in the requested State, of judgments delivered in another Member State*”, notably by allowing “*precise identification of a debtor's assets in the territory of the Member States*” so that mutual recognition can operate in the context of “*enhancing cooperation between Member States' courts*”, and measures for the “*harmonisation of conflict-of-law rules*”.

The relevance of this Programme of Measures was confirmed by the European Council. At its meeting of 3 November 2004, it adopted “The Hague Programme”- “Strengthening Freedom, Justice and Security in the European Union”. In the Action Plan adopted by the Council and the Commission, in order to implement the Hague Programme, the Commission is invited to submit, before the end of 2005, “*proposals on maintenance obligations*”.

## STAKEHOLDER CONSULTATION

The adoption of the proposal was preceded by a wide-ranging consultation of both Member States and all interested parties of civil society.

### 1.1. Study

The Commission authorized a study to be carried out by The International Network of Lawyers (*Lex-Fori*). The study, done for the Commission before the enlargement, outlined the current situation in terms of the recovery of maintenance payments in 15 Member States.

### 1.2. Green Paper

The Commission Green Paper on maintenance obligations ('The Green Paper') proceeded from the above study and from information gathered in the course of work at the Hague Conference on Private International Law.

The Green Paper is divided into four principal parts which, respectively, set out the general background of the planned work of the Commission, the relationship between Community legislation and the Hague Conventions on maintenance obligations, the basic issues defining the scope of Community legislation in this field, and finally the Commission's 37 questions covering the principal legal issues the Commission regards as relevant to any legislative activity in this field at EU level.

The launch of the Green Paper in April 2004 had the aim of creating a consultation exercise with key stakeholders with an interest in the legal and practical questions arising in situations with an international element in matters of maintenance obligations. There were about thirty responses to the Green Paper (from Member State governments, representatives of interest groups and lawyers' representative bodies).

The key questions put to the Green Paper's informants were:

- What should be the scope of the future Community instruments on maintenance obligations? More precisely, should they apply to all persons likely to enjoy maintenance claims in the different legal systems?
- Are there considerations that might make it difficult to abolish the *exequatur* for maintenance orders?
- Is it possible to impose the principle of automatic provisional enforcement of maintenance orders?
- What can be done to improve actual enforcement of maintenance orders?
- Should the future Community instruments contain conflict-of-laws rules?
- Is it possible, within the European Union, to deeply improve cooperation between the competent authorities in the field of maintenance obligations? And how?
- What mechanisms could provide for less costly procedures?

- What could be the role of the public bodies which are subrogated to the maintenance creditor's rights?

### **1.3. Public Hearing**

The first reactions to the Green Paper were debated in a public hearing organised by the Commission in June 2004. This meeting was largely devoted to the preparation of the relations between the negotiations held in The Hague and the future actions of the Community.

### **1.4. Meetings of Experts.**

A first meeting of Member States' experts took place in November 2003. It was based on a Commission staff background paper on the preparation of a Community instrument and a Hague Convention on maintenance obligations. The main purpose of this meeting was to prepare the Green Paper.

A second meeting of Member States' experts was organized in May 2005. The participants received in advance a discussion paper prepared by the services of the Commission which contained 3 draft proposals: a draft Regulation on the law applicable to the maintenance obligations, a draft Regulation concerning the recovery of maintenance claims and modifying the Regulation (EC) n° 44/2001 and a draft Directive to improve the recovery of maintenance claims by establishing minimum common rules relating to access to information, decision making and enforcement of decisions.

During this meeting, the following items were discussed: applicable law, abolition of *exequatur* and ancillary measures (harmonization of rules of procedure), cooperation, access to information, enforcement of decisions, advances, relations with other Community and international instruments.

The participants to the meeting were invited to send written comments to the Commission. Around ten of them took this opportunity to continue the consultation until the very first days of July 2005.

## **2. WHAT PROBLEMS THE PROPOSAL IS EXPECTED TO TACKLE?**

### **2.1. The Problems**

In general terms, many maintenance creditors in the European Union do not receive maintenance money, due to the lack of effective enforcement mechanisms and to other factors such as time delays and administrative inefficiencies. One of the main issues is the number of stages a claim has to go through to be enforced. The *exequatur* phase, which is necessary to obtain an enforceable in another Member State, produces delays. The current situation for maintenance creditors in many Member States represents a complex and prolonged challenge to getting a judgement enforced, which may represent a disincentive to creditors to pursue a claim.

More specifically, problems in the effective enforcement of maintenance claims can emanate from the inability of the relevant authorities to locate the debtor, and to gain information on the debtor's assets in order to justify an order against the debtor. This is especially the case from orders from countries that often do not keep records of addresses. Access to databases,

cost and time of investigations and the pressure on the police and bailiffs are further associated problems.

In many Member States, maintenance creditors are not given the support, in terms of either advice or legal aid, by the relevant authorities in order to effectively pursue a claim for maintenance payments from the debtor. There is often no guarantee of legal aid in order to enable the maintenance creditor to pursue a legal claim for maintenance.

Wide discrepancies occur in the application and enforcement of foreign maintenance orders between different EU Member States. A contributory factor to the complexity and protracted process has been the differing conceptions between Member State law as to what, and to whom maintenance obligations actually apply. Enforcement of an order is thus not guaranteed if the conception of an obligation differs between transmitting state and receiving state.

A detailed outline of the variations between Member States regarding to whom maintenance obligations pertain is shown in table A 1 of the annex, the legal and structural variations related to the enforcement of maintenance claims is shown in table A 2.

There is also considerable variation between Member States surrounding determination and enforcement of maintenance orders. Table A.3 outlines these differences.

## **2.2. This situation is compounded by the fact that there are several agreements and conventions which are applicable to maintenance obligations.**

The majority of European States have acceded to the New York Convention of 20 June 1956 on the Recovery Abroad of Maintenance. Of central relevance are also the Hague Conventions of 1958 and 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations. Insofar as these relate to the EU, 17<sup>1</sup> Member States out of 25 accepted to apply the conditions established by the Hague Convention of 2<sup>nd</sup> October 1973. The Hague Conventions on the Law Applicable to Maintenance Obligations (1956 and 1973) are also very important, but only 9 Member States have ratified the 1956 Convention, which is limited to child maintenance, and 11 are parties to the 1973 Convention, which cover the same scope of application than the 1973 Convention on Recognition and Enforcement (*“maintenance obligations arising from a family relationship”*).

With the exception of Denmark, the Member States have replaced the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters by the Council Regulation (EC) No 44/2001 of 22 December 2000 *on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (‘Brussels I Regulation’). The Regulation contains a special jurisdiction rule enabling a maintenance claimant to pursue the debtor in the creditor’s place of residence. Article 33(1) provides that *“A judgement given in a Member State shall be recognised in the other Member States without any special procedure being required”*. Such recognition may be opposed on certain grounds referred to in Article 34. Article 36 prohibits any modification of a foreign judgement.

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<sup>1</sup> Germany, Denmark, Spain, Estonia, Finland, France, Greece, Italy, Lithuania, Luxembourg, The Netherlands, Poland, Portugal, Czech Republic, United Kingdom, Slovakia, Sweden.

The Convention of 6 November 1990 on the Simplification of Procedures relating to Maintenance Recovery has also to be mentioned, even though it is not part of positive law, since it has yet to come into force between all the Member States.

The other relevant legislative instruments that impact on enforcement of maintenance orders are the Council Directive 2002/8/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, and the Regulation (EC) No 805/2004 of the European Parliament and the Council of 21<sup>st</sup> April 2004 creating a European enforcement order for uncontested claims.

Thus, the Brussels I Regulation is not the only applicable legal instrument within the EU, even in matters relating to recognition and enforcement of maintenance orders. It is indeed necessary to stress that Article 71 of the Brussels I Regulation states that “*this Regulation shall not affect any conventions to which the Member States are party and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments*”. For this reason the legal situation is not completely harmonised within the European Community.

The Hague Conventions on maintenance obligations, and more specifically the ‘Recognition Convention’ of 2 October 1973, are still in force between the Member States which are party to them. Therefore provisions regarding the recognition and enforcement of judgments of this Convention have primacy.

According to Article 26 of the 1973 Hague Convention, any Contracting State may reserve the right not to recognise or enforce several types of maintenance decisions<sup>2</sup>. Some Member States of the European Union (15 on 17 which are parties to the 1973 Convention) have made such reservations. Thus, in spite of the entry into force of the Brussels I Regulation, and its simple and harmonised regime of recognition and enforcement of judgments, the situation remains complex and heterogeneous within the European Union.

Member States authorities may refuse to recognize and enforce foreign judgements not only on the basis of the ‘classical’ public order clause – which is by definition a costly procedural delay with again no guarantee of eventual enforcement – but also on the basis of the reservations they made on the basis of the Hague Convention. Thus, for instance, Finland might refuse to grant recognition to French maintenance orders based on the obligation of a child to support his or her parents, whilst Sweden may not acknowledge maintenance obligations between siblings that are, instead, enforceable in Portugal.

Some administrative inefficiencies and uncertainty may also be pointed out. For example there is a lack of clarity about what documents are needed and this varies depending on the stipulations of each Member State. Problems occur in correspondence between agencies, the need for translation of documents, and a lack of standardisation. There is general uncertainty as to which organisation is the ‘competent authority’ to deal with a maintenance claim, these can be both administrative or judiciary bodies. There have also been difficulties in achieving a strong cooperation among the various judicial and administrative bodies.

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<sup>2</sup> Decisions relating to a period of time after a maintenance creditor attains the age of 21 years or marries; decisions in respect of maintenance obligations between persons related collaterally, or between persons related by affinity; decisions unless they provide for the periodical payment of maintenance.

### 2.3. The Size of the Problems.

It is important in order to justify action at the level of EU legislation to attempt to assess the scope of the potential problem in order to make a more informed assessment of the level of impact that future Community instruments might have in addressing those problems. The Green Paper suggests that *“large numbers of people are concerned; the difficulties met by some of them can be extremely costly to them, both in material and psychological terms; and that the sums that States have to pay to make up for the defaults of certain debtors are considerable.”*

Unfortunately, as noted in the Green Paper also, there are no European statistics on the number of maintenance claim cases requiring cross-border recovery; however it does point to a number of relevant indicators.

#### 2.3.1. (i) Numbers of European citizens living in other Member States

The Green Paper states that in 1999 about six million citizens of EU Member States resided in another Member State. In addition it further states that in many EU countries, the number of divorces per 100 inhabitants is close to half the number of marriages. In Spain, 80 per cent of the divorce or separation orders award maintenance, but that it is not actually paid in 50 per cent of cases. In 2001, Sweden, which has a population of 8.8 million, 21,000 maintenance debtors registered at the social security authorities resided abroad. The total maintenance payments made by them were approximately €7 million.

On 1<sup>st</sup> May 2004, Poland, Hungary, Slovenia, Slovakia, the Czech Republic, Latvia, Lithuania, Estonia, Cyprus and Malta became full members of the European Union. These 10 countries brought 74 million more people into the European Union. With this expansion of the Union, more people will have the option of working in another European country in due course. As more people work abroad and engage in prolonged travel, the opportunities of meeting and forming long term relationships with people from another country increases.

It is interesting to note also that more detailed analysis of the age profile of those EU citizens currently residing in another Member State shows that, looking at the most common (modal) age groups of those citizens, they predominantly fall into the age category of 25 to 39 years. In Germany, 885,600 fall into this age category. This suggests that a greater proportion of EU citizens residing in other EU Member states are fairly young.

These figures are indicative of the potential size of the problem and the indications are that the level of migration between borders by EU citizens is increasing. It is clear however, that no accurate overall statistics on the level of unresolved claims for maintenance payments across Member States' borders exist at present. There are however other indicators which point to the size of the problem.

#### 2.3.2. (ii) The extent of maintenance debt in the EU

The estimates for the amounts of non recovered maintenance in EU Member States do not give a consistent picture. Some Member States have well developed statistics, whereas in other cases such data is not accessible.

In the UK, by 31 March 2003, non-resident parents owed £2.7 billion in maintenance. In the audited Client Funds Accounts for 2002-03 £664 million is reported as full maintenance assessments that are considered collectable<sup>3</sup>.

The German agency, the Institute for Child Health and Family Rights (*Deutsches Institut für Jugendhilfe & Familienrecht*) which deals with the international enforcement of support claims for children residing in and outside of the Federal Republic of Germany reports that in the year 2000, 4,217 cases were processed by their offices. The majority of these cases were payments to support creditors living in Germany, and 356 new cases were processed in 19 different countries which resulted in legal proceedings.

### 2.3.3. (iii) *The number of lone parent families in the EU*

In the EU-15, on average 9 percent of all households with children are lone-parent households<sup>4</sup>. This group of citizens represent a major majority of the EU citizens relevant to the Programme of measures. However, the range is quite wide<sup>5</sup>. With only one exception, this family type is overwhelmingly female-headed. Between 80 and 90 percent of the parents were lone mothers. Only in Sweden are 26 percent of these families headed by fathers.

In addition to these lone parents, a similar percentage of families with children (about 20 percent) are cohabiting. This is especially common in the Nordic countries (except in Sweden where these cohabiting couple families are classified as included among the married), although the overall trend can be seen throughout the EU.

Lone mother families are at high risk for economic insecurity and poverty; and the children in these families are especially vulnerable. Child poverty rates in almost all the countries are disproportionately high among children living in lone mother families.

### 2.3.4. (iv) *Conclusion – Estimating the dimensions of the problem*

Although the evidence is incomplete, because of the variation in the extent to which data on the number people affected is gathered and in how the number of maintenance claims are filed both within and across Member States' borders, the real scope of the problem can only be broadly estimated. It is clear, however, from consultations with legal and policy experts that in terms of the numbers of people affected, the problem may be much larger than any of the current data suggests because so many maintenance debtors' claims do not go any further and so are not registered with the relevant authorities.

In other words, the current systems in place represent a serious disincentive to creditors to pursue a claim further, and reports from legal practitioners suggest that they will often dissuade clients from taking action because of the potentially lengthy and expensive processes involved. In effect, the expense often outweighs the benefits in terms of the level of payment recovered. It is especially true for the population concerned: lone parent families at high risk for economic and social problems.

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<sup>3</sup> <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmworpen/1068/3091006.htm>

<sup>4</sup> Lehmann, P. and Wirtz, C. "Household Formation in the EU – Lone Parents", Statistics in Focus, Population and Social Conditions, Theme 3-5/2004.

<sup>5</sup> From 22 percent in Sweden, 19 per cent in Germany, 16 per cent in the Netherlands, 14 per cent in Austria, 12 per cent in France, and 17 percent in the UK, to 4 percent in Italy, Portugal and Greece and 3 percent in Spain.



To estimate the extent of the problem of unsuccessful enforcement of maintenance claims across the EU, the following indicators were considered:

- The number of households with children.
- The proportion of marriages with a citizen from another EU Member State.
- The rate of divorce and the average duration of marriages that end in divorce.
- Average size of maintenance claim.

There were, on average, around 170 million households in the EU15 and the new Member States during 1999-2003 (EUROSTAT data). Approximately 54% of all households across the EU25 consisted of households with dependent children, with the proportion of such households higher in the New Member States (59%), compared to EU15 (50%). Therefore, it can be estimated that there are around 92 million households with dependent children in the EU25.

Data on marriages between citizens from different Member States is not readily available. Such data for some Member States has been inferred from a research project 'Protection and aid measures for female marriage migrants from third countries in the Member States of the European Union' conducted by Berlin Institute for Comparative Social Research, financed in the framework of DAPHNE Programme of the Commission. ([http://www.emz-berlin.de/projekte\\_e/pj44\\_1E.htm](http://www.emz-berlin.de/projekte_e/pj44_1E.htm)). Although the research focus was on the female marriage migration, some country reports on EU15 countries do contain data on the proportion of bi-national/mixed marriages with foreigners, and provide a breakdown of such foreign marriages by the nationality of spouse, including that of other European Union countries. On average, the proportion of marriages with a citizen from other EU Member States is around 4%, ranging from 0.7% in Spain to 11% in Luxembourg. However, data that would provide a figure of EU 15 countries is not available.

Available data points to the divorce rate of around 40% in the EU25. According to the EUROSTAT, in 2002 there were 40 divorces per 100 marriages in the EU25 (41 in EU15, 37.6 in NMS). EUROSTAT data also shows that the average duration of marriage at divorce is around 12 years (EU15, 2002, no data for the New Member States are available).

Therefore, the number of maintenance claims resulting from cross border marriages can be calculated as follows:

92 million households with children of which 4% are households with a spouse from another Member State = 3.7 million households with children and a parent who is a citizen from another EU Member State. Given that the divorce rate is 40% and the average marriage duration is 12 years, the number of maintenance claims in a given year would be around 123,000 (3.7 million x 40% : 12)<sup>6</sup>.

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<sup>6</sup> This assumes that relationships between non-married couples with dependant children break up at a similar rate to married couples – if anything this is likely to be an underestimate (Ermisch, J & Francesconi, M. (2000) Patterns of household and family formation. In R. Berthoult and J. Gershuny (Eds) *Seven years in the lives of British families: evidence on the dynamics of social change from the British Household Panel Survey*. (Bristol: The Policy Press)

The estimations of the proportion of the maintenance debt within the Member States are not readily available. Where such data exists, they point to variations in the problem cases with maintenance claim payments. In Spain, maintenance claims are not paid in 50% of cases. In the UK, around 70% of child support maintenance is considered as '*probably uncollectible*', which means that public authorities consider this debt is likely to be very difficult to collect (£1.9 billion out of total £2.7 billion).

On the assumption that 50% of claims are not settled, and therefore can potentially be subject to legal action, the number of cross border maintenance claims which could be subject to legal action could be up to 62,000 (50% of 123,000 total potential claims) depending on to what extent one or other of the partners leaves the jurisdiction in which they cohabitated post-separation.

The amount of an average maintenance claim is a difficult area to estimate, although some indications exist from several Member States. In the UK, maintenance claim is calculated at 15% of the salary for 1 child, 20% for 2 children, 25% for 3 children, making the average size of payment of 20% of the earnings.

Assuming that the average net annual earnings of a spouse in the EU15 is around €20,000, the average size of a maintenance claim, estimated at 20% of earnings, would be around €4,000. Thus, the monetary value of 'problematic' cross border maintenance claims could be up to €248 million (62,000 'problematic cases' with the average annual value of €4,000).

Alternatively, the extent of the problem could also be expressed in capitalised lump sum terms. Assuming that the maintenance claim is paid for 8 years on average, the average lump sum payment in the settlement of a maintenance claim would be around €32,000 (€4,000 x 8). Given that the number of maintenance claims potentially subject to legal action as a result of inter EU marriages could be up to 62,000, the monetary value of these claims, expressed in capitalised lump sum payment, could be up to €2 billion (62,000 claims x €32,000).

### 3. WHAT MAIN OBJECTIVES IS THE PROPOSAL SUPPOSED TO REACH?

The main objective is to accelerate and simplify enforcement of decisions, in order to guarantee effective recovery of maintenance. More precisely, the following specific objectives and potential actions have been elucidated:

**(i) *Re-establish harmony within the EU.*** As already explained, the Brussels I Regulation is not the only applicable legal instrument within the EU. The Hague "Recognition Convention" of 2<sup>nd</sup> October 1973 is still in force between some Member States and its provisions regarding the recognition and enforcement of judgments of this Convention have primacy. Thus, the legal situation remains complex and heterogeneous within the European Union. It is therefore necessary to adopt a new instrument which will partially replace, in matters relating to maintenance obligations, the existing Brussels I Regulation, including the derogations to it which are allowed by Article 71. As a consequence, the 1973 Hague Convention – and the reservations made under it – will cease to be applicable between Member States of the EU.

**(ii) *Remove intermediate measures.*** A first step has been taken with the adoption of the Regulation (EC) 805/2004 of the European Parliament and of the Council of 21<sup>st</sup> April 2004 creating a European Enforcement Order for uncontested claims. This new instrument is applicable to maintenance obligations and dispenses, under certain conditions, with all

intermediary measures (*'exequatur'*) in the Member State in which enforcement is sought, in the verifiable absence of a dispute over the nature or extent of a debt. On request and upon verification of whether the conditions have been complied with during the procedure, the judge of the country of origin will issue a certificate dispensing the decision from *exequatur* in any other EU Member State.

The Regulation 805/2004 is limited to uncontested claims and the issue of a certificate, on a case by case basis, is still necessary for the abolition of *exequatur*. For maintenance claims, a broader and more ambitious approach could be appropriate: all the decisions given by the competent authorities of a Member State, even those concerning contested claims are to be recognised automatically in the other Member States without any declaration of enforceability being required and without any possibility of opposing recognition.

Regarding defence rights, it must be remembered that the Mutual Recognition Programme calls for the adoption in certain areas, and particularly where abolition of the *exequatur* is planned, of minimum procedural guarantees, to ensure that the requirements for a fair trial are strictly observed in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

**(iii) *Improve and simplify enforcement procedures.*** Merely abolishing the *exequatur* would not be sufficient to remove all obstacles regarding the recovery of maintenance claims in the European law-enforcement area. Other measures would have to be put in place. The need for a judicial procedure for enforcement and the redress procedures and remedies available to the defendant are probably serious obstacles in the way of the successful enforcement of the judgement, not only because enforcement can be suspended during the proceedings but also because of the length of time taken by proceedings in some Member States.

Specific actions would include harmonising rules on the withdrawal of maintenance payments from the debtor's bank accounts. Efforts should be made to arrange that creditors would be able to enjoy the most privileged status giving them priority over any other creditors [of the debtors] including the Inland Revenue. In addition, to make access to justice more effective for the creditor, so that legal aid is made available at an early stage and to harmonise this across Member States so that creditors have access to advisory and financial support in pursuing their claims.

**(iv) *Enhance cooperation.*** Greater co-operation between Member States' agencies is envisaged with the aim of accelerating claims procedures. The processing of case files relating to maintenance obligations can generate a need to gather information abroad on personal details, for example, a debtor's address, assets and resources, on matters requiring expert opinions, in particular to establish paternity, or on the law applicable in another country. The creditor does not always have this information and can encounter difficulties in commencing a case if no help is available to obtain it.

Thus it would be beneficial to for the joint-development of more effective mechanisms and greater powers to investigate the exact financial and patrimonial endowments of the debtor and to entrust central authorities with an investigation role regarding the debtor's location and assets prior to the stage of enforcement. In this way, transparency, and access to all information about the debtor is addressed long before the stage of enforcement.

The development of closer working relationships between the authorities charged with the task of administering and enforcing maintenance claims could include developing

mechanisms to enable faster and more effective sharing and exchange of information relevant to the recovery of maintenance claims. In addition the aim will also be to encourage agreements between parties to avoid legal action to settle out of court and thus avoid more costly and lengthier procedures. Further, by simplifying access of citizens to enforcement procedures of maintenance decisions in any Member States by establishing minimum common standards.

*(v) Clarify what is applicable law.* There are major divergences in the domestic legislation of European Union Member States, as regards maintenance obligations. The age at which children cease to be eligible for a maintenance claim on their parents varies from one State to another. The legislation of certain countries does not include an age limit but looks at children's situations and their ability to cover their needs. Some legal systems provide that at least in certain circumstances one of the divorced spouses has a maintenance claim against the other. But other systems apply the contrary principle. Certain legislations allow maintenance obligations between different family members or unrelated "near ones", whereas others confine maintenance claims to children and spouses.

Therefore, it could be useful to establish a full set of conflict of laws rules within the EU or at least in the case of what constitutes a 'family relationship' that can engender maintenance obligations, but also statutory limitations, duration of obligation, the recovery of arrears, revision demands and whether the order is viable whilst the judgement is liable for appeal.

#### **4. WHAT ARE THE MAIN POLICY OPTIONS AVAILABLE TO REACH THE OBJECTIVES?**

##### **4.1. Option 1: The Status Quo.**

**Arguments in favour of maintaining the status quo:** In terms of proportionality, the number of people affected by international maintenance debt is unclear therefore action at the EU level in this area could be unjustified since the cost of implementation of this Programme of Measures might outweigh the benefits to those affected. Cost of implementation would comprise of transition costs, due to a change in the way agencies are required to operate as a result of implementation, as described under options 2, 3 and 4. As intermediate measures do not significantly contribute to time delays in maintenance claims, their enactment would do little to accelerate enforcement.

Further action at an EU level may not be justified since sufficient legislation is already in place: 17 Member States have ratified the 1973 Hague Convention and a range of cross-border agreements already exist. The Hague Conference has addressed many of the issues in the administrative cooperation recognition and enforcement.

At the national level, although problems exist with the recovery of maintenance payments in most Member States, their policies and structures need time to develop.

No additional financial commitment required should the status quo remain: the transition costs for the relevant public bodies will be zero and therefore there will not add to the financial or administrative burden on authorities.

**Arguments against maintaining the status quo:** Debtors will remain difficult to track down without increased powers to move towards greater identification and transparency of bank account details, location etc. There will be no improvement in the ability of agencies to gain

information on the debtors' assets through accessing bank account or salary details. The current problems of a lack of cooperation between competent authorities will persist without further action.

Although uncertain as to their exact level, the costs of the *exequatur* procedure would remain. Without regulatory action, claims recognised in one Member State may still not be recognised in another Member State.

The number of successful enforcements will not increase. Should the status quo option be selected, there will be no improvement in the numbers of successful claims and enforcements. Given the increased level of migration between Member States, the problem could increase in the future.

Current arrangements do not provide the necessary advice to maintenance creditors and legal aid to support the pursuit of a claim is not universally available in the EU.

A Community based instrument would not be duplicating the Hague Convention and the degree of harmonisation would be more easily achieved in the EU than internationally.

#### **4.2. Option 2: Non legislative action**

The aim will be to develop measures to address the problem of enforcement in both internal and cross-border cases and within national boundaries. This would include:

- The development of the competent authorities as contact points in each Member State, those authorities will facilitate opportunities for settling claims out of court and the prioritisation of legal aid for maintenance creditors;
- The development of collaborative mechanisms between the competent authorities of Member States;
- The development of standardised systems of claims processing including electronic forms, data transfer and translation.
- The establishment of an EU-wide peer learning forum to facilitate the development of best practice guidance on the case of cross-border claims.
- At the national level, a working party of experts will be established to address the obstacles to recovery of maintenance payments, taking into account lessons learnt from national agencies dealing with maintenance payments. This will include experts on employment and social security.

#### **Arguments in support of option 2**

A significant problem in the recovery of maintenance is the lack of cooperation and joint infrastructure to manage the processing and enforcement of maintenance claims. The option should improve cooperation between the competent authorities within each Member State and enable creditors more effective access to justice through the provision of advice and legal aid.

The non-legislative action, as outlined in option 2 represents the least politically controversial set of action which the Community could adopt. It does not cut across the legal and political structures of Member States.

The development of collaborative mechanisms between competent authorities will go some way to addressing the problem of locating the debtor.

The necessary advice to maintenance creditors and legal aid to support the pursuit of a claim should be made more easily accessible in EU Member States.

The policy option directly addresses the issue of lack of cooperation so option 2 will have a positive impact on this problem.

### **Arguments against option 2**

For many observers, relying purely on non-legislative action does not go far enough in solving the problems associated with the different conceptions of a maintenance obligation between Member States. There would be no greater guarantee that a maintenance claim from one Member State would be recognised in another Member State, since conflicting conceptions, and the ability to invoke intermediate measures will mean that delays and potential dismissal of maintenance claims may still occur in receiving states. Claims recognised in one Member State may still not be recognised in another Member State. Policy option 2 does not take account of the problems associated with intermediate measures and so therefore will have no effect on these problems.

There will be no improvement in the ability of agencies to gain information on the debtor's assets through bank account or salary details. Greater cooperation and the sharing of best practice should improve inefficiencies, however will fall short if minimum common standards or deadlines are not enforced.

Transition costs would be moderate to high, involving a significant change in the way agencies are required to operate, involving investments in new systems and procedures.

In many of the Member States the administrative infrastructures and mechanisms are poorly developed so it could take a considerable amount of time to achieve the outcomes required to improve cooperation.

- 4.3. Option 3: Increased EU harmonisation.** The aim will be to make progress towards increased harmonisation. In addition to the non-legislative actions outlined in option 2, option 3 will include the development of a full set of conflict-of-laws rules, covering the scope of all maintenance claims within the EU, including determination of relationships that constitute a maintenance obligation, statutory limitations, duration of the obligation and the recovery of arrears.

### **Arguments in support of option 3**

The development of a full set of conflict of laws rules, in addition to the introduction of the non-legislative measures will reduce the likelihood that foreign maintenance orders will be rejected because of extremely wide discrepancies between Member States as to what and to whom maintenance obligations actually apply.

As with option 2 the development of collaborative mechanisms between competent authorities will go some way to addressing the problem of locating the debtor.

The necessary advice to maintenance creditors and legal aid to support the pursuit of a claim is should be made more easily accessible in EU Member States.

Increased harmonisation should lead to greater approximation, however without regulatory action; claims recognised in one Member State may still not be recognised in another Member State.

Greater cooperation and the sharing of best practice should improve inefficiencies, however will fall short if minimum common standards or deadlines are not enforced.

Will benefit people at the ‘first’ stage of a claim and be more likely to lead to recognition and enforcement than the purely non-legislative package as outlined in option 2.

### **Arguments against option 3**

It is likely that valid claims for maintenance determined in one Member State will still be subject to intermediate measures in the receiving state, and therefore potentially subject to procedural delays. There will be no improvement in the ability of agencies to gain information on the debtor’s assets through bank account or salary details.

The non legislative actions (option 2) directly address the issue of lack of cooperation so will have a positive impact on this problem, however option 3 is unlikely to have any additional benefits on this issue.

Transition costs would be moderate to high, involving a significant change in the way agencies are required to operate, involving investments in new systems and procedures.

The option increases the likelihood that definitional issues will be resolved; however there will still be no compulsion on member states to recognise a maintenance claim brought in another Member State.

- 4.4. Option 4: Complete mutual recognition. The objective of improving recovery of maintenance payments cannot sufficiently be achieved by the Member States and can be better achieved through the Community. First of all, it is a matter of allowing a maintenance decision given in a Member State to be recognised and enforceable in any other Member State without any further procedure being required (abolition of exequatur) and improving cooperation between national authorities. Secondly, it is a matter of simplifying access of citizens to enforcement procedures of maintenance decisions in any Member State by establishing minimum common standards.**

**This option combines options 2 & 3 with the following additional actions:**

There will be provisions on applicable law, on recognition and enforceability of decisions, on cooperation and on enforcement procedures covering all maintenance orders. The scope of the measures will include all maintenance obligations recognised within the EU and orders issued by competent authorities, including those given by public bodies that have taken over the debt through Advance Payments

Other measures include: enabling transparency of debtors' assets, the imposition of deadlines on the relevant authorities to enforce claims, attachment to the debtor's earnings, the prioritisation of maintenance payments from the debtor over all other claims including the Member State' Inland Revenue Services, attachment to the debtors earnings involving the development of the electronic transfer of payments between bank accounts and index linking of maintenance payments.

#### **Arguments in support of option 4**

The objective of improving recovery of maintenance payments cannot sufficiently be achieved by the Member States individually and can be better achieved through action a within the Community. The significant obstacle to effective and efficient processing of maintenance claims is the presence of intermediate measures, which will be removed. Unless better information about the debtor and their assets is made available to the competent authorities within each Member State, some maintenance debtors will still be difficult to locate and their assets, and therefore their ability to pay will be unknown. Furthermore, the development of a European Maintenance Order, recognised in all Member States will speed up the processing of claims and the transfer of maintenance payments electronically, will represent improvements in efficiency and reduced costs in the long term.

This option will address the problem and enable agencies to access records on addresses from population censuses and national insurance records. It also directly addresses the issue of accessing information on debtor's assets, within it proposals for access to information on current bank accounts.

The necessary advice to maintenance creditors and legal aid to support the pursuit of a claim is should be made more easily accessible in EU Member States.

In addition to the measures outlined in option 3 of increased harmonisation should lead to greater approximation and through regulatory action, claims recognised in one Member State will be recognised in another Member State.



Policy option 4 directly addresses the problem and will encompass the abolition of the exequatur, thus eliminating the problem.

In addition to enhanced cooperation, the insertion of minimum common standards in option 4 will ensure that mandatory standards on processing and enforcement will be encouraged.

In sum, full mutual recognition would achieve the most in terms of cross-border litigation over maintenance obligations.

#### **Arguments against option 4**

Concern about the rights of the debtor in terms of maintaining their rights to privacy (data protection) and to a fair trial have been expressed, particularly since option 4 represents an ‘automatic’ enforcement with no clear recourse to defence for the debtor.

Of all the policy options outlined, complete mutual recognition, and the measures associated with it, was the one which informants felt would be most likely to trigger an ‘opt-out’ by some Member States, because it most clearly cuts across the legal and constitutional frameworks of each member state.

The non legislative actions (option 2) directly address the issue of lack of cooperation so will have a positive impact on this problem, however option 4 (as option 3) is unlikely to have any additional benefits on this issue.

Of all the four policy options, option 4 represents the greatest challenge to centralised authorities in terms of the transitions required in order to implement it.

The policy option may have implications for current European and national law on data protection and rights to a fair trial, with particular regard to The Charter for Fundamental Rights.

Further, the concern was raised in the public consultation that such a policy direction would target some of the more vulnerable groups in the European Community. It was noted that maintenance debtors are very often on the edge of poverty themselves so it was felt important that the debtor’s ability to pay maintenance and at the same time to enable them to maintain a reasonable standard of living wherever they resided, should be considered.

#### **5. WHAT ARE THE EXPECTED IMPACTS?**

The four policy options have been elaborated in terms of tasks and outputs and assessed according to how far they address the problems identified in the current situation and how far they achieve the policy objectives. Tables 1 and 2 summarise the estimated impacts from different policy options, regarding how far they address the problems identified in the current situation and how far they achieve the policy objectives. The specific components and actions associated with each policy option are summarised in the other tables.

**Table 1 — Summary of tasks and outputs associated with the four policy options.**

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
	<b>Status quo, no further action at the EU level</b>	<b>Non-legislative measures</b>	<b>Increased EU Harmonisation</b>	<b>Complete mutual recognition</b>
Development of the competent authorities		✓	✓	✓
Development of collaborative mechanisms between the competent authorities of Member States		✓	✓	✓
Development of standardised systems of claims processing		✓	✓	✓
Establishment of an EU-wide peer learning forum		✓	✓	✓
Establishment of a working party of experts		✓	✓	✓
Harmonisation and clarification of applicable law			✓	✓
The development of a full set of conflict of laws rules			✓	✓
Complete mutual recognition (removal of intermediate measures)				✓
Enabling transparency of debtors' assets				✓
Imposition of deadlines to enforce claims				✓
Attachment to debtors' earnings				✓
Prioritisation of maintenance payments over other claims from creditors				✓
Development of electronic transfer of maintenance payments between bank accounts				✓
Index linking of maintenance payments				✓

The policy options have been assessed according to the following criteria:

- The extent to which each policy option addresses the problems identified.
- The extent to which each policy option meets each of the policy objectives.
- The level of financial and organisational resources required for the implementation of each policy option.
- The benefits of each policy option.
- The constraints and problems associated with each policy option.

**Table 2 — Summary assessment of the policy options<sup>7</sup>**

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>	<b>Option 4</b>
	<b>Status quo, no further action at the EU level</b>	<b>Non-legislative measures</b>	<b>Increased EU Harmonisation</b>	<b>Complete mutual recognition</b>
<b>Problems addressed</b>				
Problems in locating the debtor	*	**	**	****
Accessing information on Debtors' assets	*	*	*	****
Lack of provision of advice and legal aid to the creditor	*	***	***	***
Lack of cooperation between competent authorities	*	****	****	****
Lack of mutual recognition of decisions	*	*	***	****
Problems associated with intermediate measures	*	*	*	****
Administrative inefficiencies	*	**	**	****
<b>Policy objectives achieved</b>				
To re-establish harmony within the EU	*	*	***	****
To remove intermediate measures	*	*	*	****
To simplify enforcement procedures	*	**	***	****
To enhance cooperation	*	***	***	****
To clarify applicable law	*	*	***	****

<sup>7</sup> The stars in the cells indicate the extent to which policy option addresses the underlying problems and fulfils the policy objectives. 1 star being the least and 4 stars the most.

## 5.1. Assessment of policy option 1, the ‘status quo’ (Table 3)

		Rating <sup>8</sup>	
<b>Problems addressed</b>	Problems in locating the debtor	*	The problem will remain unchanged. Without action at the EU level and the enhanced cooperation between competent authorities, debtors will remain difficult to track down both within and between Member States
	Accessing information on Debtors' assets	*	The problem will remain unchanged. There will be no improvement in the ability of agencies to gain information on the debtors' assets through accessing bank account or salary details.
	Lack of provision of advice and legal aid to the creditor	*	The problem will remain unchanged. Current arrangements do not provide the necessary advice to maintenance creditors and legal aid to support the pursuit of a claim is not universally available in the EU.
	Lack of cooperation between competent authorities	*	Without action at the EU level, the problem will remain unchanged. The current problems of a lack of cooperation between competent authorities will persist without further action.
	Lack of mutual recognition of decisions	*	The problem will remain unchanged. without regulatory action, claims recognised in one Member State may still not be recognised in another Member State
	Problems associated with intermediate measures	*	The problem is likely to remain unchanged. Without abolition of current intermediate measures (the exequatur procedure), obstacles such as delays due to those additional processes, and the additional expense incurred will persist.
	Administrative inefficiencies	*	Without action to improve cooperation and introduce minimum common standards such as standardised procedures and the imposition of time limits the problems will continue unchanged.
<b>Benefits of policy option 1</b>	No additional financial commitment required should the status quo remain: The transition costs for the relevant public bodies will be zero and therefore there will not add to the financial or administrative burden on authorities.		
<b>Constraints of the policy option</b>	It will not meet the policy objectives in improving the recovery of maintenance in and between EU Member States, problems in the current situation will mostly continue unchanged.		
<b>Issues raised in the public consultation</b>	A considerable number of the Green Paper responses and expert informants were in favour of waiting for the findings of the future Hague Convention (2007), so in fact were advocating the status quo in the interim.		

<sup>8</sup> The rating in the cells indicates the relative effectiveness in addressing the problem/providing the function, 1star being the least effective and 4 stars the most effective.

## 5.2. Assessment of policy option 2, ‘non legislative action’ (Table 4)

		Rating <sup>9</sup>	
<b>Problems addressed</b>	Problems in locating the debtor	**	The development of collaborative mechanisms between competent authorities will go some way to addressing the problem of locating the debtor.
	Accessing information on Debtors' assets	*	The problem will remain unchanged. There will be no improvement in the ability of agencies to gain information on the debtor's assets through bank account or salary details.
	Lack of provision of advice and legal aid to the creditor	***	Some positive impact: The necessary advice to maintenance creditors and legal aid to support the pursuit of a claim should be made more easily accessible in EU Member States
	Lack of cooperation between competent authorities	****	The policy option directly addresses the issue of lack of cooperation so option 2 will have a positive impact on this problem
	Lack of mutual recognition of decisions	*	The problem will remain unchanged. without regulatory action, claims recognised in one Member State may still not be recognised in another Member State
	Problems associated with intermediate measures	*	Policy option 2 does not take account of the problems associated with intermediate measures and so therefore will have no effect on these problems.
	Administrative inefficiencies	**	Greater cooperation and the sharing of best practice should improve inefficiencies, however will fall short if minimum common standards or deadlines are not enforced
<b>Benefits of the policy option</b>	<p>Politically neutral, does not cut across Member States' legal systems so is unlikely to meet with resistance within Member States.</p> <p>Will benefit people at the 'first' stage of a claim</p>		
<b>Constraints of the policy option</b>	<p>Transition costs would be moderate to high, involving a significant change in the way agencies are required to operate, involving investments in new systems and procedures.</p> <p>No greater guarantee of recognition or enforcement.</p>		
<b>Issues raised in the public consultation</b>	<p>In many of the Member States the administrative infrastructures and mechanisms are poorly developed so it could take a considerable amount of time to achieve the outcomes required to improve cooperation</p>		

<sup>9</sup> The rating in the cells indicates the relative effectiveness in addressing the problem/providing the function, 1star being the least effective and 4 stars the most effective.

### 5.3. Assessment of policy option 3, ‘increased EU harmonisation’ (Table 5)

		Rating <sup>10</sup>	
<b>Problems addressed</b>	Problems in locating the debtor	**	No improvement from option 2, however, as with option 2 the development of collaborative mechanisms between competent authorities will go some way to addressing the problem of locating the debtor.
	Accessing information on Debtors’ assets	*	The problem will remain unchanged. There will be no improvement in the ability of agencies to gain information on the debtor’s assets through bank account or salary details.
	Lack of provision of advice and legal aid to the creditor	***	Some positive impact: The necessary advice to maintenance creditors and legal aid to support the pursuit of a claim is should be made more easily accessible in EU Member States
	Lack of cooperation between competent authorities	****	The non legislative actions (option 2) directly address the issue of lack of cooperation so will have a positive impact on this problem, however option 3 is unlikely to have any additional benefits on this issue
	Lack of mutual recognition of decisions	***	Increased harmonisation should lead to greater approximation, however without regulatory action, claims recognised in one Member State may still not be recognised in another Member State
	Problems associated with intermediate measures	*	Policy option 3 does not take account of the problems associated with intermediate measures and so therefore will have no effect on these problems.
	Administrative inefficiencies	**	Greater cooperation and the sharing of best practice should improve inefficiencies, however will fall short if minimum common standards or deadlines are not enforced
<b>Benefits of the policy option</b>	<p>Will benefit people at the ‘first’ stage of a claim and be more likely to lead to recognition and enforcement than the purely non-legislative package as outlined in option 2.</p> <p>The option will serve to resolve the confusion surrounding conflict of laws between Member States</p>		
<b>Constraints of the policy option</b>	<p>Transition costs would be moderate to high, involving a significant change in the way agencies are required to operate, involving investments in new systems and procedures.</p> <p>No greater guarantee of recognition or enforcement.</p>		
<b>Issues raised in the public consultation</b>	<p>The option increases the likelihood that definitional issues will be resolved; however there will still be no compulsion on member states to recognise a maintenance claim brought in another Member State.</p>		

<sup>10</sup> The rating in the cells indicates the relative effectiveness in addressing the problem/providing the function, 1star being the least effective and 4 stars the most effective.

#### 5.4. Assessment of policy option 4, ‘complete mutual recognition’ (Table 6)

		Rating <sup>11</sup>	
<b>Problems addressed</b>	Problems in locating the debtor	****	Actions associated with the directive outlined within option 4 will address the problem and enable agencies to access records on addresses from population censuses and national insurance records
	Accessing information on Debtors’ assets	****	Option 4 directly addresses the issue of accessing information on debtor’s assets, within it proposals for access to information on current bank accounts
	Lack of provision of advice and legal aid to the creditor	***	The necessary advice to maintenance creditors and legal aid to support the pursuit of a claim is should be made more easily accessible in EU Member States
	Lack of cooperation between competent authorities	****	The non legislative actions (option 2) directly address the issue of lack of cooperation so will have a positive impact on this problem, however option 4 (as option 3) is unlikely to have any additional benefits on this issue
	Lack of mutual recognition of decisions	****	In addition to the measures outlines in option 3 of Increased harmonisation should lead to greater approximation and through regulatory action, claims recognised in one Member State will be recognised in another Member State.
	Problems associated with intermediate measures	****	Policy option 4 directly addresses the problem and will encompass the abolition of the exequatur, thus eliminating the problem.
	Administrative inefficiencies	****	In addition to enhanced cooperation, the insertion of minimum common standards in option 4 will ensure that mandatory standards on processing and enforcement will be encouraged
<b>Benefits of the policy option</b>	Full mutual recognition would achieve the most in terms of cross-border litigation over maintenance obligations		
<b>Constraints of the policy option</b>	<p>Of all the four policy options, option 4 represents the greatest challenge to centralised authorities in terms of the transitions required in order to implement it.</p> <p>The policy option may have implications for current European and national law on data protection and rights to a fair trial, with particular regard to The Charter for Fundamental Rights.</p>		
<b>Issues raised in the public consultation</b>	The concern was raised that such a policy direction would target some of the more vulnerable groups in the European Community. It was noted that maintenance debtors are very often on the edge of poverty themselves so it was felt important that the debtor’s ability to pay maintenance and at the same time to enable them to maintain a reasonable standard of living wherever they resided, should be considered.		

<sup>11</sup> The rating in the cells indicates the relative effectiveness in addressing the problem/providing the function, 1 star being the least effective and 4 stars the most effective.

## 5.5. Summary of impacts.

The potential impacts of the proposal can be summarised as follows:

The ‘status quo’ option 1, will not meet the policy objectives outlined in the Programme of Measures to address the problems associated with the enforcement of maintenance claims in the EU. Issues such as tracking down the location of debtors, the ability for competent agencies to gain information on the assets of debtors, the provision of advice and legal aid in order to pursue a claim will not be improved. The lack of cooperation between Member States’ agencies will also persist and there would be no greater guarantee that maintenance creditors would succeed in having a judgement recognised or enforced due to the existing structures and their associated problems remaining unchanged. There would no assurance that even if a claim was recognised in one Member State that it would proceed any more expeditiously than before.

The implementation of non-legislative action, (option 2) is largely focused on improving, rather than changing the current systems. As such it will address some of the problems in the current situation, but not all of them, so would not go far enough in terms of addressing all the policy objectives. It will improve the systems of transfer and the actions of this option will lead to institutional learning and improvement (a peer learning forum and a working party). Its impact on the abilities of the competent authorities to work within the current system may have benefits but it will not address the barriers to greater harmonisation and mutual recognition..

Option 3, increased EU harmonisation in addition to leading to improvements in the administration and learning capacity of the competent authorities will also serve to resolve the complexities associated with the different conceptions of maintenance which exist in between EU Member States statutory limitations, duration of the obligation and the recovery of arrears. It will not address the issue of procedural delays resulting from intermediate measures, nor will it lead to guarantees that maintenance claims will be recognised and enforced; it will just make that eventuality more likely.

These considerations point to the policy option 4 as the preferred option to achieve the policy objectives and address the problems identified. It is in effect the most ambitious iteration of the other three policy options and so therefore represents the furthest development of the four in terms of the issues that it is designed to address. It represents a considerable cost in terms of direct and indirect costs such as ‘transition costs’ associated with implementation, but not considerably more than options 2 or 3. In contrast, in the long-term the implementation of option 4 could reduce legal costs dramatically because cases will no longer have to enter into a legal procedure.

This option seems to be the most relevant for the population concerned: vulnerable lone parent families which are at high risk for economic poverty and social insecurity.

The development of policy in this area would seem also particularly timely, particularly in the context of a growing European Union and the concomitant rise in migration within the EU. Furthermore, the most recent figures on the level of migration within the EU suggest that a significant extent of future migration will be from New Member States.

It was generally agreed that the objective of improving recovery of maintenance payments cannot sufficiently be achieved by the individual Member States and can be better achieved



through Community-level action. The main reason is the degree of concordance between Member States' legal frameworks, compared to the wide variation between those countries ratifying the Hague Convention.

The conception of a sort of 'European Attachment Order' is strongly supported for the increased efficiency it will bring. It will overcome the confusion associated with the different Member States' agencies working to different procedures and requirements in terms of evidence and forms required to process and enforce a case.

The legal practitioners consulted stated that they often actively discourage their clients from using the Brussels Regulations to pursue a claim for maintenance because it was "*too time consuming and costly*", especially since the levels of maintenance payment recovered are often less than the cost of trying to recover them.

The policy option presented here would therefore effectively create the possibility of successful perusal of cross border maintenance claims for the first time – not a small consideration when we consider that up to €2bn. could be at stake each year (see section 2 relating to the size of the problems).

Nevertheless such a move may not be devoid of possible negative impacts. Greatest concern has been raised about the political impact such a significant change as this represents in terms of the legal structures of Member States. Furthermore, issues such as access to personal information such as account details, earnings, and other financial data may cut across the individual Member States' regulations on data protection.

Additionally, removal of the *exequatur* procedure and more powers of enforcement may lead to the possibility of the increased criminalisation of debtors in some Member States thus impacting negatively on what is often an already vulnerable sector of society. Moreover, increased enforceability of cross-border maintenance obligations may in theory create a disincentive to work legally and encourage a transfer of vulnerable workers into the informal economy. This has implications for the assumption that the sums paid out by Member States to make up for defaulting debtors can be recovered from increased enforcement success.

Again, in theory, the policy may become a victim of its own success. As the number of claims leading to enforcement increase additional administrative burdens may be placed on agencies to process and enforce such claims.

This said, the possible negative consequences reviewed here exist in so far as they are all essentially consequences of *existing* Member States' social policies. Therefore they may not be seen as applicable to the current proposals, which merely propose to make the legal underpinnings of existing social policy (on which there is considerable policy consensus and consistency among the Member States) properly enforceable across the Union.

Concerning the potential impacts on fundamental rights in area of maintenance obligations, the following observations can be made:

Effective enforcement of maintenance claims will raise standards to the protection of several fundamental rights, most notably, the rights of children and the right to effective remedy of the creditor. According to Article 24 of the Charter of Fundamental Rights of the European Union, children shall have the right to such protection and care as is necessary for their well-

being. Moreover, in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Regarding the right to effective remedy, it has to be underlined that fair trial (Article 47 of the Charter) includes effective enforcement of the decision. According to the European Court of Human Rights, the right to a fair trial *“would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 (of the ECHR – equivalent to Article 47 of the Charter) should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (art. 6); moreover, the Court has already accepted this principle in cases concerning the length of proceedings”* (Hornsby vs. Greece, 19 March 1997).

Effective enforcement of maintenance claims will involve processing of personal data. This could involve processing of personal data to a higher extent than is currently done in several Member States. Investigation and processing of a maintenance claim across the Member States would generate a considerable amount of personal data held by public authorities about the debtor (e.g. investigators will need a person's address to track him/her down in another Member State, bank account information etc). Personal data would be shared between more authorities such collection agencies and other relevant authorities across the Member States. This increases the risks and likelihood that personal data could be used for purposes other than processing and enforcement of maintenance claim.

However, the processing shall be done fairly for the purpose of enforcing a claim and the rights of debtor will be protected. Only independent courts shall ask, obtain and use information. Only a limited number of types of information shall be accessible and access to information shall in no circumstances entail the creation of new records in a Member State. A procedure has to be established by the Community to oblige the Member States to delete personal information from records systems of their relevant authorities after the maintenance claim has been settled. Moreover, the debtors concerned by a shall be notified of the information which has been transmitted and the manner in which that information was obtained, of the identity of the addressees of that information, of the conditions under which that information may be utilized, and of the rights and remedies of the debtor in accordance with national law implemented in application of the Directive 95/46/EC 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.

Enforcement of maintenance claims will have an impact on the debtor's right to a fair trial and hearing. Defendants' rights to notification, time to prepare defence, of audience and right of review need to be safeguarded.

Care must be taken to formulate policy actions in gender neutral way (i.e., the rights of male creditors).

Table 7 summarises the impacts on fundamental rights.

## 5.6. Table 7 Impacts of maintenance obligations on Fundamental Rights

<b>Fundamental Right<sup>12</sup></b>	<b>Nature of impact</b>	<b>Positive impact</b>	<b>Negative impact</b>	<b>Proportionality of restrictions on FR</b>	<b>Mitigating measures</b>
Article 8 – Protection of personal data	Effective enforcement of maintenance obligations across the Member States will require access to personal information of the debtor (e.g. bank details, level of earnings, assets)		Several agencies across the Member States will have access to the personal data of the debtor. Such personal data will be shared between several public agencies in several countries, which increases the risk that personal data is used for purposes other than the enforcement of maintenance claim.	Personal information will be formally processed only for the purpose of recovering an outstanding claim. Outstanding claim also means that a debtor has not fulfilled his/her obligations to the creditor.	Guarantees that personal data is processed only for the purpose of enforcing the claim are necessary, although it might be difficult to enforce them in practice. The debtor should have a right to access and rectify information held about him/her by all the relevant agencies across the Member States. Personal data should be deleted after the claim has been processed
Article 15 – Right to engage in work and live in any Member State	Increasing number of MS citizens live, work and form long term relationships in another MS.	Effective enforcement of maintenance claims can encourage the exercise of this right. If people know that any claim resulting from the breakdown of a relationship will be enforced, living and working in another MS would not be different from staying in their own MS.			
Article 24 The rights of the child	Maintenance claims affect the child's well-being	Effective enforcement of maintenance claims will lead to better protection of children rights.	Ineffective enforcement of maintenance claims negatively affects child's protection, care and best interests. Current legal and administrative procedures do not lead to decisions made on the basis of child's best interests (e.g. long delays).		

Article 45 Freedom of movement and residence	Increasing number of MS citizens live, work and form long term relationships in another MS.	Effective enforcement of maintenance claims can encourage the exercise of this right. If people know that any claim resulting from the breakdown of a relationship will be enforced, living and working in another MS would not be different from staying in their own MS.			
Article 47 Right to an effective remedy	A creditor is entitled to effective remedy to outstanding maintenance claim and legal aid to ensure effective access to justice	More effective enforcement of maintenance claims will ensure that this right is effectively exercised when a maintenance claim involves the jurisdictions of two Member States.			
Article 47 Right to a fair trial	A debtor is entitled to a fair trial and hearing of his/her case		Enforcement proceedings across several Member States could jeopardise the debtor's right to a fair hearing and trial.		Availability of legal aid, translation of all the documents and interpretation of hearing proceedings in a language of the debtor
Article 49 Principle of proportionality of criminal offences and penalties	Penalty should be proportionate to the offence		This is a complex phenomenon, but there are concerns that some debtors, often poor, could be criminalised in circumstances where they cannot afford to settle the claim		Enforcement of the claim should take full account of the circumstances of the debtor

## 6. HOW TO MONITOR AND EVALUATE THE RESULTS AND IMPACTS OF THE PROPOSAL AFTER IMPLEMENTATION?

The monitoring and evaluation of the implementation and of the preferred policy option will be an important element to ensure the success and effectiveness of its operation in the EU. In assessing the utility of potential indicators of success, it is worthwhile to refer to the original policy objectives (see above, section 2.3).

Broadly speaking, the underlying indication of the success of the policy will be the extent to which these objectives have been achieved. These can be translated into observable indicators which either directly or indirectly will indicate the achievement of the policy objectives.

Given that major elements to the introduction of a programme of complete mutual recognition will include working towards greater cooperation between central authorities, and the setting up of systems to facilitate this, the collection of data on a number of key indicators should be able to be more effectively shared and coordinated between authorities. This could then be assessed and made available on a periodic (yearly) basis in the form of progress reports.

Specific indicators could include:

- An evaluation of the success of the development of collaborative mechanisms between Member States' agencies.
- An indication of the success of increasing awareness of creditors' rights regarding advice and the provision of legal aid could be revealed indirectly by taking account of any increase in the number of claims brought within each Member State. Indirectly, this could be seen as indicative of the removal of the disincentives associated with the current system and the willingness of maintenance creditors' to take a claim forward.
- Comparison between the number of successfully enforced claims for maintenance before implementation and at periodic points after implementation.
- Comparison of data on the speed at which claims are processed and enforced before and after implementation.
- Monitoring the monetary value of the amount of maintenance payments recovered.

## Annex

### Tables outlining member state variations in maintenance obligations, and legal and structural elements related to determination and enforcement

*NB. Empty cells within each of the three tables below indicate absence of information from those Member States, either due to delays in receiving the information from the relevant agencies or the absence of data within that Member State.*

**Table A 1 — Member State Variation in Maintenance Obligations**

	Child maintenance for biological child	Child maintenance for non-biological child (not adopted)	Spouse maintenance (divorce)	Spouse maintenance (separation)	Spouse Maintenance	Registered same sex spouse maintenance	Cohabiting Partners	Separated Cohabiting partners	Maintenance of parents or grandparents	Debtor can be non-custodial grandparent or relatives in direct line	Debtor/creditor can be siblings	Debtor /creditor can be in laws	Contractual obligation
Austria	✓		✓		✓	✓			✓	✓	X	X	
Belgium	✓	✓	✓	✓	✓	✓	✓ <sup>13</sup>	✓	✓	✓	✓	✓	
Denmark	✓ <sup>14</sup>	✓	✓	✓	✓	✓			X	X	X	X	
Finland	✓	X	✓	✓	✓	✓			X	X	X	X	
France	✓	✓	✓		✓	✓			✓	✓	✓	✓	
Germany	✓	X	✓	✓	✓	✓		✓	X	✓	X	X	
Greece	✓		✓		✓	X			✓	✓	X	X	
Ireland	✓		✓		✓	X	X	X	X	X	X	X	
Italy	✓		✓		✓	X			✓	✓	✓	✓	
Luxembourg	✓	✓	✓	✓	✓				✓	✓	✓	✓	
The Netherlands	✓	✓	✓		✓	✓			X	X	X		
Portugal	✓	X	✓		✓	X	✓	✓	X	✓	✓	✓	
Spain	✓		✓	✓	✓	✓ <sup>15</sup>		✓	✓	X	✓	X	
Sweden	✓	✓	✓	✓	✓	✓	X	X	X	X	X	X	
U.K.	✓		✓		✓	✓	X	X	X	X	X	X	
Scotland	✓		✓		✓	✓	X	X	X		X	X	
Cyprus													
Czech Republic	✓												
Estonia	✓												
Hungary	✓												

	Child maintenance for biological child	Child maintenance for non-biological child (not adopted)	Spouse maintenance (divorce)	Spouse maintenance (separation)	Spouse Maintenance	Registered same sex spouse maintenance	Cohabiting Partners	Separated Cohabiting partners	Maintenance of parents or grandparents	Debtor can be non-custodial grandparent or relatives in direct line	Debtor/creditor can be siblings	Debtor /creditor can be in laws	Contractual obligation
Latvia	✓	✓	✓	X	✓	X	X	X	✓	✓	X	X	✓
Lithuania					✓								
Malta													
Poland													
Slovakia	✓						X	X					
Slovenia	✓	✓	✓	✓	✓	X	✓	✓	✓	X	✓	X	✓

C = Child maintenance only, Sp = Spouse maintenance only, F=Frequent, ✓ = used X = Not used

**Table A 2 — Legal / structural elements potentially affecting cross-border enforceability of a maintenance claim.**

	Common Law	Civil Law	Combination of civil and Common law	Post Communist/ Transition Countries	State Universal Child Benefit	Income related or targeted <sup>16</sup> CB (inc. tax allowance)	Advance payment of Child Maintenance	Universalistic welfare system	Minimum subsistence level based Welfare system	Combination
Austria	X	✓	X	X	✓		✓	X	X	✓
Belgium	X	✓	X	X	✓	✓	✓	X	X	✓
Denmark	X	✓	X	X	✓	X	✓	✓	X	X
Finland	X	✓	X	X	✓	X	✓	X	X	✓
France	X	✓	X	X	X	✓	✓	X	X	✓
Germany	X	✓	X	X	X	✓	✓	X	X	✓
Greece	X	✓	X	X	✓	✓		X	✓	X
Ireland	✓	X	X	X	X		X	X	X	✓
Italy	X	✓	X	X		✓	X	X	✓	X
Luxembourg	X	✓	X	X			✓	X	✓	X
The Netherlands	X	✓	X	X	✓		X	X	X	✓
Portugal	X	✓	X	X			✓	X	✓	X
Spain	X	✓	X	X				X	X	✓
Sweden	X	✓	X	X			✓	✓	X	X
U.K.	✓	X	X	X	✓	✓	X	X	X	✓
Scotland							X	X	X	✓
Cyprus	X	X	✓	X	✓	✓		X	✓	X
Czech Republic	X	✓	✓	✓	X	✓	✓	X	✓	X
Estonia	X	✓	X	✓	✓	X	X	X	✓	X
Hungary	X	✓	X	✓	✓		✓	X	✓	X
Latvia	X	✓	X	✓	✓		✓	X	✓	X



	Common Law	Civil Law	Combination of civil and Common law	Post Communist/ Transition Countries	State Universal Child Benefit	Income related or targeted <sup>16</sup> CB (inc. tax allowance)	Advance payment of Child Maintenance	Universalistic welfare system	Minimum subsistence level based Welfare system	Combination
Lithuania	X	✓	X	✓	X	✓		X	✓	X
Malta	X	X	✓	X	X	✓		X	✓	X
Poland	X	✓	X	✓	X	✓	✓	X	✓	X
Slovakia	X	✓	X	✓	✓			X	✓	X
Slovenia	X	✓	X	✓	X	✓	✓	X	✓	X

C = Child maintenance only, Sp = Spouse maintenance only, F=Frequent, ✓ = used X = Not used.

**Table A3. — Determination of Maintenance and enforcement**

	Considers Child's needs	Considers Child's age	Debtor Means Tested	Financial capacity of both parties	Most Frequent type of Enforcement						Non-compliance leads to criminal procedure	Specialised National Collection / Enforcement Agency	Specialised International enforcement agency
					earnings	Credit transfer from account	Secured payment order	movable goods	immovable goods	Garnishee Order			
Austria	✓	✓	C	X	F			F	✓	✓	✓	X	X
Belgium	✓	✓	✓	✓	✓	✓	✓	✓	✓	F	✓	X	X
Denmark	✓	X	✓	✓	F			✓	X	X	X	X	X
Finland	✓	X	✓	✓	FC	X	X	✓	✓	F	X	X <sup>17</sup>	X
France	✓	✓	✓	✓	✓	✓	✓	✓	✓	F	✓	X	X
Germany	✓	✓	C	✓	FC	✓		✓	✓		✓	✓	X
Greece	✓	X	✓	✓	F	✓	X	✓	✓	X	✓	X	X
Ireland	X	X	✓	✓	F	X	✓	✓		X	✓	X	X
Italy	✓	X	✓	✓	X	X	X	✓	✓	✓	✓	X	X
Luxembourg	✓		✓	✓	F		✓	✓	✓	✓		X	X
The Netherlands			✓	✓	✓	X	X	F	F	X	✓	C	✓
Portugal	✓	✓	✓	✓	✓		✓	C	C	F	✓	X	X
Spain	✓	X	✓	✓	F	X	X	✓	✓	X	✓	X	X
Sweden	✓	X	✓	✓	F	X	X	X	X	X	✓	X	X
U.K	✓	✓	C	✓	F	✓	✓	F	✓	F	✓	C	C
Scotland	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	C	C
Cyprus													
Czech Republic													
Estonia													
Hungary			✓	✓	✓						✓		
Latvia	✓		✓	✓	✓	✓	X	✓	✓	✓	✓	✓	X

	Considers Child's needs	Considers Child's age	Debtor Means Tested	Financial capacity of both parties	Most Frequent type of Enforcement						Non-compliance leads to criminal procedure	Specialised National Collection / Enforcement Agency	Specialised International enforcement agency
					earnings	Credit transfer from account	Secured payment order	movable goods	immovable goods	Garnishee Order			
Lithuania													
Malta													
Poland													
Slovakia					FC	✓		✓			✓		C
Slovenia	✓		✓	✓		✓							

C = Child maintenance only, Sp = Spouse maintenance only, F=Frequent, ✓ = used X = Not used