

28 January 2008

## CONFERENCE ON RECOVERY OF MAINTENANCE OBLIGATIONS

### 1. Venue

The conference takes place at the Riga Graduate School of Law, Strelnieku iela 4k-2, LV-1010 Riga, Latvia

### 2. Contact persons

Contact person at the conference venue:

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### 3. Objective

The purpose of the conference is:

- To present the position of maintenance recovery in EU law
- To present recovery practices in selected EU member states
- To present and discuss initiatives for development of the EU law

### 4. Materials

In addition to the present programme, the participants will receive the following:

- Copies of presentations
- Copies of materials used during presentations

## 5. Background

### *Project*

The conference has been called within the ambit of a project that is concerned with the internationalization of the economic life, social and individual life of natural and legal persons calls for a high level of cooperation in civil judicial matter.

The project calls for consideration of the following issues:

- European Space
- EU Acts
- Difficulties
- Maintenance Obligations
- Choice of Forum and Choice of Law
- National Characteristics
- Coordination
- Proposal
- Italian Law

### *European Space*

The European Union has tried to provide to such a need, particularly important in the European space, with the introduction in the institutive Treaty of the European Community of a legal base ad hoc for the adoption of measures direct on one hand to the improvement and the simplification of the recognition and the enforcement of the decisions in civil matter, on the other and to the promotion of the compatibility of the rules applicable in the States members to the conflicts of laws and jurisdiction (art. 61 TEC).

### *EU Acts*

The numerous acts that from 2000 have been adopted by the EC institutions in the exercise of the above mentioned competence have confirmed that, in general, the protection of the credit constitutes a particularly delicate and problematic field:

Regulation no. 1346/2000 on insolvency procedures

Regulation no. 1348/2000 on service in member States of judicial and extrajudicial documents in civil and commercial matters

Regulation no. 1347/2000 on jurisdiction and the recognition and enforcement of judgments

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in matrimonial matters and in matters of parental responsibility for children of both spouses  
Repealed and replaced by Regulation no. 2201/2003 concerning jurisdiction and the  
recognition and enforcement of judgments in matrimonial matters and the matters of parental  
responsibility)

Regulation no. 44/2001 on jurisdiction and the recognition and enforcement of judgments in  
civil and commercial matters

Regulation no. 1206/2001 on cooperation between the courts of the Member States in the  
taking of evidence in civil or commercial matters

Regulation no. 805/2004 creating a European Enforcement Order for uncontested claims

### *Difficulties*

The difficulties that arose in the adoption of Regulation no. 1346/2000 on insolvency  
procedures are emblematic under this point of view.

The Regulation is characterized, on one side, by a minimalist content, since the law of  
insolvency, inside every member State, is basically found on a public and territorial approach  
and, from the other, for the fact that it applies only with reference to procedures regarding  
debtors whose centre of main interests is placed within the European community space, with  
the consequence that the insolvency procedures, which has been opened inside member States  
and regulated by different national laws, are not often in a position to regulate the failure of  
debtors whose activities or sites are not within the territory of a single member State.

An important step ahead has been taken place with the adoption of the Regulation no.  
805/2004 creating a European Enforcement Order for uncontested claims, by virtue of which  
the judicial decision, certified from the European Enforcement Order, to the ends of the  
execution must be considered as pronounced in the member State where the execution is  
demanded, being not anymore necessary to resort to the procedure of exequatur provided by  
Regulations n. 44/2001.

However topics related to the status or legal capacity of natural persons, rights in property  
arising out of a matrimonial relationship, wills and succession; bankruptcy, proceedings  
relating to the winding-up of insolvent companies or other legal persons, judicial  
arrangements, compositions and analogous proceedings; social security and arbitration are

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excluded from the scope of application of the Regulation and, consequently, also the relative issues to the maintenance obligations deriving from familiar relationships.

### ***Maintenance Obligations***

As pointed out by the Green paper on maintenance obligations (COM (2004) 254 def.), the issue of the recovery of the alimentary credits in the within of the European judicial space is really important: the phenomenon interests numerous persons and it is not limited to problems regarding enforcement of decisions, but it assumes bigger importance, regarding also the problem of the substantial discipline of the right to maintenance and of the differences of regime among member States, the possibilities to verify the existence of the right of maintenance and the procedures in order to recover the relative credits.

The project of research is aimed to critically analyze the contents of the proposal of regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (COM (2005) 649 def.) and to verify, in particular, the effects of the system of circulation of the decisions regarding the payment of maintenance obligations on member States legislation.

### ***Choice of Forum and Choice of Law***

The content of the proposal of regulation is in fact particularly meaningful, not only under a procedural point of view, with the introduction of the automatic recognition and enforcement of the decision, based on the model of the Regulations no. 2201/2003 and no. 805/2004, and with the recognition of the principle of universality for some measures of execution.

As an example may be mentioned the introduction of order of direct payment that the jurisdictional authority of the State of origin may address to the employer of the debtor or to the financial institution in which the debtor is titular of an account in an other State member), but also as regard the law applicable to maintenance obligations, being this a specific choice that has not been taken by previous communitarian acts (art.1, letter b), of the Convention of Rome of 1980 on the law applicable to the contractual obligations excludes in fact maintenance obligations from the scope of application.

### ***National Characteristics***

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It is important to point out that the notion of maintenance obligations comprises also institutes provided by the law of member States which have different characteristics.

The project of research is aimed, therefore, to examine the impact that the definitive adoption of the proposal of regulation may have on the private international law of member States, on their substantial law regarding the institutions which fall within the notion of maintenance obligations.

Within the activities of the research project, it will be considered the problems of compatibility between the proposal of regulation on maintenance obligation and the other regulations: in particular, although art. 48 of the proposal of regulation states expressly that the regulation itself replaces regulation n. 44/2001 and regulation n. 805/2000, it is however to verify if the replacement is complete or if, in the absence of a uniform regime within member States as regard the institutes which fall within the notion of maintenance obligations, the regulations above mentioned are still applicable.

Under the same point of view, the project of research is aimed to study the problems of coordination between the proposal of regulation regarding maintenance obligations and Regulation n. 2201/2003.

### ***Coordination***

This is necessary having regard to the fact that within national system of law the interpretation of the notion of maintenance obligations has given rise to problems of coordination in finding the scope of application of the regulations and more precisely with reference the Regulation referred to as Brussels II. At this regard, reference is made to a recent and much debated decision made by the Court of Florence that states its own jurisdictional competence on the basis of Regulation no. 1347/2000, when the case was to be regulated by Regulation no. 44/2001.

The project is aimed also to consider the impact that the adoption of the proposal of regulation on maintenance obligations will have on private international law. It is in fact necessary to verify the residual spaces of application of such norms with reference to cases which are not within the scope of the proposal of regulation and also to international relationships which fall

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without the European judicial space.

### ***Proposal***

The proposal wants to apply to maintenance obligations, deriving from familiar relationships and relationships that, in force of the applicable law, produce similar effects. Such expression, if, on one side, permits to apply the same regime to different legal institutes, on the other hand it creates the problem to verify on a case by case basis which relationships produce effects "similar" to those originated by familiar relationships and may therefore be regulated by EC law and which legal institutes are not to be considered as to the familiar relationships and therefore may fall within other regulations or under national rules of private international law.

Emblematic in such sense is the case of the obligation deriving from the more uxorio cohabitation: the couples are not equivalent, under a legal point of view, to spouses and, in spite of that, case law recognizes obligation of maintenance in favour of the couples living more uxorio.

It is necessary to verify if for the maintenance credits inherent to familiar unit founded on factual relationship may fall within the proposal of regulation. On the other side, there is also the problem of recognize and give execution into a member State to decision recognizing the existence of maintenance obligations, deriving from "pacts" between persons of the same sex.

### ***Italian Law***

Finally, the research project is aimed to examine the impact that the EC law will have on the Italian legal order, having regard to the fact that with specific reference to maintenance obligations the Italian legal order, on one side distinguishes between maintenance and "alimentari" obligations and, on the other, finds various competent jurisdictional authorities (in fact, ordinary Court is competent to decide in matter of maintenance obligations in favour of children born from parents married, vice versa for cases regarding maintenance obligations in favour of children born outside a marriage is competence the "Tribunale dei minorenni").

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## 6. Programme

*Friday 14 March 2008*

10.00 - 10.15 Opening of seminar

- Lesley Jane Smith, RGSL Rector
- [speaker], Ministry of Justice

10.15 - 11.00 Position of maintenance recovery in EU law

Peter Gjørtler, RGSL Docent

- Competence of the EU legislator
- Effects of the EU legislation in Member States
- Scope of the EU jurisdiction

11.15 - 12.00 EU legislation on maintenance recovery

[speaker], University of Genoa

- Preparatory works
- Status of the present legislation
- Experience gathered from application

12.00 - 13.00 Lunch

13.00 - 13.45 Maintenance recovery in Romania

[speaker], National Association of Romanian Bars

- Implementation in Romania
- Application by Romanian authorities
- Problems encountered in practice

14.00 - 14.45 Maintenance recovery in Malta

[speaker], Malta Chamber of Advocates

- Implementation in Malta
- Application by Maltese authorities
- Problems encountered in practice

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15.00 - 15.45 Maintenance recovery in Italy

[speaker], University of Genoa

- Implementation in Italy
- Application by Italian authorities
- Problems encountered in practice

15.45 - 16.00 Conclusions concerning the first day

***Saturday 15 March 2008***

09.00 - 09.15 Comments on the first day

09.15 - 10.00 Maintenance recovery in Latvia

Dana Rone, Rone law firm

- Implementation in Latvia
- Application by Latvian authorities
- Problems encountered in practice

10.15 - 11.00 Common aspects of national experience

Peter Gjørtler, RGSL Docent

- Administrative handling
- Judicial handling
- Practical problems

11.15 - 12.00 Revision of the EU legislation

[speaker], University of Genoa

- Need for legislative amendments
- Need for procedural amendments
- Possibilities for amendments

12.15 - 13.00 Panel discussion

All speakers

- Questions and answers
- Final comments

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