Maintenance Regulation Published in the OJ

The maintenance regulation, and its 11 Annexes, have been published in the Official Journal of the European Union no. L 7 of 10 January 2009. The official reference is the following: **Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations** (OJ n. L 7, p. 1 ff.)

Due to its coverage of all the conflictual aspects of maintenance obligations, and its interactions with other EU and international instruments (such as the ones adopted in the frame of the Hague Conference on Private International Law), the regulation provides a complex set of transitional provisions as regards its entry into force and application (see Articles 75 and 76). In this regard, it must be stressed that, pursuant to Art. 76, **the application of the new EC regime on maintenance is made dependent, *ratione temporis*, upon the application in the Community of the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations**, which the EC is planning to sign and conclude in the very near future (see Recital no. 20 and Council doc. no. 15226/08, p. 4-5).

The consultation procedure leading to the adoption of the regulation is summarized as follows in Council doc. n. 17102 of 15 December 2008 *(external links and parts in italics added)*:

> *1. By letter of 12 January 2006, the Commission transmitted to the Council a proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, based on Articles 61(c) and 67(2) of the Treaty establishing the European Community [COM(2005) 649 fin. of 15 December 2005].*
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> *2. The European Parliament delivered its opinion on 13 December 2007. In view of the major changes made to the original Commission proposal during discussions within the Council's subordinate bodies, a decision was taken to reconsult the European Parliament on the basis of the text approved by the*

Council (Justice and Home Affairs) on 24 October 2008. The European Parliament delivered its new opinion on 4 December 2008.

3. The European Economic and Social Committee issued its opinion on 20 April 2006 following non-compulsory consultation.

4. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has given notice of its wish to take part in the adoption and application of the Regulation.

5. The United Kingdom is not taking part in the adoption and application of the Regulation since it did not exercise its right to take part under Article 3 of the above Protocol. However, the United Kingdom stated at the Council meeting (Justice and Home Affairs) on 28 November that it wished to take part in the application of the Regulation by accepting it after its adoption in accordance with Article 4 of the above Protocol.

6. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation, and is not bound by it or subject to its application, without prejudice to Article 3 of the Agreement of 19 October 2005 between the Community and Denmark. [see Recital no. 48 and Art. 68(1) of the Reg.: can the new regulation, which provides derogations to the Brussels I regime insofar matters relating to maintenance obligations are concerned, be properly construed as an "amendment" to Reg. no. 44/2001, for the purposes of Art. 3 of the "parallel agreement" between the EC and Denmark?]

7. With an eye to adoption of the draft Regulation by the end of 2008 the Council (Justice and Home Affairs) endorsed on 24 October 2008 an overall compromise aimed at resolving the last outstanding issues regarding substance and at reaching agreement on the enacting terms of the Regulation. Following that compromise, the Council (Justice and Home Affairs) approved the recitals and annexes as an "A" item at its meeting on 27 and 28 November 2008.

Links to other relevant documents can be found in the OEIL page of the procedure. As usual, the whole set of Council's preparatory documents relating to

the new regulation will be shortly made available on the Council Register.

An excellent presentation of the structure and the main features of the regulation can be read in this post by our friend *Federico Garau*, over at the Conflictus Legum Blog.

(Many thanks to Federico for the tip-off)