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MODULE III

SUBJECT 10

MAINTENANCE OBLIGATIONS. (EC) REGULATION 4/2009 OF THE COUNCIL, of 18th December 2008, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

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1.- INTRODUCTION

(EC) Regulation 4/2009 of the Council, of 18 December 2008, on jurisdiction, applicable law, recognition and enforcement of decisions and COOPERATION in matters relating to maintenance obligations was published in the OJEU on 10 January 2009.

The aim of this Regulation is to ensure that a maintenance creditor is able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities. This Community instrument provides a comprehensive regulation of maintenance obligations, to the extent that it covers the following aspects:

- jurisdiction and conflicts thereof;
- applicable law and conflict of laws;
- the recognition and enforceability of decisions within its scope of application;
- free legal aid;
- and cooperation between Central Authorities.

Multiculturality, mass migration and increased litigiousness in family matters are some of the factors that have led to the creation of this regulatory instrument, which sets out to respond to the need for stronger protection in the international recovery of child support and other forms of family maintenance, and to ensure that the procedures in place are accessible, fast, efficient, cost-effective, flexible and fair, thus producing the results for which they have been created.

It should be borne in mind in order to understand the application of the provisions contained in the Regulation, it needs to be analysed in combination with the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, and the Protocol on the Law Applicable to Maintenance Obligations, both signed in 2007. Among other reasons, this is because the Regulation makes reference to both these instruments in its different articles.[2] One of the clauses in the preamble reads as follows:"In the framework of The Hague Conference on Private International Law, the Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) and the Protocol on the Law Applicable to Maintenance Obligations (hereinafter referred to as the 2007 Hague Protocol)." These two instruments must therefore be taken into account where the Regulation is concerned, to such an extent that the application of the Regulation is dependent on the application of The Hague Protocol, as we will see below.

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[1] The text of the Regulation is available at the URL
http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2009:007:SOM:EN:HTML

[2] The text is available at the URL

http://www.hcch.net./index_fr.php?act=conventions.text&cid=133

The following key points have to be borne in mind when studying the Regulation:

- It constitutes an advancement in the EU's will to create a genuine common judicial area based on the principle of the mutual recognition of judgments.
- It brings together all the provisions concerning applicable law resulting from The Hague Conference on International Private Law: the law applicable to maintenance obligations will be determined according to the Protocol in the Member States where it is binding.
- The aim of the regulation is to ensure that a maintenance creditor is able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.
- In order to take account of the various ways of resolving maintenance obligation issues in the Member States, the Regulation should apply both to court decisions and to decisions given by administrative authorities, provided that the latter offer guarantees with regard to, in particular, their impartiality and the right of all parties to be heard.
- The Protocol makes a valuable contribution towards guaranteeing greater legal certainty and predictability of judgments to debtors and creditors of food allowances. Standardising the legislation to determine the applicable law will allow the free circulation of judgments concerning maintenance obligations within the Community, without any formalities being necessary in the Member State where enforcement is sought.
- The effects of the Regulation with respect to recognition, enforceability and enforcement are different in the Member states bound by the 2007 Protocol and those which are not.
- In relations between Member States, the Regulation takes precedence over other regulatory instruments (Art. 69).

It must be remembered that each Member State has its own regulatory regime in the field of international private law, but that the Community Regulation takes precedence in all cases over the domestic regulations of each State.

2.- SCOPE OF APPLICATION

2.1.- Substantive scope

The Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity (Art. 1).

Its scope therefore extends to any family relations that may give rise to maintenance obligations, regardless of their nature, and is not therefore restricted to parentage or marriage.

2.2.- Temporal scope

The Regulation entered into force twenty days after its publication in the Official Journal of the EU (OJEU of 10 January 2009). Thus, it has been effective since 30 January 2009.

The text will not be applied, however, until 18 June 2011, with the exception of the following provisions on:

- the information that the Member States must communicate to the Commission for the proper application of the Regulation (Art. 71);
- the Committee that will assist the Commission in relation to the practical application of the Regulation (Art. 73);
- the procedure to make amendments to the forms provided for in the Regulation (Art. 72);
- the right to benefit from legal aid in proceedings for recognition or enforcement of maintenance-related measures (Art. 47.3);

and the specification of the administrative authorities which, for the purposes of the Regulation, shall have the status of courts (Art. 2.2).

Application of these provisions will commence on 18 September 2010.

All other provisions will apply from 18 June 2011.

The application of the Regulation is subject to the 2007 Hague Protocol on the law applicable to maintenance obligations being applicable in the Community by the established date. Failing that, the application of the Regulation will be postponed to the date of application of that Protocol in the Community (Art. 76).

However, we have recently seen the publication in the OJEU L331 of 16 December 2009[3] of **Council Decision of 30 November 2009** on the conclusion by the European Community of the Hague Protocol of 23 November 2007.

This Decision, which approves The Hague Protocol of 23 November 2007 on behalf of the European Community, authorises the President of the Council to designate the person(s) empowered to sign the Protocol in order to bind the Community.

Article 3 establishes that "its Member States shall be bound by the Protocol by virtue of its conclusion by the European Community." However, it points out that "for the purpose of this declaration, the term 'European Community' does not include Denmark, by virtue of Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty establishing the European Community, nor does it include the United Kingdom, by virtue of Articles 1 and 2 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, however, does take part in the adoption and application of the Decision.

[3] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:331:17:23:EN:PDF

By virtue of this Decision, once the Protocol has been signed, the rules of the Protocol will apply ***provisionally*** within the Community from 18 June 2011, if the Protocol had not yet entered into force by that date. The European Union thus adopts the Protocol as a Community regulatory text, irrespective of the effective date.

As a rule of transitional law, the Decision provides that the rules of the Protocol will also determine the law applicable to maintenance claimed in a Member State relating to a period prior to the entry into force or the provisional application of the Protocol in the Community in situations where, under Regulation (EC) No 4/2009, proceedings are instituted, court settlements are approved or concluded and authentic instruments are established as from 18 June 2011, the date of application of Regulation (EC) No 4/2009.

2.3. Scope of application:

The Regulation is binding on all Member States, in principle with the partial exception - as we will see below - of Denmark and the UK by virtue of the position of these two countries with respect to the Treaty on European Union and the Treaty establishing the European Community.[4]

Regarding Denmark it should be mentioned that the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, published in the Official Journal of the European Union of 12 June 2009,[5] states the country's intention to accept the text to the extent that Regulation 4/2009 amends Regulation (EC) 44/2001. This means that the provisions of Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations will be applied to relations between the Community and Denmark, with the exception of the provisions contained in Chapters III and VII. The provisions in Article 2 and Chapter IX of Regulation (EC) No 4/2009, however, are applicable

[4] Opting-out clause applicable to the UK and Ireland

Opting out is an exemption granted to a country that does not wish to join the other Member States in a particular area of Community cooperation as a way of avoiding a general stalemate. The United Kingdom, for instance, asked to be allowed not to take part in the third stage of Economic and Monetary Union (EMU) leading to adoption of the euro, and similar clauses were agreed with Denmark as regards EMU, defence and European citizenship.

Opting-in clause applicable to Denmark

"Opting in" enables a Member State that has decided not to participate in measures provided for in the Treaties to change its mind at any time. For instance, a special regime for Denmark was included in the Treaty establishing the European Community with regard to Title IV thereof, concerning visas, asylum, immigration and other policies related to the free movement of persons. Denmark may at any time give up that regime should the Danish people call for this.

[5] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:149:15:39:EN:PDF

only to the extent that they relate to jurisdiction, recognition, enforceability and enforcement of judgments, and access to justice.

Thus, according to the Agreement, Regulation (EC) 4/2009 constitutes an amendment to the Agreement to the extent that it amends Council Regulation (EC) No 44/2001 and is considered annexed thereto.

As for the United Kingdom[6], the Commission Decision of 8 June 2009 on the intention of the United Kingdom to accept Council Regulation (EC) No 4/2009 - also published in the OJEU of 12 June 2009 - implies that Regulation (EC) No 4/2009 will enter into force in the UK on 1 July 2009, and applicability will commence on the dates provided in the Regulation subject to the 2007 Hague Protocol on the law applicable to maintenance obligations being applicable in the Community by that date. This leads us to presume that the UK will also sign The Hague Protocol.

3.- DEFINITIONS CONTAINED IN THE TEXT OF THE REGULATION.

Article 2 of the regulation defines a number of concepts for the purposes of applying the Regulation:

1) **"decision":** a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII (cooperation between authorities), the term "decision" shall also mean a decision in matters relating to maintenance obligations given in a third State.

The list of court rulings accepted is non-restrictive. Thus, according to this article, decrees, orders, judgments and writs of execution are all valid for the purposes of the Regulation. Despite not being directly related to maintenance obligations, "a decision by an officer of the court determining the costs or expenses" is also expressly included. Although the recognition and enforcement of an order to pay court costs is expressly provided for, there is no explicit provision to include the interests accrued for the maintenance debt.

2) **"court settlement":** a settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings.

3) **"authentic instrument":**

(a) a document in matters relating to maintenance obligations which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument, and

[6] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:149:15:39:EN:PDF

(ii) has been established by a public authority or other authority empowered for that purpose; or,

(b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them.

It may be inferred from the above that the Regulation contemplates the possibility that the enforceable decision may not be of a judicial but of an administrative nature, provided that certain safeguards are observed.

4) **"Member State of origin":** the Member State in which, as the case may be, the decision has been given, the court settlement has been approved or concluded, or the authentic instrument has been established;

5) **"Member State of enforcement":** the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought;

6) **"Requesting Member State":** the Member State whose Central Authority transmits an application pursuant to Chapter VII;

7) **"Requested Member State":** the Member State whose Central Authority receives an application pursuant to Chapter VII;

8) **"2007 Hague Convention Contracting State**": a State which is a contracting party to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) to the extent that the said Convention applies between the Community and that State;

9) **"court of origin**": the court which has given the decision to be enforced.

It should also be pointed out that for the purposes of the Regulation, the term "court" includes administrative authorities of the Member States with jurisdiction in matters relating to maintenance obligations provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard, and provided that their decisions under the law of the Member State where they are established:

(i) may be made the subject of an appeal to or review by a judicial authority; and

(ii) have a similar force and effect as a decision of a judicial authority on the same matter.

One of the annexes of the Regulation requires the Member States to provide a list of their administrative authorities recognised as authorities of origin. The Member States are to communicate this list prior to 18 September 2010.

10**) "creditor":** any individual to whom maintenance is owed or is alleged to be owed. In spite of the literal tenor of the definition, the term should be understood to extend, in relation to Chapter VIII, to "public bodies which are entitled to act in place of a person to whom maintenance is owed or to claim reimbursement of benefits provided to the creditor in place of maintenance" (Article 64).

11) **"debtor":** any individual who owes or who is alleged to owe maintenance.

Regulation 4/09 does not, however, offer a definition for the **concept of "maintenance obligation"**. It merely states in point 11 of the Preamble that the term "should be interpreted autonomously". The concept is therefore independent of that used in the domestic legislations of the different Member States.

This gives rise to a debate on the scope of the concept, and specifically, whether it should apply to redressive payments[7]. According to a differing interpretation, the new regulatory instrument establishes a European enforcement order which is procedurally privileged in respect of maintenance obligations in countries bound by the 2007 Protocol, which is also binding, actively as well as passively, on the Central Authorities of the Member States. The argument goes on that this privilege is warranted where maintenance is concerned, but hardly compatible with claims for compensatory payments in legal systems where - as in the case of Spain - these are strictly private in their material implications, and therefore beyond the protective reach of the courts and public bodies.

In our view, however, the interpretation of maintenance obligations given by the Court of Justice of the European Communities and at The Hague Conference constitutes a sound basis.

In a case concerning the application of the Brussels Convention of 1968, the Court of Justice of the European Communities took a broad view of the concept. In L. de Cavel v J. de Cavel (Judgment of the Court of Justice, Third Chamber, given on 6 March 1980, Case 120/79)[8] the Court held that the "compensatory payment" after divorce provided for by French law was to be treated as a maintenance obligation since it had been "fixed on the basis of their respective needs and resources". Likewise, in A. Van den Boogaard v P. Laumen (Judgment of the Court of Justice, Fifth Chamber, given on 27 February 1997. Case C-220/95)[9] the CJEC held that "a decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance (...) if its purpose is to ensure the former spouse's maintenance".

The different Hague Conventions and the New York Convention also avoid defining maintenance obligations. It should be borne in mind that a specific

[7] On the case of Spain, see Article 97 of the Civil Code. In other legislations, this would refer to claims for maintenance or compensation between spouses or ex-spouses.

[8] JCJEC of 6 March 1980, case 120/79, De Cavel v De Cavel [II], Recueil, 1980, pages 731-744 (Art. 24 BC: "The Brussels Convention is applicable, on the one hand, to the enforcement of an interlocutory order made by a French court in divorce proceedings whereby one of the parties to the proceedings is awarded a monthly maintenance allowance and, on the other hand, to an interim compensation payment, payable monthly, awarded to one of the parties by a French divorce judgment pursuant to Article 270 et seq. of the French Civil Code. "

[9] JCJEC of 27 February 1997, case C-220/95, Antonius van den Boogaard v Paula Laumen, Proc. CJEC/TPI, no 07/1997, pages 6-8: Art.1. "A decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the Convention of 27 September 1968 (...) if its purpose is to ensure the former spouse's maintenance. The fact that in its decision the court of origin disregarded a marriage contract is not significant in this regard."

provision included in Article 8 of the 1973 Convention on the law applicable to maintenance obligations removes any ambiguity with respect to the application of this Convention to maintenance obligations between divorced spouses. This provision was deemed necessary in view of the uncertainty surrounding the allowances due to divorced spouses (which are considered maintenance in some legal systems and compensation in others).[10]

All these precedents make a strong case for considering that the term "maintenance obligations" covers all and any payments for food within family relations. This essentially includes food payments from parents to children (particularly after the breakdown of the relation between the holders of parental responsibility), and payments between ex-spouses after divorce, made in compliance of the duty to aid. In the latter case, however, the provisions relating to administrative cooperation would only apply to maintenance obligations between spouses and ex-spouses between States that have made a declaration in this regard.

Article 5 of the Protocol contains a special rule on the applicable law, which could justify the above: "*In the case of a maintenance obligation between spouses, ex-spouses or parties to a marriage which has been annulled, Article 3 shall not apply if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case the law of that other State will apply.*" [11]

[10] Already in The Hague Convention of 1973 it was deemed necessary not to include a definition of the term "maintenance obligations" in view of the divergent connotations it has in the different Member States. It was therefore left to the courts to define the legal status in each particular case. In this respect, see M. VERWILHEN “Rapport explicatif des Conventions sur les obligations alimentaires”. Conférence de la Haye de Droit International Privé, Actes et documents de la douzième session, 2 au 21 octobre 1972.

[11] In A. Bonomi's Report Explaining the Convention, the following is stated in this respect:"This Article contains a special rule for the connecting factor concerning maintenance obligations between spouses and ex-spouses. For such obligations, the connection in principle to the creditor’s habitual residence is to yield, when one of the parties so requests, to application of the law of another State, in particular the State of the spouses’ last common habitual residence, if that law has a closer connection with the marriage.

a) The reason for the special rule

The provision of a special rule for this class of maintenance obligations is based on the observation that application of the law of the creditor’s habitual residence is not always suitable for obligations between spouses or ex-spouses. It should be taken into consideration that in certain domestic systems, maintenance is granted to a spouse only with great restraint and in exceptional cases (in Europe, this restrictive attitude is a feature of the law of Scandinavian States in particular). Against that background, indiscriminate application of the rules inspired by favor creditoris is seen in certain States as being excessive. In particular, the possibility for one of the spouses of influencing the existence and substance of the maintenance obligation through a unilateral change of residence may lead to a result that is less than fair and contrary to the debtor’s legitimate expectations. Take for instance the case of a couple of citizens of State A, the law of which does not in principle provide for maintenance after a divorce. After living all their married life in that State, the spouses divorce and one of them moves to State B, where the law is more generous to divorced spouses, and then claims maintenance on

22

the basis of the law of his or her new habitual residence. According to the general connecting rule under Article 3, that claim ought to be allowed. In such circumstances, however, application of the law of State B, a State where the spouses never lived during their marriage, seems less than fair to the other spouse and contrary to the legitimate expectations the spouses may have held during their marriage.

4.- INTERNATIONAL JURISDICTION AND MAINTENANCE OBLIGATIONS.

4.1. GROUNDS FOR EXCLUSIVE JURISDICTION

The Regulation establishes a series of general grounds for international jurisdiction. Thus, according to Article 3, in matters relating to maintenance obligations in Member States, jurisdiction lies with:

(a) the court for the place where the defendant is habitually resident, or

(b) the court for the place where the creditor is habitually resident, or

(c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties (parentage, marriage), or

(d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

It should be noted that in the latter two cases jurisdiction is recognised "unless that jurisdiction is based solely on the nationality of one of the parties", a point that has been included to prevent the appearance of exorbitant jurisdictions.

Habitual residence should be understood as the place where an individual has established, with the intention that it should be of a lasting character, the permanent or habitual centre of his or her interests. This concept is autonomous of the Regulation and it does not necessarily coincide with the concept of legal residence, as mere permanence in the territory of the court whose international jurisdiction is questioned, is sufficient.

The Court of Law has on different occasions offered a definition of habitual residence, stating that it is "the place where an individual has established, with the intention that it should be of a lasting character, the permanent or habitual centre of his or her interests, it being understood that, for the purposes of determining habitual residence, all the factual circumstances which constitute such residence must be taken into account". Generally speaking, it may be asserted that all scientific doctrine and official reports, including Prof. M.W. Von Steigler's Report explaining The Hague Convention of 5 October 1961, agree that the concept of habitual residence is less legal than factual.

It should be taken into account that Article 2.3 of the Regulation states that "*[f]or the purposes of Articles 3, 4 and 6, the concept of "domicile" shall replace that of "nationality" in those Member States which use this concept as a connecting factor in family matters.*"

The English term "domicile" will be understood to have the meaning given to it in the legal systems of the United Kingdom and Ireland.

Dr Borrás's Report explaining the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters (text approved by the Council on 28

May 1998) is highly illuminating on the concepts discussed here. (Official Journal C 221 of 16/07/98 pp. 0027 – 0064).

According to this report, establishing the possibility of having the authorities of the State of nationality or "domicile" of both spouses handle proceedings does not mean that the courts of the State can in every instance examine whether one or other of those criteria has been met. What is intended is that in the light of their internal system, States will adopt one or other of the criteria. Hence, just as common nationality may be acceptable to Spain, "domicile" will be the criterion for the United Kingdom and for Ireland.

The fundamental use of "domicile" is to establish a link between an individual and the country where his or her home is permanently or indefinitely located. It provides a way to attach the individual to the legal system of that country for a wide range of purposes, chiefly relating to important matters of family relations and family property. The statutory provisions of the UK aim to ensure that individuals have one and only one domicile at any time. Thus, there are rules to determine a child's domicile (domicile of origin) and rules to establish an adult's domicile, which relate both to the acquisition of a new domicile (domicile of choice) and to the recovery of the domicile of origin (revival of the domicile of origin). The same principles apply in Irish law.

Lastly, it is worth mentioning that for the purposes of Article 6, parties which have their "domicile" in different territorial units of the same Member State are deemed to have their common "domicile" in that Member State.

4.2. CHOICE OF COURT

The jurisdiction under Art. 3 is exclusive unless the parties have agreed otherwise (Art. 4). Therefore, the regulation provides for the possibility of tacit or express consent. Specifically, Art. 4 (choice of court) establishes that the parties may agree that the courts of a Member State have jurisdiction to settle any disputes in matters relating to a maintenance obligation which has arisen or may arise between them, provided that the conditions below are met at the time the choice of court agreement is concluded or at the time the court is seised.

The parties may come to a choice of court agreement limited to certain specific courts and, as we will see below, excluding disputes relating to minors (under 18). These courts are the following:

(a) a court or the courts of a Member State in which one of the parties is habitually resident *(habitual residence criterion);*

(b) a court or the courts of a Member State of which one of the parties has the nationality; (*nationality criterion*);

(c) in the case of maintenance obligations between spouses or former spouses:

(i) the court which has jurisdiction to settle their dispute in matrimonial matters (*ancillary jurisdiction to prevent the case becoming dispersed internationally*); or

(ii) a court or the courts of the Member State which was the Member State of the spouses' last common habitual residence for a period of at least one year.

There is one exception: disputes relating to a maintenance obligation towards a minor (under 18). Given that the aim is "to protect the weaker party", the rules of jurisdiction established in Article 3 are necessarily applied in such cases.

4.3. FORM OF THE CHOICE OF COURT AGREEMENT

A choice of court agreement must be in writing. For these purposes, it is considered that any communication by electronic means which provides a durable record of the agreement is equivalent to 'writing'.

This form of transmission is likely to give rise to problems of interpretation, stemming not so much from the impossibility to guarantee the actual existence of what is written, as the authenticity of the sender, the addressee and, ultimately, the consent given to the content of the agreement.

Article 4(4) provides the following: *If the parties have agreed to attribute exclusive jurisdiction to a court or courts of a State party to the Lugano Convention*[12]*, where that State is not a Member State, the said Convention shall apply except in the case of the disputes referred to in paragraph 3.*"

For example, a choice of court agreement between the parents of a child under the age of 18 engaged in a dispute concerning maintenance for that child would not be valid before the court of a Member State.

4.4. TACIT CONSENT (Art. 5)

Article 5 establishes that a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule does not apply where appearance was entered to contest the jurisdiction.

Tacit consent is not applicable if jurisdiction is determined by other provisions in the Regulation. It must be understood that subsequent tacit consent prevails over previous express consent (JCJEC of 24 June 1981 and 7 March 1985).

4.5. SUBSIDIARY JURISDICTION (Art. 6)

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5 and no court of a State party to the Lugano Convention which is not a Member State has jurisdiction pursuant to the provisions of that Convention, the courts of the Member State of the common nationality of the parties shall have jurisdiction. The purpose of this provision is to prevent an absence of jurisdiction.

4.6. FORUM NECESSITATIS (Art. 7)

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4, 5 and 6, the courts of a Member State may, on an exceptional basis, hear the case if

[12] Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007 in Lugano (hereinafter referred to as the Lugano Convention).

proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected.

The dispute must have a sufficient connection with the Member State of the court seised.

Some of the circumstances in which this jurisdiction comes into play are set out in the preamble of the Regulation, e.g. if proceedings prove impossible in the third State in question because of civil war. In my view, the *forum necessitatis* should also be resorted to if there are assets in that Member State that may be subject to enforcement as a result of the proceedings.

In some cases, the jurisdictions established in Articles 6 and 7 could be concurrent, thus giving rise to an alternative. To counter this possibility, Preamble Clause 16 states that "[j]urisdiction based on the forum necessitatis should, however, be exercised only if the dispute has a sufficient connection with the Member State of the court seised, for instance the nationality of one of the parties."

4.7. LIMIT ON PROCEEDINGS: ARTICLE 8

Article 8 lays down the following: "*1. Where a decision is given in a Member State or a 2007 Hague Convention Contracting State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given.*

2. Paragraph 1 shall not apply:

(a) where the parties have agreed in accordance with Article 4 to the jurisdiction of the courts of that other Member State;

(b) where the creditor submits to the jurisdiction of the courts of that other Member State pursuant to Article 5;

(c) where the competent authority in the 2007 Hague Convention Contracting State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or give a new decision; or

(d) where the decision given in the 2007 Hague Convention Contracting State of origin cannot be recognised or declared enforceable in the Member State where proceedings to modify the decision or to have a new decision given are contemplated."

This article attributes jurisdiction to modify a decision (e.g. in the event of a substantial change of the circumstances, to increase or reduce the amount paid for maintenance) to the courts of the Member State that issued that first decision as long as the creditor has his habitual residence in that State.

The Regulation privileges jurisdiction to modify the initial decision on maintenance in the following cases:

(a) the decision was given in a Member State;

(b) the decision was given in a non-Member State which is a party to the 2007 Convention;

(c) in addition, the creditor has his habitual residence in that State.

In this case, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given.

This restriction does not affect the creditor, who may resort to the courts of another Member State to request an increase of the maintenance allowance for instance.

However, there are four exceptions to this general rule:

(a) express consent of the parties;

(b) tacit consent;

(c) where the competent authority in the 2007 Hague Convention Contracting State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or give a new decision; or

(d) where the decision given in the 2007 Hague Convention Contracting State of origin cannot be recognised or declared enforceable in the Member State where proceedings to modify the decision or to have a new decision given are contemplated.

4.8. SEISING OF A COURT (Art. 9)

Article 9 establishes the time at which a court is considered to have been seised of a dispute. It distinguishes two cases on the basis of whether the legal system concerned requires prior service to the defendant:

(a) If prior service is *not* required: at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or

(b) If prior service *is* required: if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The Regulation thus gives prevalence to the time of lodging, rather than the time at which the claim is admitted by the court after examination according to the relevant procedural provisions.

4.9. EXAMINATION AS TO JURISDICTION (Art. 10)

Article 10 provides the following: "*Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation it shall declare of its own motion that it has no jurisdiction.*"

This gives rise to the issue of determining the time at which the court is to examine its own jurisdiction. Given that the Regulation admits tacit consent with no limitation to any specific case (Art. 5), the court must serve the claim on the defendant upon its receipt. If, having been duly summoned, the defendant does not enter an appearance, the court will evaluate whether it has international jurisdiction according to

the Regulation. If it is established that it does not have this jurisdiction, it will declare this of its own motion. Despite the reference in Art. 5, the Regulation makes no provision for the review of jurisdiction at the request of one of the parties. Therefore, the rules of the internal law of each Member State apply in this respect.

4.10. EXAMINATION AS TO ADMISSIBILITY

Article 11 reads as follows: "*1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end.*"

The Regulation thus lays down a number of safeguards to ensure that the relevant document is duly served on a defendant who fails to enter an appearance:

- The court is required to stay the proceedings until it is proved that the document has been served in sufficient time or that all necessary steps have been taken to this end;
- The Regulation incorporates the provisions of Article 19 of Regulation (EC) 1393/2007[13] and, where the Regulation does not apply, Article 15 of the 1965 Hague Convention[14]. These articles establish safeguards to ensure that the relevant documents are duly and effectively served on the defendant.

4.11. OTHER PROCEDURAL MATTERS

Article 12 deals with **lis pendens:** Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. This solution, which is the same as that provided in Regulation 44/2001 (Art. 27), is based on the principle of *prior tempore, potior iure*. It guarantees that the only judgment issued can circulate freely in the Member States.

Article 13 regulates **related actions**. Actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. In this case, the court is not required to decline jurisdiction. This course of action is optional and always taken at the request of one of the parties, provided that the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

[13] Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Available online at www.prontuario.org
And also at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R1393

[14] The Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters. The text is available at
http://www.hcch.net/index_en.php?act=conventions.text&cid=17

To protect the rights of creditors, Article 14 provides the possibility to apply for **provisional or protective measures,** "as may be available under the law of that State, even if, under the Regulation, the courts of another Member State have jurisdiction as to the substance of the matter". The measures that may be requested are those provided in the domestic law of the State where implementation is sought. Where the court has no jurisdiction over the substance of the case, it would be advisable to require some kind of connection with the Member State where the measures are requested, such as the existence of assets in its territory. However, the Regulation makes no mention of this[15].

5.- APPLICABLE LAW (Art. 15)

The law applicable to maintenance obligations shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (hereinafter referred to as the 2007 Hague Protocol) in the Member States bound by that instrument[16].

As regards the Member States that are not bound by the Protocol, the choice of law rules of their domestic legislation will apply in the absence of any relevant treaties.
This gives relevance to the rules established in international instruments, avoiding over-protection of the national law of the Member States.

6.- RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS.

The Regulation makes provision for the recognition, enforceability and enforcement of the decisions contemplated therein, establishing two different regimes:
1.- The first applies to decisions given in a Member State bound by the 2007 Hague Protocol;
2.- The second applies to decisions given in a Member State not bound by the 2007 Hague Protocol.

As a general rule, it could be said that in the first case, decisions will be recognised without any procedure being required and without any possibility of opposing recognition, and they will be enforceable in another Member State without the need for a declaration of enforceability. In the second case, the process is similar to that provided in Regulation 44/01 (Brussels I), i.e. automatic recognition subject to certain criteria for refusal, and, where applicable, a declaration of enforceability to render the decision effectively enforceable.

6.1. SECTION 1: DECISIONS GIVEN IN A MEMBER STATE NOT BOUND BY THE 2007 HAGUE PROTOCOL[17]

[15] The Regulation does not contemplate so-called *Worldwide Mareva Injunctions*, i.e. interim measures available under English law to freeze an individual's assets in certain exceptional circumstances, even if the English court has no jurisdiction over the substance of the matter and the defendant is neither domiciled in England nor has any property in English territory.
[16] See the independent section "More information……..."
[17] http://www.hcch.net/index_es.php?act=conventions.status&cid=133).

With respect to these decisions, Article 17 provides the following:

a) *These decisions must be recognised by the other Member States without any procedure being required and without any possibility of opposing its recognition.*
b) *Moreover, a decision given in a Member State bound by the 2007 Hague Protocol which is enforceable in that State shall be enforceable in another Member State without the need for a declaration of enforceability.*

The exequatur is abolished not only in respect of the recognition, but also of the enforcement of decisions, thus making the decisions falling within Section 1 a new form of European enforcement order. Consequently, Regulation 805/04 is not applicable in this field, as established in Article 68(2) of Regulation 4/09. The direct enforceability of decisions constitutes a further step in the strengthening of the principle of mutual recognition.

Article 18 adds that an enforceable decision shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State of enforcement.

6.1.a. THE POSSIBILITY FOR REVIEW

The elimination of intermediate stages and the absence of any grounds for refusal gives rise to the right of the party affected by the enforceable decision to apply for its review, not before the court of the State of enforcement, however, but before the court of origin, that is, the court that issued the decision whose enforcement is sought.

This is possible only if the defendant did not enter an appearance in the Member State of origin and the following conditions are met (Art. 19):

> (a) he or she was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence; or
> (b) he or she was prevented from contesting the maintenance claim by reason of force majeure or due to extraordinary circumstances without any fault on his or her part; unless he or she failed to challenge the decision when it was possible for him or her to do so.

The time limit for applying for a review will run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his or her property non-disposable in whole or in part.

The defendant must react promptly, in any event within 45 days. No extension may be granted on account of distance. In accordance with Article 39 of the Regulation, however, the claimant may, during the review period, request the court of origin to declare the decision provisionally enforceable, even if the national law of the court does not provide for this possibility. In this respect the Regulation is prevalent over domestic law.

6.1.b. APPLICATION FOR ENFORCEMENT

The Regulation sets out the formal requirements to apply for enforcement before the court of the State of enforcement.

The following **documents** must be produced:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
(b) the extract from the decision issued by the court of origin using the form set out in Annex I;
(c) where appropriate, a document showing the amount of any arrears and the date such amount was calculated;
(d) where necessary, a transliteration or a translation of the content of the form into the official language of the Member State of enforcement, in accordance with the terms set out in the Regulation.

The application for enforcement must be made in the form established in the domestic law of the State of enforcement. As no exequatur is required, enforcement may only be refused or suspended on the grounds provided for such purpose in the domestic law of the member State of enforcement, in so far as they are not incompatible with the Regulation (in Spain, for instance, grounds for refusal include a disparity between the application and the enforceable decision, while the grounds for opposition include the production of proof that the debt has been settled).

The Regulation lays down four exceptions, which the court will not apply of its own initiative but at the request of the debtor. Specifically, enforcement may be refused in part or in full according to the terms of Art. 21 of the Regulation.

a) Extinguishment by prescription.
b) Res iudicata.
c) Review in the Member State of origin of an application for review.
d) Suspension of enforceability in the Member State of origin.

The Regulation does not provide any time limits to contest enforcement. Therefore, the domestic law of the Member State of enforcement applies.

According to the Regulation, the recognition and enforcement of a decision on maintenance under this Regulation shall not in any way imply the recognition of the family relationship, parentage, marriage or affinity underlying the maintenance obligation which gave rise to the decision (Art. 22). Consequently, as there is no res iudicata, the relationships on which the maintenance obligation is based may be dealt with in different proceedings.

6.2. SECTION 2: DECISIONS GIVEN IN A MEMBER STATE NOT BOUND BY THE 2007 HAGUE PROTOCOL [18]:

Decisions in this category, i.e. given in a Member State not bound by the 2007 Hague Protocol, will be recognised in the other Member States without any special procedure being required. Nevertheless, in the event of opposition, any interested party who raises

[18] http://www.hcch.net/index_es.php?act=conventions.status&cid=133).

the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in this Section, apply for a decision that the decision be recognised (Art. 23).[19]

This amounts to a simplified exequatur, analogous to the procedure provided in Regulation 44/2001 (Brussels I), currently in force.
If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court will have jurisdiction over that question (Art. 23), where the documents set out in Art. 40 of the Regulation will have to be submitted.[20]

In contrast to Section 1, the court of the requested State may refuse recognition in certain circumstances, always at the request of the defendant and not of its own initiative (as provided in Art. 30 with reference to Arts. 24, 23(2) and 28).

Specifically, recognition will be refused at the defendant's request in the cases set out in Art. 24, which may be summarised as follows[21]:

a) recognition is contrary to public policy and the test of public policy may not be applied to the rules relating to jurisdiction;
b) service defects;
c) the decision is incompatible or irreconcilable with an earlier decision.
It is worth pointing out here that a decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances will not be considered an irreconcilable decision.

The possibility is open for the court of the Member State where recognition is sought to stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal (Art. 25).

6.2.a. ENFORCEABILITY

[19] The procedure referred to is provided in Article 28.
[20] Incidental recognition implies that a decision given by the courts of a Member State not bound by the 2007 Hague Protocol may be directly invoked before the authorities of any other Member State without the need for it to have been previously recognised. The decision thus only has effects in the proceedings where it has been resorted to.
[21] A decision shall not be recognised:
(a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;
(b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him or her to do so;
(c) if it is irreconcilable with a decision given in a dispute between the same parties in the Member State in which recognition is sought;
(d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in a dispute involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.
A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of points (c) or (d).

Decisions given in a Member State not bound by the 2007 Hague Protocol and enforceable in that State will only be enforceable in another Member State when, on the application of any interested party, "it has been declared enforceable there" (Art. 26). Consequently, enforcing a decision given in a non-bound Member State requires an exequatur procedure or a declaration of enforceability, which renders the decision enforceable.

By contrast with Section 1, this case does not involve a European enforcement order. Instead, a simplified exequatur is established which is equivalent to that provided in Regulation 44/01 (Brussels I). This precludes any further application of Regulation 805/04 of 21 April 2004[22] creating a European order for payment procedure, as established in Article 68(2) of Regulation 4/09. Thus, pursuant to Regulation 805/04, decisions on maintenance given in States not bound by the 2007 Hague Protocol may be European enforcement orders provided that they have been issued in proceedings that fulfil the requirements set out in Regulation 805/04.

The application for a declaration of enforceability must be submitted to the court of the Member State of enforcement notified by that Member State to the Commission (Art. 27).
Local jurisdiction lies with:

- the court of the place of habitual residence of the party against whom enforcement is sought; or
- the court of the place of enforcement (e.g. where there are assets that may be subject to seizure or exaction).

6.2.b. THE PROCEDURE FOR ENFORCEMENT

Article 28 lays down the formal requirements, specifying the documents that must be attached to the application for enforcement and the translation requirements for each particular case (briefly, a certified copy of the decision and extract thereof, using the form provided in Annex II, duly completed and translated by a certified translator)[23].

If the extract referred to in Article 28 is not produced, the competent court or authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production. Accordingly, an application for recognition or enforcement cannot be refused simply because the form of Annex II submitted has not been suitably completed.

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[22] OJ L 143 of 30-4-2004. The text is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:143:15:39:EN:PDF

[23] The application for a declaration of enforceability shall be accompanied by the following documents:
(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
(b) an extract from the decision issued by the court of origin using the form set out in Annex II, without prejudice to Article 29;
(c) where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

If the extract is not produced in accordance with the terms of the Regulation, Article 29(2) provides that a translation of the documents must be produced if the competent court or authority *so requires*. It appears that it is left to the competent court or authority whether or not to require a translation of the copy of the decision whose enforcement is sought.

Once the necessary documents have been submitted, Article 30 of the Regulation sets out the terms for the declaration of enforceability, which is merely a simplified form of exequatur.

It should be pointed out that the procedure for obtaining the exequatur has several stages:

- application and recognition;
- possible appeals;
- enforcement.

During the period in which the order for recognition or enforceability of the foreign decision may be contested, i.e. the first stage of the exequatur, we should avoid the term "declaration of enforcement" and refer instead to the recognition of the decision's "enforceability".

In the **first stage** the court decides whether to declare the decision enforceable without any review under Article 24 (grounds for refusal). This stage is conducted *inaudita parte*, as the defendant in the exequatur proceedings is not entitled to make any submissions on the application (Art. 30). Recognition of enforceability of the foreign decision is granted by the court subject to the requirements of Article 28 and, as has already been mentioned, without, on its own initiative, implementing the review provided for in Article 24 (which will only be applicable after this stage and at the request of the defendant, if he or she contends the enforceability within the term legally established for such purpose; Art. 30).
Once the decision granting or refusing the exequatur has been issued, according to the provisions of Article 30, it will be served immediately on the party against whom enforcement is sought through the procedure established by the law of the State of enforcement, accompanied by the decision, if not already served on that party (Art. 31)[24].

Enforcement of the decision on the assets of the defendant cannot commence until the term provided to appeal against the exequatur decision has elapsed.

In the **2nd stage**: If the court admits the application for enforceability, the defendant may appeal against the decision on the application once it has been served (Art. 32(1)). The appeal must be lodged with the court notified by the Member State concerned to the Commission in accordance with Article 71[25].
In the same way as Regulation 44/01 (Brussels I), Regulation 4/09 simply prescribes that the appeal will be dealt with "in accordance with the rules governing procedure in

[24] If the defendant has his or her residence in a foreign country within the EU, the new Regulation 1393/07 will apply to service. If he resides outside of the EU, the 1965 Hague Convention will apply. Both these instruments relate to the form in which documents are to be served.

[25] In Spain, presumably the Provincial Court will be designated to decide on such appeals, as is provided in Regulation 44/01 (Brussels I), given that the procedure for contesting the exequatur of Regulation 4/2009 is the same as that of Regulation 44/01.

contradictory matters", adding that it must be lodged within 30 days [26]of service of the declaration of enforceability (thus providing a specific term where Regulation 44/01 prescribed that it should be lodged "without delay"). The manner in which the appeal is dealt with will have to be analysed in each Member State in accordance with its internal legislation.

According to Article 33, the decision given on appeal may be contested only if the Member State concerned has given notification to the Commission in this respect in accordance with the article 71[27].

Article 34 of the Regulation specifies the procedures for contesting a declaration of enforceability. According to its provisions, the court seised of an appeal under Articles 32 or 33 must refuse or revoke such declaration only on one of the grounds specified in Article 24. The Regulation also empowers the court with which an appeal is lodged, on the application of the party against whom enforcement is sought, to stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal (Art. 35).

In the interim, prior to the determination of the recognition, the applicant has the possibility to avail himself of provisional, including protective, measures in accordance with the Member State of enforcement. In addition, the declaration of enforceability in accordance with Article 30 entails, by operation of law, the power to proceed to any protective measures.

Lastly, it is established that during the time specified for an appeal pursuant to Article 32(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 37 contemplates the possibility for the court - whether at the request of the claimant or of its own motion - to recognise only partial enforceability of a foreign decision. In such case, the competent court or authority shall give it for one or more of them.

Lastly, with regard to enforcement of a foreign decision in the State of enforcement, i.e. the stage following the prior exequatur in respect of resolutions given in a Member State not bound by the 2007 Hague Protocol, the procedure for the enforcement of decisions given in another Member State will be governed by the law of the Member State of enforcement (Art. 41)[28].

It is worth noting that the recovery of any costs incurred in the application of the Regulation will not take precedence over the recovery of maintenance (Arts. 42 and 43).

[26] If the party against whom enforcement is sought has his or her habitual residence in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 45 days and shall run from the date of service, either on him or her in person or at his or her residence (Art. 32).
[27] Once again, it may be presumed that Spain will admit an appeal in cassation before the Supreme Court for this purpose, as was the case under Regulation 44/01 (Brussels I).
[28] In Spain, Articles 538 et seq. and related provisions.

7.- RELATIONS WITH OTHER COMMUNITY INSTRUMENTS (ART. 68) AND WITH EXISTING INTERNATIONAL CONVENTIONS AND AGREEMENTS (ART. 69).

The following is a list of the instruments currently in force in the international regulatory system concerning maintenance obligations, in chronological order:

- The New York Convention of 20 June 1956 on the recovery of maintenance abroad.
- The Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children.
- The Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children.
- The Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.
- The Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.
- The Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance.
- The Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.
- 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*).

7.1. RELATIONS WITH OTHER COMMUNITY INSTRUMENTS

Subject to the transitional provisions, the following provisions on the Regulation's effects on other instruments included in Article 68 should be taken into account:

(a) The Regulation amends Regulation (EC) 44/2001 by replacing the provisions of that Regulation applicable to maintenance obligations. Hence, Article 5.2 of this Regulation, which establishes special grounds for jurisdiction in matters relating to maintenance and provisions on recognition and enforcement, is rendered ineffective. By contrast to Regulation 44/2001, under Regulation 4/2009 those precepts, which cover all matters, will not be applicable to the recognition and enforcement of decisions concerning maintenance.

(b) The Regulation replaces, in matters relating to maintenance obligations, Regulation (EC) No 805/2004, except with regard to European Enforcement Orders on maintenance obligations issued in a Member State not bound by the 2007 Hague Protocol. This makes perfect sense, as the section on recognition and enforcement applicable to States that are party to the Hague Protocol establishes a system of enforceability that is very similar to the European enforcement order, adapted to the particularities of maintenance, while the section on recognition and enforcement applicable to the States that have not ratified the protocol lays down a system that is very similar to that set forth in Regulation 44/2001. Therefore, a decision on maintenance that is a European enforcement order in accordance with Regulation 805/04 on account of the fact that the defendant has not contested the claim, and which has been issued in a State that has not ratified the Protocol, may be enforced as such European enforcement order or by application of Regulation 4/09, which constitutes a

privileged and expeditious procedure as compared with the system commonly used in declarations of enforceability.

(c) In matters relating to maintenance obligations, the Regulation shall be without prejudice to the application of Directive 2003/8/EC, subject to Chapter V.

(d) The Regulation shall be without prejudice to the application of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

7.2. RELATIONS WITH OTHER CONVENTIONS AND AGREEMENTS

The Regulation will not affect the application of bilateral or multilateral conventions and agreements to which one or more Member States are party at the time of adoption of this Regulation and which concern matters governed by this Regulation, without prejudice to the obligations of Member States under Article 307 of the Treaty (in reference to the treaties concluded between the Member States before 1958).

This article ends by stating that the Regulation permits the application of certain conventions existing between some northern states, namely Sweden, Denmark, Finland, Iceland and Norway.

8.- ACCESS TO JUSTICE

This chapter begins by laying down a general principle of effective access to justice. According to Article 44, "*[p]arties who are involved in a dispute covered by this Regulation shall have effective access to justice in another Member State, including enforcement and appeal or review procedures, in accordance with the conditions laid down in this Chapter.*" To ensure that this principle is materialised, the Regulation establishes the provision of legal aid [29] under the terms of Articles 44 to 47[30]:

In the cases set out in Chapter VII (proceedings brought through the Central Authorities), an applicant must be resident in the requesting Member State in order to be entitled to legal aid. The concept of residence is to be understood not as legal residence, but rather as physical permanence in a given place, regardless of any legal or administrative status in this respect. Entitlement to legal aid is therefore not subject to being a national of a member State or to the applicant's legality of residence.

In this case, the Regulation allows the Member States to exclude the right to free legal aid where it is not necessary for the parties to make the case, and where the Central Authority provides the necessary legal services free of charge[31].

[29] The content of legal aid according to the Regulation may be more extensive than that covered by the national law of each State. Paragraph 4 also precludes domestic legislation from establishing, in the proceedings within the scope of the Regulation, requirements for access to legal aid that are more restrictive than those fixed for domestic cases.

[30] Directive 2003/8/EC and the legislation for its implementation remain applicable in matters not provided for in the Regulation (Art. 68).

[31] In Spain, the State Counsel.

The Regulation precludes the requirement of any bond or deposit to guarantee the payment of costs and expenses in proceedings concerning maintenance obligations.

Article 45, which regulates the content of legal aid, makes provision for the following costs, which are covered according to the applicant's needs:
(a) pre-litigation advice with a view to reaching a settlement prior to bringing judicial proceedings;
(b) legal assistance in bringing a case before an authority or a court and representation in court;
(c) exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings;
(d) in Member States in which an unsuccessful party is liable for the costs of the opposing party, if the recipient of legal aid loses the case, the costs incurred by the opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seised;
(e) interpretation;
(f) translation of the documents required by the court or by the competent authority and presented by the recipient of legal aid which are necessary for the resolution of the case;
(g) travel costs to be borne by the recipient of legal aid where the physical presence of the persons concerned with the presentation of the recipient's case is required in court by the law or by the court of the Member State concerned and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means. Where the parties are required to appear in court, solutions such as videoconference and the like could be used.

The Regulation then goes on to establish the necessary conditions for entitlement:

(A) Applications through Central Authorities concerning maintenance obligations towards a person under the age of 21 (Article 55). In these cases, the requested Member State "shall provide free legal aid" with no exceptions where the application is for recognition or recognition and declaration of enforceability of a decision, or enforcement of a decision given or recognised in the requested Member State.
In all other applications listed in Article 56, entitlement may be refused only if the application or any appeal or review is manifestly unfounded.

(B) Where the application is submitted directly, i.e. not through a Central Authority, entitlement to legal aid is governed in accordance with the national law of the requested State, subject to Articles 44 and 45. Nevertheless, there are two exceptions to this general rule:
1. A party who has benefited from legal aid in the Member State of origin, shall be entitled, in any proceedings for recognition, enforceability or enforcement, to benefit from the most extensive exemption from costs or expenses provided for by the law of that Member State.
2. The same regime will apply to a party who has benefited from legal aid before an administrative authority listed in Annex X. Entitlement to legal aid in this case will be subject to the production of the relevant proof.

9.- COOPERATION BETWEEN CENTRAL AUTHORITIES.

Each Member State will designate a Central Authority to discharge the duties which are imposed by the Regulation on such an authority, take measures to facilitate the application

of the Regulation and to strengthen their cooperation, and seek as far as possible solutions to difficulties which arise in the application of the Regulation. For this purpose the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC will be used.

The Regulation legitimises the Central Authorities to initiate or facilitate the institution of proceedings in respect of maintenance applications and to transmit and receive such applications.

To this end, the Central Authorities will take all appropriate measures:
(a) where the circumstances require, to provide or facilitate the provision of legal aid;
(b) to help locate the debtor or the creditor;
(c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets.
(d) To encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes.
(e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
(f) to facilitate the collection and expeditious transfer of maintenance payments;
(g) to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001;
(h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
(i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application, in accordance with the provisions of Article 14 of the Regulation;
(j) to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007.

The collaboration procedure is as follows: the applicant submits his request (which must correspond to one of the types listed in Article 56) to the Central Authority of the Member State where he is resident, which in turn forwards it to the Central Authority of the requested Member State where the actions sought are to be executed. The Central Authority of the requested State may only refuse to process an application if the strict conditions set out in Articles 58(8) and 58(9) of the Regulation are met.

The Central Authorities will process cases as quickly as a proper consideration of the issues will allow and they will employ the most rapid and efficient means of communication at their disposal.

Assistance and representation will be provided by the Central Authority of the requested Member State directly or through public authorities or other bodies or persons. This possibility opens the way to the privatisation of some of the functions of the Central Authorities of the Member States, albeit under state supervision, under special agreements or administrative franchise schemes[32].

[32] 3. This possibility is already provided in Article 6.3 of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, which prescribed that "[t]he functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of

Central Authorities may not impose any charge on an applicant for their services, with the exception of certain exceptional costs. [33]

Articles 55 and 56 regulate the applications that creditors and debtors of maintenance allowances may submit to the Central Authorities.

Specifically, a creditor seeking to recover maintenance by virtue of the Regulation may apply for:
(a) recognition or recognition and declaration of enforceability of a decision;
(b) enforcement of a decision given or recognised in the requested Member State;
(c) establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;
(d) establishment of a decision in the requested Member State where the recognition and declaration of enforceability of a decision given in a State other than the requested Member State is not possible;
(e) modification of a decision given in the requested Member State;
(f) modification of a decision given in a State other than the requested Member State.

A debtor against whom there is an existing maintenance decision may make applications for the following:
(a) recognition of a decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested Member State;
(b) modification of a decision given in the requested Member State;
(c) modification of a decision given in a State other than the requested Member State.
It should be noted that the debtor may not apply for an ex novo decision, but only for an amendment of the decision (e.g. a modification of the amount or the extinction of the right to maintenance) or for the recognition of a decision leading to the suspension or restriction of enforcement of an earlier decision in the requested Member State.

Articles 57 to 63 regulate the content of the application to the Central Authorities set out in Annexes VI and VII, the possibility to withhold the address of the applicant in cases of gender-related violence, the transmission, reception, processing and language of applications made through the Central Authorities using the forms provided in the Regulation as an instrument to standardise such communications.
It is worth pointing out that Article 61 allows the Central Authorities to obtain from the public authorities or administrations the necessary information for the relevant procedures. Depending on the purpose of the request, the information available to the Central Authorities is different:
a) For the purpose of obtaining or modifying a decision, only the information relating to the address of the debtor or of the creditor may be requested by the requested Central Authority.
b) For the purpose of having a decision recognised, declared enforceable or enforced, the requested Central Authority may request, in addition to the address, information on the debtor's income, the identification of the debtor's employer and of the debtor's bank

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that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes."

[33] See Articles 53 and 54 of the Regulation.

account(s). If the latter two pieces of information prove insufficient for the purpose intended, information on the debtor's assets may also be requested.

10.- PUBLIC BODIES ACTING ON BEHALF OF THE CREDITOR OR BY VIRTUE OF ITS RIGHT TO REIMBURSEMENT

Article 64 prescribes that "*[f]or the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions, the term "creditor" shall include a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.*
The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.
A public body may seek recognition and a declaration of enforceability or claim enforcement of:
(a) a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
(b) a decision given between a creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance.
4. The public body seeking recognition and a declaration of enforceability or claiming enforcement of a decision shall upon request provide any document necessary to establish its right under paragraph 2 and to establish that benefits have been provided to the creditor".

Many Member States have public bodies that provide benefits in cases of non-payment of judicially established maintenance obligations.[34] The 1973 Hague Convention includes special rules with regard to the law applicable to these institutions, which are also set forth in the 2007 Protocol (Art. 10) and in the 2007 Hague Convention (Art. 36).

Regulation 4/2009 includes a rule on applicable law in Article 64(2): "*The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject."* This text is essentially along the same lines as Article 10 of the 2007 Protocol and Article 36 of the 2007 Hague Convention, although it is broader than the Protocol in that it not only provides for the right to reimbursement, but also for the right to act in place of the creditor.

A public body's entitlement to act in place of an individual who is owed maintenance or to seek reimbursement of benefits provided to the creditor in place of maintenance is not established in the Regulation: it is a right that may only be recognised by the law to which the body is subject. Thus, in order to establish the law under which such entitlement is to be determined, it will be necessary to resort to the choice of law rules of the domestic law

[34] In Spain, Royal Decree 1618/2007 of 7 December on the organisation and functioning of the Guarantee Fund for the Payment of Maintenance, which regulates this fund created under the 53rd additional provision of Law 42/2006 of 28 December on the National Budget for 2007, and lays down the requirements for entitlement to advance benefits and the procedures for their payment and reimbursement.

of the State to which the body belongs. In most cases it will be found that the domestic law of that State applies. For example, if a Spanish public body seeks to have a maintenance decision given in Poland enforced against a debtor who has his or her residence and assets in Spain, the entitlement to actively seek such enforcement will be determined under Polish law, which will have to be consulted by the Spanish judge for purposes of verifying such entitlement.

Article 64 lists the different decisions whose recognition, declaration of enforceability or enforcement may be requested by a public body acting as creditor:

(a) a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
(b) a decision given between a creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance.

11.- INFORMATION MADE AVAILABLE TO THE PUBLIC AND INFORMATION ON CONTACT DETAILS AND LANGUAGES (ARTS. 70 and 71).

The Member States will provide within the framework of the European Judicial Network in civil and commercial matters the following information:
(a) a description of the national laws and procedures concerning maintenance obligations[35];
(b) a description of the measures taken to meet the obligations under Article 51 (specific functions of the Central Authority);
(c) a description of how effective access to justice is guaranteed, as required under Article 44 (right to legal aid), and
(d) a description of national enforcement rules and procedures, including information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods. This information must be permanently updated by the Member States.

Article 71 requires all Member States to communicate the following to the Commission by 18 September 2010:
(a) the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability;
(b) the redress procedures;
(c) the review procedure; the names and contact details of their Central Authorities and;(d) the names and contact details of the public bodies;
(e) the names and contact details of the authorities with competence in matters of enforcement;
(f) the languages accepted for translations of the documents in the proceedings;
(g) the languages accepted by their Central Authorities for communication;

This information, with the exception of points (a), (c) and (f) will be published in the OJEU. The Commission will also publish all the information communicated through any other medium, particularly through the European Judicial Network.

CONCLUDED JANUARY 2010

[35] See the website of the European Judicial Network http://ec.europa.eu/civiljustice/.

PROTOCOL OF 23 NOVEMBER 2007 ON THE LAW APPLICABLE TO MAINTENANCE OBLIGATIONS

Article 15 of Regulation 4/2009 establishes that the applicable law shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations in the Member States bound by that Protocol.

As regards the Member States that are not bound by the Protocol, the choice of law rules of their domestic legislation will apply in the absence of any relevant treaties.

1.- SCOPE OF APPLICATION

Substantive scope: The Protocol determines the law applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child regardless of the marital status of the parents.

Geographical scope: The Protocol is universal in scope. This means that it applies even if the applicable law is that of a non-Contracting State (Art. 2).

Temporal scope: The subject of the date of entry into force having already been discussed, it should be pointed out here that the Protocol does not apply to maintenance claimed in a Contracting State relating to a period prior to its entry into force in that State (Art. 22).

The aim of the Protocol and the Regulation is an ambitious one: to guarantee, as stated in preamble clause 11 of Regulation 4/09, "equal treatment of all maintenance creditors".

The Protocol, which is highly protective in cases where the creditor is a child, sets a number of objectives:

a) to establish common provisions concerning the law applicable to maintenance obligations;
b) to modernise the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children and the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations;
c) to develop general rules on applicable law that may supplement the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

2.- APPLICABLE LAW: GENERAL RULE AND SPECIAL RULES

The general rule laid down in Article 3 is that maintenance obligations are to be governed by the law of the State of the habitual residence of the creditor, save where the Protocol provides otherwise. In the case of a change in the habitual residence of the creditor, the law of the State of the new habitual residence will apply as from the moment when the change occurs.

Articles 4 and 5 establish a number of special rules favouring certain creditors (***parents towards their children, children towards their parents, and persons below the age of 21***), and also with respect to spouses and ex-spouses.

According to Article 4, if the creditor is unable, by virtue of the law of the State where the debtor has his or her habitual residence, to obtain maintenance from the debtor, the law of the forum will apply in the case of maintenance obligations of:
(a) parents towards their children;
(b) persons, other than parents, towards persons who have not reached the age of 21 years, except for obligations arising out of the relationships referred to in Article 5; and
(c) children towards their parents.

The law of the forum will also apply if the creditor has seised the competent authority of the State where the debtor has his or her habitual residence. However, if the law of the forum does not provide maintenance, the law of the State of the habitual residence of the creditor will apply.

Lastly, it is set forth that if the creditor is unable, by virtue of the laws referred to in Article 3 (forum of the creditor's domicile) and paragraphs 2 and 3 of this Article, to obtain maintenance from the debtor, the law of the State of their common nationality, if there is one, will apply.

3.- SPECIAL RULE RELATING TO SPOUSES AND EX-SPOUSES (ART. 5)

With respect to maintenance obligations between spouses, ex-spouses or parties to a marriage which has been annulled, the Regulation established that Article 3 (forum of the creditor's domicile) will not apply if one of the parties objects and the law of another State, in particular the State of their last common habitual residence, has a closer connection with the marriage. In such a case the law of that other State will apply.

4.- SPECIAL RULE ON DEFENCE FOR MAINTENANCE OBLIGATIONS OTHER THAN THOSE ARISING FROM PARENT-CHILD RELATIONS AND THOSE BETWEEN SPOUSES AND EX-SPOUSES *(ART. 6).*

Article 6 establishes that in the case of maintenance obligations other than those arising from a parent-child relationship towards a child and those referred to in Article 5, the debtor may contest a claim from the creditor on the ground that there is no such obligation under either the law of the State of the habitual residence of the debtor and the law of the State of the common nationality of the parties, if there is one.

The Protocol allows the maintenance creditor and debtor to designate by common accord and *for the purpose only of a particular proceeding* in a given State, the law of that State as applicable to a maintenance obligation. Such a designation must be made before the institution of the proceedings in an agreement signed by both parties, in writing or recorded in any medium, the information contained in which must be accessible so as to be usable for subsequent reference.

There is also the possibility for *general designation* of one of the following laws as applicable to a maintenance obligation. Such designation may be made at any time in a written document signed by the parties (Art. 8):

(a) the law of any State of which either party is *a national* at the time of designation;

(b) the law of the State of the *habitual residence* of either party at the time of designation;

(c) the *law designated by the parties as applicable*, or the law in fact applied, *to their property regime;*

(d) the *law designated by the parties as applicable, or the law in fact applied, to their divorce or legal separation* (Art. 8).

This designatory power is excluded where the creditor is a person under the age of 18 years or an adult who, by reason of an impairment or insufficiency of his or her personal faculties, is not in a position to protect his or her interest.

5.- THE POSSIBILITY FOR A STATE TO COMMUNICATE THAT THE WORD "NATIONALITY" IN ARTICLES 4 AND 6 OF THE PROTOCOL IS TO BE REPLACED BY "DOMICILE".

A State which has the concept of "domicile" as a connecting factor in family matters may inform the relevant agency that, for the purpose of cases which come before its authorities, the word "nationality" in Articles 4 and 6 is replaced by "domicile" as defined in that State (Art. 9). This provision is included specifically for Ireland and the UK (preamble clause 18 of Regulation 4/09).

6.- LAW APPLICABLE TO THE RIGHT OF A PUBLIC BODY TO SEEK REIMBURSEMENT OF A BENEFIT PROVIDED TO THE CREDITOR IN PLACE OF MAINTENANCE:

This right is governed by the law to which that body is subject. (Art. 10)

7.- (SUBSTANTIVE) SCOPE OF THE APPLICABLE LAW.

According to the Protocol, the law applicable determines:
(a) whether, to what extent and from whom the creditor may claim maintenance;
(b) the extent to which the creditor may claim retroactive maintenance;
(c) the basis for calculation of the amount of maintenance, and indexation;
(d) who is entitled to institute maintenance proceedings, except for issues relating to procedural capacity and representation in the proceedings;
(e) prescription or limitation periods;
(f) the extent of the obligation of a maintenance debtor, where a public body seeks reimbursement of benefits provided for a creditor in place of maintenance.

8.- EXCLUSION OF RENVOI AND PUBLIC POLICY CLAUSE

The term "law" means the law in force in a State other than its choice of law rules. (Art. 12)

The application of the law determined under the convention may be refused only to the extent that its effects would be contrary to the public policy of the forum. (Art. 13)

9.- DETERMINATION OF THE AMOUNT OF MAINTENANCE

Even if the applicable law provides otherwise, the needs of the creditor and the resources of the debtor as well as any compensation which the creditor was awarded in place of periodical maintenance payments shall be taken into account in determining the amount of maintenance. (Art. 14)

10.- *COORDINATION WITH PREVIOUS HAGUE CONVENTIONS ON MAINTENANCE OBLIGATIONS*

As between the Contracting States, this Protocol replaces the Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations and the Hague Convention of 24 October 1956 on the law applicable to maintenance obligations towards children.

Article 20 of the Protocol calls for a consistent interpretation of its provisions, having regard to *its international character and to the need to promote uniformity in its application*.

ANNEXES TO REGULATION 4/2009

ANNEX I.- EXTRACT FROM A DECISION/COURT SETTLEMENT IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS NOT SUBJECT TO PROCEEDINGS FOR RECOGNITION OR A DECLARATION OF ENFORCEABILITY (Articles 20 and 48 of Regulation (EC) 4/2009)

ANNEX II.- EXTRACT FROM A DECISION/COURT SETTLEMENT IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS NOT SUBJECT TO PROCEEDINGS FOR RECOGNITION OR A DECLARATION OF ENFORCEABILITY (Articles 28 and 75(2) of Regulation (EC) 4/2009)

ANNEX III.- EXTRACT FROM AN AUTHENTIC INSTRUMENT IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS NOT SUBJECT TO PROCEEDINGS FOR RECOGNITION OR A DECLARATION OF ENFORCEABILITY (Article 48 of Regulation (EC) 4/2009)

ANNEX IV.- EXTRACT FROM AN AUTHENTIC INSTRUMENT IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS SUBJECT TO PROCEEDINGS FOR RECOGNITION AND A DECLARATION OF ENFORCEABILITY (Articles 48 and 75(2) of Regulation (EC) 4/2009)

ANNEX V.- REQUEST FOR SPECIFIC MEASURES
(Article 53 of Regulation (EC) 4/2009)

ANNEX VI.- APPLICATION FORM WITH A VIEW TO THE RECOGNITION, DECLARATION OF ENFORCEABILITY OR ENFORCEMENT OF A DECISION IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS (Articles 56 and 57 of Regulation (EC) 4/2009)

ANNEX VII.- APPLICATION FORM TO OBTAIN OR HAVE MODIFIED A DECISION IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS (Articles 56 and 57 of Regulation (EC) 4/2009)

ANNEX VIII.- ACKNOWLEDGEMENT OF RECEIPT OF AN APPLICATION (Article 58(3) of Regulation (EC) 4/2009) This acknowledgement of receipt must be sent within 30 days from the date of receipt of the application.

ANNEX IX.- NOTIFICATION OF REFUSAL OR OF DECISION NO LONGER TO PROCESS AN APPLICATION (Article 58(8) and (9) of Regulation (EC) 4/2009)

ANNEX X.- The administrative authorities referred to in Article 2(2) of Regulation (EC) No 4/2009

ANNEX XI.- The competent authorities referred to in Article 47(3) of Regulation (EC) No 4/2009

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