

**THEME 4 – CARLOS MANUEL GONÇALVES DE MELO MARINHO –
Judge of Court of Appeal**

Evaluation questions

A. THE *COUNCIL REGULATION (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations* was made possible through the impulse and guidance given by:

1. The Lisbon Treaty;
2. The *Tampere* Conclusions and the Nice Treaty;
3. The Amsterdam Treaty and the *Tampere* conclusions;
4. The Treaty on the Functioning of the European Union and the Treaty of Amsterdam.

Right answer: 3

B. The referred Regulation aimed to:

1. Establish the principle of the direct communication between central authorities;
2. Establish the principle of mutual recognition of decisions in civil and commercial matters;
3. Accelerate the cooperation between central authorities;
4. Make easier the judicial cooperation in civil and commercial matters between the 27 Countries of the European Union.

Right answer: 2

C. The pointed Regulation:

1. Envisages to promote the compatibility of the rules concerning the conflict of laws and jurisdiction in matters relating to maintenance obligations;

2. The creation of a new set of autonomous rules concerning the conflict of laws;
3. To force the creation of new internal rules in matters relating to maintenance obligations;
4. Serve as a subsidiary legal regime applicable when the internal rules don't show any effective solution to a problem of conflict of laws and jurisdiction in matters relating to maintenance obligations.

Right answer: 1

D. The abolition of the *exequatur* procedure for maintenance claims, is:

1. A proposal introduced by the first time through this Regulation and that will be applied after the first revision of this legal text;
2. A measure that comes in the sequence of others with the same content, contained in several EU Regulations in the Justice and Social Security Area, that will be applicable after the beginning of 2012;
3. A measure that comes in the sequence of others with the same content, inscribed in several EU Regulations in civil and commercial matters, that shows the will of the EU of establishing the principle of mutual recognition of decisions in civil and commercial matters;
4. An effective measure that allow the enforcement of judicial decisions in all the 27 Countries of the EU after a very light process of internal recognition of judicial decisions.

Right answer: 3

E. The suppression of the *exequatur* in the domain of the maintenance claims:

1. Aims to generate the automatic enforceability of the judicial decisions in order to produce its quicker and simpler enforcement and depends on a permanent inter-mediation of Central Authorities;
2. Aims to generate the automatic enforceability of the judicial decisions in order to produce quicker and simpler enforcement of those decisions, emerging from the idea that there is no need for its reexamination in a Common Space of Justice where the Courts should cooperate directly and trust each other;
3. Aims to generate the almost automatic enforceability of the judicial decisions in order to produce the quick enforcement of those decisions and to create a Common Space of Justice where the Courts should cooperate directly and trust each other;
4. Aims to materialize the system of recognition of judicial decisions consecrated by Regulation n. 44/2001, thus establishing the principle of mutual recognition of decisions in civil and commercial matters.

Right answer: 2

F. In the THE COUNCIL REGULATION (EC) No 4/2009 of 18 December 2008, if the intervention of no other Court is imposed by its provisions:

1. It has jurisdiction the Court of a Member State before which the defendant is claimed;
2. It has jurisdiction the Court of a Member State where the defendant has domicile;
3. It has jurisdiction the Court of a Member State before which the defendant is claimed and appears, if he doesn't contest its authority;
4. It has jurisdiction the Court of a Member State before which

the defendant is claimed and appears.

Right answer: 3

G. In the domain of the choice of law, the law applicable to maintenance obligations shall be determined:

1. In accordance with the Hague Protocol of 23 November 2007 and the Regulation EC 44/2001; the general rule that emerges from this joint interpretation point out the applicability of the law of the state of residence of the creditor;
2. In accordance with the Regulation under analysis, the Regulation EC 44/2001, the Regulation 805/2004 and the Hague Protocol of 23 November 2007, which jointly point out the application of the law of the State of the residence of the defendant;
3. In accordance with the Hague Protocol of 23 November 2007 that indicates, as general rule, the applicability of the law of State of the residence of the creditor;
4. Only according to COUNCIL REGULATION (EC) No 4/2009 of 18 December 2008 that points, as general rule, the applicability of the law of the state of residence of the creditor.

Right answer: 3

H. Through The «REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004, it was aimed to:

1. Accelerate and simplify the enforcement of cross-border judgments, Court settlements and authentic instruments on uncontested claims and to reduce costs inherent to the enforcement of foreign judicial and official documents;
2. Change the regime of the Regulation (EC) 44/2001;

3. Create procedural rules that could prepare the entry into force of the “*small claims*” regulation;
4. To accelerate and simplify the enforcement of cross-border judgments and to reduce costs inherent to the enforcement of foreign judicial documents.

Right answer: 1

I. This Regulation, has incidence in:

1. Civil and commercial matters defined according with the internal law of the State of origin;
2. Civil, commercial and administrative law, defined according with the internal law of the State of origin;
3. Civil and commercial matters and, in some cases, also criminal matters, defined according with the law of the State of enforcement;
4. Civil and commercial matters defined without any connection with the nature of the Court or Tribunal and corresponding to an autonomous Community law notion.

Right answer: 4

J. Under the Regulation:

1. Only a specific sum of money until the limit of 10.000 euros and that has fallen due can be claimed;
2. Only mobile property or any sum of money can be claimed;
3. Only a specific sum of money that has fallen due, with no pecuniary limits and reported to uncontested claims can be collected.
4. Only a specific sum of money that has fallen due, with no pecuniary limits and exclusively reported to claims expressly admitted by the debtor can be collected.

Right answer: 3

K. The decisions delivered following challenges to judgments:

1. Cannot give origin to an European Enforcement Order for uncontested claims since the challenge means that the claim is not uncontested;
2. Can give origin to an European Enforcement Order if the appeal has not raised objections to the existence of the credit;
3. Can give origin to an European Enforcement Order for uncontested claims if the superior Court declares void the procedure and imposes the repetition of the invalid acts;
4. Can give origin to an European Enforcement Order if the debtor gives its agreement.

Right answer: 2

L. The control for the respect of the minimum standards defined in the EEO Regulation in order to assure the full respect for the rights of defense:

1. Is made by the Court/Tribunal that issues the certificate, according to arts. 13, 14 and 15 of the EEO Regulation and its internal procedural rules;
2. Is made by the Court of the State of the Enforcement, according to its own procedural rules;
3. Is made by the Court of State where the judgment was delivered and the Court of the State of the Enforcement, making use of their own national adjective rules;
4. Is made by the Court/Tribunal giving the judgment, only according to arts. 13, 14 and 15 of the EEO Regulation.

Right answer: 1

M. When the rules contained in Articles 13 to 17 are not respected:

1. There is no chance of issuing an EEO;
2. The EEO can be issued if the disrespect of these rules is considered irrelevant by the Court of State where the judgment was delivered and the debtor accepts it;
3. The EEO can be issued if both parties agree in this direction and they both have domicile in the same Member State;
4. The EEO can be issued if the non-compliance is cured thorough the attainment the secure notion that the defendant had, at least, the judgment served on him and that he had total conditions to challenge it, or that he personally received the document to be served in sufficient time to arrange for his defense.

Right answer: 4

N. Due to the complete suppression of the *exequatur*, a judgment certified as EEO is enforced:

1. Under the same conditions as a judgment handed down in the Member State of enforcement, under the law of the Member State of enforcement and of the Regulation rules;
2. Under the same conditions as a judgment handed down in the Member State of enforcement and exclusively under the law of the Member State of enforcement;
3. Under a previous extremely light process of recognition and under the law indicated by the Regulation (EC) 44/2001;
4. By special authorities indicated in the declarations of the states and according the law of the Member State of enforcement.

Right answer: 1

O. The enforcement of the EEO can only be refused by the competent Court in the Member State of enforcement:

1. If the judgment certified is irreconcilable with an earlier judgment given in any Member State or in a third country;
2. If the judgment certified is irreconcilable with an earlier judgment given in any Member State;
3. If the judgment certified is irreconcilable with public order rules or with an earlier judgment given in any Member State or in a third country;
4. If the judgment certified is irreconcilable with an earlier judgment given in any Member State or in a third country or if the minimum standards have not been respected.

Right answer: 1

P. THE «PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European certificate of succession» – Brussels, 14.10.2009 COM(2009)154 final 2009/0157 (COD) C7-0236/09 has the specific objectives of:

1. Producing an European Certificate of Succession and creating rules applicable to the European successions that can avoid the use of the national rules on these successions;
2. Guaranteeing the rights of the heirs, the legatees and other interested parties, simplifying, creating swiftness and reducing expenses, increasing legal certainty by guaranteeing the predictability and solidity of the rules applicable and offering more flexibility in the choice of the law;
3. Assuring the simple and swift direct enforcement, in all Europe, of the judicial decisions in matters of successions and wills;
4. Allowing the use of the principle of the *«forum non*

conveniens» in all Europe and avoiding «*lis pendens*» in this Geo-political area.

Right answer: 2

Q The referred proposal:

1. Goes further in the process of suppressing the *exequatur* allowing it even in relation with judicial decisions coming from third Countries;
2. Keeps the progresses made in the area of the suppression of the *exequatur* in relation to decisions coming from EU States;
3. Abandons the promising route of the suppression of *exequatur* and just sets up full mutual recognition of decisions and authentic acts in succession matters;
4. Abandons the suppression of *exequatur* and contains no rules on recognition of decisions and authentic acts in succession matters.

Right answer: 3

R. The proposal introduces an «European Certificate of Succession» to be issued under an uniform model. Through it, it seeks to:

1. Produce swiftness simplicity and economy of means, enabling a person to prove his capacity as heir or his powers as administrator or executor of a succession without further formalities;
2. Assure that all heirs are equally treated;
3. Allow the uniform collection of successions taxes;
4. Produce swiftness simplicity and economy of means, enabling a person to easily prove the content of a will or his capacity as heir;

Right answer: 1