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Characterization of spousal 'maintenance obligations' in the context of the European regulations

On 16 March 2011 the European Commission presented a proposal, which would in the future regulate the property rights of 'international' married couples (the proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes). According to Article 1(3)c of the said proposal the maintenance obligations would be excluded from the scope of the future regulation. This is justified by the fact that the maintenance obligations have already been covered by an existing European regulation - the Maintenance Regulation (Regulation No (EC)4/2009).

Harmonizing private international law rules on matrimonial property regimes raises an interesting characterization problem that the Commission has left unsolved in its new proposal. It is often not easy to draw a distinction between the spousal maintenance questions, which would be covered by the Maintenance Regulation and the matrimonial property issues, which would fall under the scope of the proposed regulation on matrimonial property regimes. This is due to the fact that in some Member States (England, Ireland) a formal distinction between property division and maintenance does not exist. The contribution aims to give a solution to the characterization problem that the proposal for the regulation on matrimonial property presents in conjunction with the Maintenance Regulation. The author works on the presumption that the term 'spousal maintenance obligations' should be treated as an autonomous concept in order to achieve the predictability and harmony of judgements awarded by the courts of different Member States. The contribution will analyze the general objectives of the EU private international law rules on maintenance and matrimonial property as well as the relevant case-law of the Court of Justice (Cavel v de Cavel No 1 - Case No 143/78, Cavel v de Cavel No 2 - Case No 120/79, Van den Boogaard v Laumen - Case No C-220/95) in order to give an autonomous definition for spousal 'maintenance obligations'. In the end, relevant conclusions will be drawn in order to determine which criteria should be decisive for concluding that a certain dispute between the spouses falls under the scope of the Maintenance Regulation or under the scope of the future regulation on matrimonial property regimes.

Literature:

- 1) Case 120/79 de Cavel v de Cavel (No 2) [1980] ECR 731
- 2) Case 143/78 de Cavel v de Cavel (No 1) [1979] EC