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***Diversity in a United World of Child Support - Country reports  
ITALY***

**I. SUBSTANTIVE QUESTIONS**

**1. BASIC FEATURES OF CHILD MAINTENANCE LAW**

The concept of *maintenance obligation* used by international and European instruments refers to two legal institutions ruled by the Italian Civil Code of 1942 (*alimony* - “alimenti” - and *maintenance* - “mantenimento”) as well as to the institution of *divorce contribution* (“assegno divorzile”), comprised in the Italian system since 1970, when the law allowing divorce was approved.

According to Art. 433 et seq. of Civil Code, *alimonies* have to be granted towards many members of the family: spouse, children or descendants, parents or forefathers, sons and daughters-in-law, fathers and mothers-in-law, brothers and sisters (even half-brothers and half-sisters). A particular case of alimony obligation is due by the donee toward the donor. The main purpose of alimonies is to ensure an economic support to a member of the family (widely considered) who is in a situation of necessity and which is not able to provide himself to his own maintenance. For this reason, the amount of alimonies may not exceed the amount strictly necessary to maintain a decent way of life (also considering the social position of the creditor).

*Maintenance* (“mantenimento”), conversely, regards (i) the spouses’ relationship during marriage, as well as the duty of parents towards their children (in such cases, no judicial decision has normally been issued); (ii) the relationship between spouses during the period of legal separation (at least 3 years in order to obtain divorce), with the purpose of maintaining a financial balance between them and making each of them able to keep on the same way of life that he/she was used to have during the marriage (Art. 156 Civil Code); (iii) the maintenance of their children, since both the parents continue to be obliged to participate to their maintenance in case of separation (Art. 155 Civil Code) or divorce (Art. 6 legge 898/1970), therefore the judge has to determine the amount of each contribution on the basis of different criteria (i.e. children’s needs, father’s/mother’s economical capabilities, period of stay with each parent and so on). Please consider that Italian law has recently provided that, in case of separation/divorce, a “shared parental responsibility” is the first solution that has to be considered by the judge; only in case that this way cannot be followed (first of all if a situation of strong conflict has arisen), he can decide to give the responsibility only to one of the parents.

Otherwise, the *divorce contribution* is only referred to the relationship between two former spouses and it is determined by the judge in the context of a divorce decision (Art. 5 legge 898/1970). The amount has to be fixed having regard to the economical and social situation of each former spouse, to their incomes, to their personal contribution (even economical) to the family life, to the reasons of the divorce and to the marriage’s length.

With reference to the specific position of children, Italian law provides that both parents (or, if they are not present, other relatives) must participate to children’s maintenance, even in case that parental responsibility is exclusively given to one of them. The action aimed at claiming maintenance toward a child under age can be introduced by the person who is actually exercising parental responsibility. That person

is considered as the maintenance obligation's creditor, since the child cannot directly receive money before he is eighteen years old. In fact, maintenance is always due until the son/daughter reaches the age of 18 years old; then, maintenance still has to be granted in case that the person is not able to provide by his/herself to his/her needs and, if due, it can be directly given to the son/daughter.

**2. ARE THERE ANY GUIDELINES OR CHARTS TO CALCULATE CHILD SUPPORT/MAINTENANCE?**

No. In principle, Italian law only makes reference to some criteria that courts have to consider in determining the maintenance amount (see *supra*, § 1).

Notwithstanding the general freedom in determining the amount, some Courts have prepared a table of more specific criteria aimed at facilitating the judge's task: among other, a big success has been earned by the criteria of the Tribunale di Monza (similar tables have also been made by Tribunale di Firenze and Tribunale di Palermo).

**3. TO WHAT EXTENT DOES THE PUBLIC SECTOR PROVIDE FINANCIAL SUPPORT IN PLACE OF CHILD SUPPORT/MAINTENANCE?**

There is not any general prevision that allows the creditor to obtain the payment of maintenance obligation by a public body instead of a non complying creditor, when such an obligation is due to grant the support of a child.

However, the Autonomous Districts ("Province Autonome") of Trento and Bozen have introduced special regional laws that expressly provides some cases where maintenance obligation towards children are paid by a public body (the same regional administration) that, after having paid, is surrogated in the creditor's rights towards non complying debtors.

**II. QUESTION CONCERNING PROCEDURAL LAW**

**1. DOES COMPETENCE TO RECOGNIZE AND ENFORCE A CHILD MAINTENANCE DECISION LIE WITH JUDICIAL OR WITH ADMINISTRATIVE AUTHORITIES?**

The competence to recognize and enforce a child maintenance decision only lies with judicial authorities ("Tribunale", or "Giudice di Pace" for small claims).

**2. HOW DOES THE STATE PROVIDE APPLICANTS WITH EFFECTIVE ACCESS TO PROCEDURE (FOR EXAMPLE FREE LEGAL ASSISTANCE)?**

Italian proceedings in maintenance matters (even if provisional or enforcement proceedings) are exempted from the payment of the "standard fee" ("contributo unificato") that is generally due in order to sue someone in a civil judgment (like almost procedures in the field of family law). Moreover, a general principle of the Italian system provides that defence fees have to be paid by the losing party.

Therefore, if the claimant obtains a judgment recognizing him as a creditor, the fees of the entire procedure will be covered by the condemned debtor.

Finally, Italian law provides a free of charge legal assistance ("Patrocinio a spese dello Stato") for persons which have a low-income (less than about € 10.000,00 each year, considering the income of the applicant together with incomes of the cohabitating members of his family).

**3. DOES THE STATE FACILITATE ACCESS TO INFORMATION SUCH AS INCOME AND ASSETS CONCERNING THE DEBTOR FOR THE PURPOSE OF CHILD SUPPORT/MAINTENANCE?**

No, there is not any specific provision aimed at consenting to maintenance creditor to obtain information on debtor's incomes and/or assets, when maintenance is due towards children.

### **III.PRIVATE INTERNATIONAL LAW QUESTIONS**

#### **1. WHAT ARE THE INTERNATIONAL JURISDICTION RULES IN MATTERS RELATING TO CHILD SUPPORT/MAINTENANCE?**

Italian PIL does not provide for any specific rule concerning jurisdiction in maintenance matters: we make reference to general principles contained in our 1995 PIL Act. According to it, national jurisdiction (even in crossborder maintenance cases) could be properly declared when, alternatively, (i) defendant's "domicilio"/residence is located in Italy; (ii) a 1968 Brussels Convention special jurisdiction rule confers such a jurisdiction to an Italian court; (iii) parties concluded a choice of court agreement for Italian courts or the uncontested appearance of the defendant before Italian courts take place (implied prorogation of jurisdiction).

Moreover, uniform jurisdiction rules have been introduced by EU Regulation 4/2009, that is applicable in Italy - like in all other Member States - since June 2011.

#### **2. WHAT ARE THE APPLICABLE LAW RULES REGARDING CHILD SUPPORT/MAINTENANCE?**

Italy is a party of the 1973 Hague Convention on the Law Applicable to Maintenance Obligations: its provisions have universal application, i.e. they have to be applied also in case the applicable law determined following its rules is not the law of a contracting State. Regarding the law applicable to maintenance obligations, our PIL (Art. 45 of 1995 Italian PIL Act) makes a general *renvoi* to the conflict of laws rules provided by the 1973 Hague Convention.

From 2011, applicable law in maintenance matters is ruled by the new 2007 Hague Protocol, that is not yet entered into force at the international level but that's anyway applicable in EU Member States (Denmark and UK excepted) according to Regulation 4/2009.

#### **3. WHAT ARE THE RULES ON RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS, OF AUTHENTIC INSTRUMENTS AND OF OTHER MAINTENANCE AGREEMENTS?**

Generally speaking, Italian PIL Act provides some rules devoted to recognition and enforcement of foreign decisions: such rules (Articles 64 et seq.) outline a system of free circulation of decisions similar to the one created by the 1968 Brussels Convention (automatic recognition + enforceability that can be denied only in a limited number of circumstances). The same rules are applicable also to decisions in maintenance matters, even in case of obligations towards children.

At the EU level, Regulation 4/2009 is now fully applicable, and it is well-known that this instrument is principally aimed at erasing every form of control of foreign decisions, granting them an automatic enforceability without passing through the *exequatur* procedure.

Finally, at the international level, Italy is a contracting State of (i) 1958 Hague Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, of (ii) 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and, through the ratification instrument that will be presented by EU in a short time (signature has been made on April, 6<sup>th</sup> 2011), Italy will be part of (iii) 2007 Hague

Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The abovementioned treaties are the international instruments which have to be considered when looking for rules governing recognition and enforcement of foreign decisions coming from a contracting State.

**IV. ARE THERE ANY CURRENT PLANS TO RATIFY THE HAGUE MAINTENANCE CONVENTION AND PROTOCOL OF 2007? IF SO, WHAT PRELIMINARY MEASURES HAVE BEEN OR ARE BEING TAKEN WITH REGARD TO NATIONAL LAW?**

Since Italy is a EU Member State, the Protocol has been approved by EU (and a *renvoi* to it is made by Regulation 4/2009, with the effect to make it applicable in EU even if it is not yet entered into force at international level), while the Convention is being approved by the same EU regarding decisions coming from extra-European systems, since Regulation 4/2009 takes precedence over this latter Convention among Member States.