Maintenance Regulation

European Commission
DG Justice
Unit A1 – Civil Justice Policy

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Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Introduction

- Replaces provisions of **Regulation No 44/2001** ("old" Brussels I Regulation) applicable to maintenance obligations;
- Replaces provisions of Regulation No 805/2004 creating a European enforcement order for uncontested claims, except for European enforcement orders concerning maintenance obligations issued by EU countries that are not bound by the 2007 Hague Protocol;
- Applies to proceedings instituted on or after **18 June 2011**;
- **Abolishes exequatur** for decisions originating from Member States bound by the 2007 Hague Protocol;
- Establishes **Central Authorities** to facilitate cooperation;
- System is based on **mutual trust**

Subject matter

The Regulation provides rules on:

- Which Member State courts have **jurisdiction** in cross-border maintenance cases in the European Union;
- Which **law** should the courts having jurisdiction apply;
- Conditions and procedures for the **recognition and enforcement** of decisions;
- Functions of Member States' **Central Authorities** and their **cooperation**;

Scope of application

The Regulation applies to maintenance obligations arising from:

- Family relationship,
- parentage,
- marriage,
- affinity.

Regulation 44/2001 is still applicable to cases falling within ist scope, but outside of the scope Regulation 4/2009.

Jurisdiction (I)

As a **general rule**, the Regulation grants **jurisdiction** to:

- The courts of the Member State where the **defendant** is habitually resident, or
- The courts of the Member State where the **creditor** is habitually resident, or
- The courts of the Member State which have jurisdiction for determining the **status of a person** (if this is related to the maintenance question), or
- The courts of the Member State which have jurisdiction for determining **parental responsibility** (if this is related to the maintenance decision).

Jurisdiction (II)

As a **special rule**, jurisdiction may also be set in accordance with:

- Appearance of the defendant,
- Common nationality of the parties (**Subsidiary jurisdiction**),
- Close connection of the dispute and a Member State (**Forum necessitatis**),
- Choice of court agreement.

In proceedings concerning the same dispute and between the same parties are brought in two Member States court first seized gets priority (**Lis pendens**).

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Applicable law

The Regulation determines applicable law in accordance with the **2007 Hague Protocol** on the law applicable to maintenance obligations.

The **general rule** for Member States **bound** by the 2007 Hague Protocol is that the the law of the state of habitual residence of the creditor applies.

As a special rule in relations of **parents to children**, **children to parents** and by **other persons towards persons below 21** (if they have never been spouses), the law of their common nationality or the law of the habitual residence of the debtor applies if it is impossible to establish the maintenance obligation by applying the law of the state of habitual residence of the creditor.

The parties are allowed to make a **choice of applicable law** agreement, except in cases concerning maintenance obligations towards **vulnerable persons** and **children under 18**.

In the case of **Denmark** and the **United Kingdom**, the applicable law is determined by their respective national laws.

Recognition

The Regulation diferentiates between provisions concerning recognition applying to Member States **bound** by the 2007 Hague Protocol, and those **not bound** by it.

The Regulation provides for an **automatic recognition** of decision given in **all Member States**, with **no special procedure** being required for recognition (recognition is automatic) and **no review of substance**.

Recognition can be refused to decisions originating from Member States not bound by the 2007 Hague Protocol, only on the basis of:

- **Public policy**;
- **Default judgment** without adequate notice;
- **Judgment irreconcilable** with earlier judgment given in the **same Member State**;
- **Judgment irreconcilable** with earlier judgment given in **another Member State** or a **third state.**

Enforcement (I)

The Regulation diferentiates between provisions concerning enforcement applying to **Member States bound by the 2007 Hague Protocol**, and those **not bound by it**.

- The exequatur is abolished for decisions given in a Member States **bound** by the 2007 Hague Protocol;
- Decisions given in a Member State **not bound** by the 2007 Hague Protocol and enforcable in that state will be enforcable in another Member State **when it has been declared enforcable there**.
  - The decision on the declaration of enforcability may be contested,
  - The decision given on appeal may be contested in a procedure notified to the Commission.

Enforcement (II)

Refusal of **enforcement** (Member States **bound** by the 2007 Hague Protocol):

- **Law of the Member State of enforcement**;
- **Prescription or limitation** of action;
- **Irreconcilable** with earlier judgment given in the Member State of enforcement, another Member State or third state;
- **Review** of the decision pursuant to Art 19;
- **Enforcability suspended** by the Member State of origin.

Refusal of a declaration of **enforcability**(Member States **not bound** by the 2007 Hague Protocol):

- The same grounds apply as for the **refusal of recognition**.

Central Authorities

The Regulation establishes Central Authorities in order to facilitate cooperation in maintenance cases.

These authorities are designated by Member States and represent a non-obligatory assistance to citizens (citizens are not obliged to lodge applications through them).

Central Authorities are to:

- **Cooperate** with eachother and seek solution to problems arising from the application of the Regulation;
- **Transmit** and receive applications;
- **Initiate or facilitate** proceedings in respect to these applications;
- Provide or facilitate **legal aid**;
- Locate debtor, obtain information, encourage mediation, facilitate enforcement, obtaining of evidence, service of documents, etc.

Central Authorities (II)

The Regulation provides that Central Authorities shall use all appropriate means to obtain information neccessary to facilitate the maintenance procedure.

The Regulation foresees that Central Authorities are to meet regularly to facilitate the application of the Regulation.

Central Authorities meet in bilateral meetings under the framework of the European Judicial Network in civil and commercial matters.

Applications

The Regulation provides forms for applications for:

- **Recognition** and **recognition and declaration of enforcability** of decisions;
- **Enforcement** of decisions;
- **Establishment** of a decision in a Member State where there is no existing decision;
- **Establishment** of a decision in a Member State when recognition and declaration of enforcability given in a state other than the requested Member State is not possible;
- **Modification** of a decision given in the requested Member State;
- **Modification** of a decision given in a state other than the requested Member State;