

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

CHAPTER II

JURISDICTION

Article 3

General provisions

In matters relating to maintenance obligations in Member States, jurisdiction shall lie 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, 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.

Article 4

Choice of court

1 The parties may agree that the following court or courts of a Member State shall have jurisdiction to settle any disputes in matters relating to a maintenance obligation which have arisen or may arise between them:

- a a court or the courts of a Member State in which one of the parties is habitually resident;
- b a court or the courts of a Member State of which one of the parties has the nationality;
- 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;
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.

The conditions referred to in points (a), (b) or (c) have to be met at the time the choice of court agreement is concluded or at the time the court is seised.

The jurisdiction conferred by agreement shall be exclusive unless the parties have agreed otherwise.

2 A choice of court agreement shall be in writing. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3 This Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18.

4 If the parties have agreed to attribute exclusive jurisdiction to a court or courts of a State party to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾, signed on 30 October 2007 in Lugano (hereinafter referred to as the Lugano Convention), 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.

Article 5

Jurisdiction based on the appearance of the defendant

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction.

Article 6

Subsidiary jurisdiction

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.

Article 7

Forum necessitatis

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 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.

Article 8

Limit on proceedings

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.

Article 9

Seising of a court

For the purposes of this Chapter, a court shall be deemed to be seised:

- (a) 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 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.

Article 10

Examination as to jurisdiction

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.

Article 11

Examination as to admissibility

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 to arrange for his defence, or that all necessary steps have been taken to this end.

2 Article 19 of Regulation (EC) No 1393/2007 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3 Where the provisions of Regulation (EC) No 1393/2007 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 12

Lis pendens

1 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 shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2 Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 13

Related actions

1 Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2 Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3 For the purposes of this Article, 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.

Article 14

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

(1) [OJ L 339, 21.12.2007, p. 3.](#)