

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 IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 16

Scope of application of this Chapter

- 1 This Chapter shall govern the recognition, enforceability and enforcement of decisions falling within the scope of this Regulation.
- 2 Section 1 shall apply to decisions given in a Member State bound by the 2007 Hague Protocol.
- 3 Section 2 shall apply to decisions given in a Member State not bound by the 2007 Hague Protocol.
- 4 Section 3 shall apply to all decisions.

SECTION 1

Decisions given in a Member State bound by the 2007 Hague Protocol

Article 17

Abolition of exequatur

- 1 A decision given in a Member State bound by the 2007 Hague Protocol shall be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.
- 2 A decision given in a Member State bound by the 2007 Hague Protocol which is enforceable in that State shall be enforceable in another Member State without the need for a declaration of enforceability.

Article 18

Protective measures

An enforceable decision shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State of enforcement.

Article 19

Right to apply for a review

1 A defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the decision before the competent court of that Member State where:

- a he was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence; or
- b he was prevented from contesting the maintenance claim by reason of force majeure or due to extraordinary circumstances without any fault on his part;

unless he failed to challenge the decision when it was possible for him to do so.

2 The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance.

3 If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the decision shall remain in force.

If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the decision shall be null and void. However, the creditor shall not lose the benefits of the interruption of prescription or limitation periods, or the right to claim retroactive maintenance acquired in the initial proceedings.

Article 20

Documents for the purposes of enforcement

1 For the purposes of enforcement of a decision in another Member State, the claimant shall provide the competent enforcement authorities with:

- a a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- b the extract from the decision issued by the court of origin using the form set out in Annex I;
- c where appropriate, a document showing the amount of any arrears and the date such amount was calculated;
- d where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

2 The competent authorities of the Member State of enforcement may not require the claimant to provide a translation of the decision. However, a translation may be required if the enforcement of the decision is challenged.

3 Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 21

Refusal or suspension of enforcement

1 The grounds of refusal or suspension of enforcement under the law of the Member State of enforcement shall apply in so far as they are not incompatible with the application of paragraphs 2 and 3.

2 The competent authority in the Member State of enforcement shall, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if the right to enforce the decision of the court of origin is extinguished by the effect of prescription or the limitation of action, either under the law of the Member State of origin or under the law of the Member State of enforcement, whichever provides for the longer limitation period.

Furthermore, the competent authority in the Member State of enforcement may, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of the second subparagraph.

3 The competent authority in the Member State of enforcement may, on application by the debtor, suspend, either wholly or in part, the enforcement of the decision of the court of origin if the competent court of the Member State of origin has been seised of an application for a review of the decision of the court of origin pursuant to Article 19.

Furthermore, the competent authority of the Member State of enforcement shall, on application by the debtor, suspend the enforcement of the decision of the court of origin where the enforceability of that decision is suspended in the Member State of origin.

Article 22

No effect on the existence of family relationships

The recognition and enforcement of a decision on maintenance under this Regulation shall not in any way imply the recognition of the family relationship, parentage, marriage or affinity underlying the maintenance obligation which gave rise to the decision.

SECTION 2

Decisions given in a Member State not bound by the 2007 Hague Protocol

Article 23

Recognition

1 A decision given in a Member State not bound by the 2007 Hague Protocol shall be recognised in the other Member States without any special procedure being required.

2 Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in this Section, apply for a decision that the decision be recognised.

3 If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 24

Grounds of refusal of recognition

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in a dispute between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in a dispute involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of points (c) or (d).

Article 25

Staying of recognition proceedings

A court of a Member State in which recognition is sought of a decision given in a Member State not bound by the 2007 Hague Protocol shall stay the proceedings if the

enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 26

Enforceability

A decision given in a Member State not bound by the 2007 Hague Protocol and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there.

Article 27

Jurisdiction of local courts

1 The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission in accordance with Article 71.

2 The local jurisdiction shall be determined by reference to the place of habitual residence of the party against whom enforcement is sought, or to the place of enforcement.

Article 28

Procedure

1 The application for a declaration of enforceability shall be accompanied by the following documents:

- a a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- b an extract from the decision issued by the court of origin using the form set out in Annex II, without prejudice to Article 29;
- c where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

2 The court or competent authority seised of the application may not require the claimant to provide a translation of the decision. However, a translation may be required in connection with an appeal under Articles 32 or 33.

3 Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 29

Non-production of the extract

1 If the extract referred to in Article 28(1)(b) is not produced, the competent court or authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2 In the situation referred to in paragraph 1, if the competent court or authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

Article 30

Declaration of enforceability

The decision shall be declared enforceable without any review under Article 24 immediately on completion of the formalities in Article 28 and at the latest within 30 days of the completion of those formalities, except where exceptional circumstances make this impossible. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 31

Notice of the decision on the application for a declaration

1 The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.

2 The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

Article 32

Appeal against the decision on the application for a declaration

1 The decision on the application for a declaration of enforceability may be appealed against by either party.

2 The appeal shall be lodged with the court notified by the Member State concerned to the Commission in accordance with Article 71.

3 The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4 If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 11 shall apply even where the party against whom enforcement is sought is not habitually resident in any of the Member States.

5 An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought has his habitual residence in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 45 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

Article 33

Proceedings to contest the decision given on appeal

The decision given on appeal may be contested only by the procedure notified by the Member State concerned to the Commission in accordance with Article 71.

Article 34

Refusal or revocation of a declaration of enforceability

1 The court with which an appeal is lodged under Articles 32 or 33 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 24.

2 Subject to Article 32(4), the court seised of an appeal under Article 32 shall give its decision within 90 days from the date it was seised, except where exceptional circumstances make this impossible.

3 The court seised of an appeal under Article 33 shall give its decision without delay.

Article 35

Staying of proceedings

The court with which an appeal is lodged under Articles 32 or 33 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 36

Provisional, including protective measures

1 When a decision must be recognised in accordance with this Section, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 30 being required.

2 The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.

3 During the time specified for an appeal pursuant to Article 32(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Status: This is the original version (as it was originally adopted).

Article 37

Partial enforceability

1 Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the competent court or authority shall give it for one or more of them.

2 An applicant may request a declaration of enforceability limited to parts of a decision.

Article 38

No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

SECTION 3

Common provisions

Article 39

Provisional enforceability

The court of origin may declare the decision provisionally enforceable, notwithstanding any appeal, even if national law does not provide for enforceability by operation of law.

Article 40

Invoking a recognised decision

1 A party who wishes to invoke in another Member State a decision recognised within the meaning of Article 17(1) or recognised pursuant to Section 2 shall produce a copy of the decision which satisfies the conditions necessary to establish its authenticity.

2 If necessary, the court before which the recognised decision is invoked may ask the party invoking the recognised decision to produce an extract issued by the court of origin using the form set out in Annex I or in Annex II, as the case may be.

The court of origin shall also issue such an extract at the request of any interested party.

3 Where necessary, the party invoking the recognised decision shall provide a transliteration or a translation of the content of the form referred to in paragraph 2 into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the recognised decision is invoked, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept.

Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

4 Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 41

Proceedings and conditions for enforcement

1 Subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement. A decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement.

2 The party seeking the enforcement of a decision given in another Member State shall not be required to have a postal address or an authorised representative in the Member State of enforcement, without prejudice to persons with competence in matters relating to enforcement proceedings.

Article 42

No review as to substance

Under no circumstances may a decision given in a Member State be reviewed as to its substance in the Member State in which recognition, enforceability or enforcement is sought.

Article 43

No precedence for the recovery of costs

Recovery of any costs incurred in the application of this Regulation shall not take precedence over the recovery of maintenance.