

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 VII

COOPERATION BETWEEN CENTRAL AUTHORITIES

Article 49

Designation of Central Authorities

- 1 Each Member State shall designate a Central Authority to discharge the duties which are imposed by this Regulation on such an authority.
- 2 Federal Member States, Member States with more than one system of law or Member States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a Member State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that Member State. If a communication is sent to a Central Authority which is not competent, the latter shall be responsible for forwarding it to the competent Central Authority and for informing the sender accordingly.
- 3 The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by each Member State to the Commission in accordance with Article 71.

Article 50

General functions of Central Authorities

- 1 Central Authorities shall:
 - a cooperate with each other, including by exchanging information, and promote cooperation amongst the competent authorities in their Member States to achieve the purposes of this Regulation;
 - b seek as far as possible solutions to difficulties which arise in the application of this Regulation.
- 2 Central Authorities shall take measures to facilitate the application of this Regulation and to strengthen their cooperation. For this purpose the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC shall be used.

Article 51

Specific functions of Central Authorities

- 1 Central Authorities shall provide assistance in relation to applications under Article 56 and shall in particular:

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- a transmit and receive such applications;
 - b initiate or facilitate the institution of proceedings in respect of such applications.
- 2 In relation to such applications Central Authorities shall take all appropriate measures:
- a where the circumstances require, to provide or facilitate the provision of legal aid;
 - b to help locate the debtor or the creditor, in particular pursuant to Articles 61, 62 and 63;
 - c to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets, in particular pursuant to Articles 61, 62 and 63;
 - d to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
 - e to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
 - f to facilitate the collection and expeditious transfer of maintenance payments;
 - g to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001;
 - h to provide assistance in establishing parentage where necessary for the recovery of maintenance;
 - i to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
 - j to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007.
- 3 The functions of the Central Authority under this Article may, to the extent permitted under the law of the Member State concerned, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that Member State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by each Member State to the Commission in accordance with Article 71.
- 4 Nothing in this Article or in Article 53 shall impose an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested Member State.

Article 52

Power of attorney

The Central Authority of the requested Member State may require a power of attorney from the applicant only if it acts on his behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 53

Requests for specific measures

- 1 A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under points (b), (c), (g), (h), (i) and (j) of Article 51(2) when no application under Article 56 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a

potential applicant in making an application under Article 56 or in determining whether such an application should be initiated.

2 Where a request for measures under Article 51(2)(b) and (c) is made, the requested Central Authority shall seek the information requested, if necessary pursuant to Article 61. However, the information referred to in points (b), (c) and (d) of Article 61(2) may be sought only when the creditor produces a copy of the decision, court settlement or authentic instrument to be enforced, accompanied by the extract provided for in Articles 20, 28 or 48, as appropriate.

The requested Central Authority shall communicate the information obtained to the requesting Central Authority. Where that information was obtained pursuant to Article 61, this communication shall specify only the address of the potential defendant in the requested Member State. In the case of a request with a view to recognition, declaration of enforceability or enforcement, the communication shall, in addition, specify merely whether the debtor has income or assets in that State.

If the requested Central Authority is not able to provide the information requested it shall inform the requesting Central Authority without delay and specify the grounds for this impossibility.

3 A Central Authority may also take specific measures at the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting Member State.

4 For requests under this Article, the Central Authorities shall use the form set out in Annex V.

Article 54

Central Authority costs

1 Each Central Authority shall bear its own costs in applying this Regulation.

2 Central Authorities may not impose any charge on an applicant for the provision of their services under this Regulation save for exceptional costs arising from a request for a specific measure under Article 53.

For the purposes of this paragraph, costs relating to locating the debtor shall not be regarded as exceptional.

3 The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

Article 55

Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Member State in which the applicant resides to the Central Authority of the requested Member State.

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Article 56

Available applications

1 A creditor seeking to recover maintenance under this Regulation may make applications for the following:

- a recognition or recognition and declaration of enforceability of a decision;
- b enforcement of a decision given or recognised in the requested Member State;
- c establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;
- d establishment of a decision in the requested Member State where the recognition and declaration of enforceability of a decision given in a State other than the requested Member State is not possible;
- e modification of a decision given in the requested Member State;
- f modification of a decision given in a State other than the requested Member State.

2 A debtor against whom there is an existing maintenance decision may make applications for the following:

- a recognition of a decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested Member State;
- b modification of a decision given in the requested Member State;
- c modification of a decision given in a State other than the requested Member State.

3 For applications under this Article, the assistance and representation referred to in Article 45(b) shall be provided by the Central Authority of the requested Member State directly or through public authorities or other bodies or persons.

4 Save as otherwise provided in this Regulation, the applications referred to in paragraphs 1 and 2 shall be determined under the law of the requested Member State and shall be subject to the rules of jurisdiction applicable in that Member State.

Article 57

Application contents

1 An application under Article 56 shall be made using the form set out in Annex VI or in Annex VII.

2 An application under Article 56 shall as a minimum include:

- a a statement of the nature of the application or applications;
- b the name and contact details, including the address, and date of birth of the applicant;
- c the name and, if known, address and date of birth of the defendant;
- d the name and the date of birth of any person for whom maintenance is sought;
- e the grounds upon which the application is based;
- f in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;
- g the name and contact details of the person or unit from the Central Authority of the requesting Member State responsible for processing the application.

3 For the purposes of paragraph 2(b), the applicant's personal address may be replaced by another address in cases of family violence, if the national law of the requested Member State does not require the applicant to supply his or her personal address for the purposes of proceedings to be brought.

4 As appropriate, and to the extent known, the application shall in addition in particular include:

- a the financial circumstances of the creditor;
- b the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;
- c any other information that may assist with the location of the defendant.

5 The application shall be accompanied by any necessary supporting information or documentation including, where appropriate, documentation concerning the entitlement of the applicant to legal aid. Applications under Article 56(1)(a) and (b) and under Article 56(2)(a) shall be accompanied, as appropriate, only by the documents listed in Articles 20, 28 and 48, or in Article 25 of the 2007 Hague Convention.

Article 58

Transmission, receipt and processing of applications and cases through Central Authorities

1 The Central Authority of the requesting Member State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.

2 The Central Authority of the requesting Member State shall, when satisfied that the application complies with the requirements of this Regulation, transmit the application to the Central Authority of the requested Member State.

3 The requested Central Authority shall, within 30 days from the date of receipt of the application, acknowledge receipt using the form set out in Annex VIII, and inform the Central Authority of the requesting Member State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same 30-day period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

4 Within 60 days from the date of acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.

5 Requesting and requested Central Authorities shall keep each other informed of:

- a the person or unit responsible for a particular case;
- b the progress of the case;

and shall provide timely responses to enquiries.

6 Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

7 Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

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8 A requested Central Authority may refuse to process an application only if it is manifest that the requirements of this Regulation are not fulfilled. In such a case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal using the form set out in Annex IX.

9 The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or this information. If the requesting Central Authority does not do so within 90 days or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall promptly notify the requesting Central Authority using the form set out in Annex IX.

Article 59

Languages

1 The request or application form shall be completed in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place of the Central Authority concerned, or in any other official language of the institutions of the European Union which that Member State has indicated it can accept, unless the Central Authority of that Member State dispenses with translation.

2 The documents accompanying the request or application form shall not be translated into the language determined in accordance with paragraph 1 unless a translation is necessary in order to provide the assistance requested, without prejudice to Articles 20, 28, 40 and 66.

3 Any other communication between Central Authorities shall be in the language determined in accordance with paragraph 1 unless the Central Authorities agree otherwise.

Article 60

Meetings

1 In order to facilitate the application of this Regulation, Central Authorities shall meet regularly.

2 These meetings shall be convened in compliance with Decision 2001/470/EC.

Article 61

Access to information for Central Authorities

1 Under the conditions laid down in this Chapter and by way of exception to Article 51(4), the requested Central Authority shall use all appropriate and reasonable means to obtain the information referred to in paragraph 2 necessary to facilitate, in a given case, the establishment, the modification, the recognition, the declaration of enforceability or the enforcement of a decision.

The public authorities or administrations which, in the course of their ordinary activities, hold, within the requested State, the information referred to in paragraph 2 and which control the processing thereof within the meaning of Directive 95/46/EC shall, subject

to limitations justified on grounds of national security or public safety, provide the information to the requested Central Authority at its request in cases where the requested Central Authority does not have direct access to it.

Member States may designate the public authorities or administrations able to provide the requested Central Authority with the information referred to in paragraph 2. Where a Member State makes such a designation, it shall ensure that its choice of authorities and administrations permits its Central Authority to have access, in accordance with this Article, to the information requested.

Any other legal person which holds within the requested Member State the information referred to in paragraph 2 and controls the processing thereof within the meaning of Directive 95/46/EC shall provide the information to the requested Central Authority at the latter's request if it is authorised to do so by the law of the requested Member State.

The requested Central Authority shall, as necessary, transmit the information thus obtained to the requesting Central Authority.

2 The information referred to in this Article shall be the information already held by the authorities, administrations or persons referred to in paragraph 1. It shall be adequate, relevant and not excessive and shall relate to:

- a the address of the debtor or of the creditor;
- b the debtor's income;
- c the identification of the debtor's employer and/or of the debtor's bank account(s);
- d the debtor's assets.

For the purpose of obtaining or modifying a decision, only the information listed in point (a) may be requested by the requested Central Authority.

For the purpose of having a decision recognised, declared enforceable or enforced, all the information listed in the first subparagraph may be requested by the requested Central Authority. However, the information listed in point (d) may be requested only if the information listed in points (b) and (c) is insufficient to allow enforcement of the decision.

Article 62

Transmission and use of information

1 The Central Authorities shall, within their Member State, transmit the information referred to in Article 61(2) to the competent courts, the competent authorities responsible for service of documents and the competent authorities responsible for enforcement of a decision, as the case may be.

2 Any authority or court to which information has been transmitted pursuant to Article 61 may use this only to facilitate the recovery of maintenance claims.

Except for information merely indicating the existence of an address, income or assets in the requested Member State, the information referred to in Article 61(2) may not be disclosed to the person having applied to the requesting Central Authority, subject to the application of procedural rules before a court.

3 Any authority processing information transmitted to it pursuant to Article 61 may not store such information beyond the period necessary for the purposes for which it was transmitted.

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4 Any authority processing information communicated to it pursuant to Article 61 shall ensure the confidentiality of such information, in accordance with its national law.

Article 63

Notification of the data subject

1 Notification of the data subject of the communication of all or part of the information collected on him shall take place in accordance with the national law of the requested Member State.

2 Where there is a risk that it may prejudice the effective recovery of the maintenance claim, such notification may be deferred for a period which shall not exceed 90 days from the date on which the information was provided to the requested Central Authority.

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