

Übersetzung durch Eileen Flügel.

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**Act on the Recovery of Maintenance in Relations with  
Foreign States**  
**Foreign Maintenance Act**  
**(Gesetz zur Geltendmachung von Unterhaltsansprüchen im  
Verkehr mit ausländischen Staaten**  
**Auslandsunterhaltsgesetz – AUG)**

Foreign Maintenance Act of 23 May 2011 (Federal Law Gazette [BGBl.] Part I p. 898), last amended by Article 4 of the Act of 10 August 2021 (Federal Law Gazette I p. 3424)

**Chapter 1**  
**General Part**

**Division 1**  
**Scope of application; Definitions of terms**

**Section 1**  
**Scope of application**

(1) This Act serves

1. to implement the following Regulation and the following instruments of the European Union:
  - a) Regulation (EC) No 4/2009 of the Council of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7 of 10 January 2009, p. 1);
  - b) the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 299 of 16 November 2005, p. 62), insofar as this Agreement is to be applied to maintenance matters;
  - c) the Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 339 of 21 December 2007, p. 3), insofar as this Convention is to be applied to maintenance matters;
2. to implement the following international treaties:

- a) the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance (OJ L 192 of 22 July 2011, p. 51) in accordance with the Council Decision of 9 June 2011 (OJ L 192 of 22 July 2011, p. 39) on the approval, on behalf of the European Union, of this Convention;
  - b) the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations (Federal Law Gazette 1986 II p. 826);
  - c) the Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters (Federal Law Gazette 1994 II p. 2658), insofar as this Convention is to be applied to maintenance matters;
  - d) the New York UN Convention of 20 June 1956 on the recovery abroad of maintenance (Federal Law Gazette 1959 II p. 150);
3. the recovery of statutory maintenance claims, where one of the parties has his or her habitual residence within the scope of application of this Act and the other party has his or her habitual residence in another State with which reciprocity is guaranteed.

Reciprocity undersentence 1 no. 3 is deemed to be guaranteed if the Federal Ministry of Justice and Consumer Protection has so declared and has published this in the Federal Law Gazette (formal reciprocity). States within the meaning of sentence 1 no. 3 also include partial states and provinces of a federal state.

(2) Provisions in international agreements, insofar as they have become directly applicable domestic law, take precedence over the provisions of this Act. The provisions of the Regulation and the instruments referred to in subsection (1) sentence 1 no. 1, being directly applicable law of the European Union, are not affected by the implementing provisions of this Act.

## **Section 2**

### **General provisions of court procedure**

Unless otherwise regulated in this Act, the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply.

## **Section 3**

### **Definitions**

Within the meaning of this Act

1. Member States are the Member States of the European Union,
2. international treaties are multilateral and bilateral recognition and enforcement agreements,
3. persons entitled are
  - a) natural persons who have or assert a right to maintenance payments,
  - b) providers of benefits under public law asserting maintenance claims from a subrogated right where Council Regulation (EC) No 4/2009 or the international treaty that is to be implemented is applicable to such claims,
4. persons liable are natural persons who owe maintenance or vis-à-vis whom maintenance claims are asserted,
5. titles are court decisions, court settlements and public documents to which the Regulation that is to be implemented, or the respective international treaty that is to be implemented, is applicable,

6. the state of origin is the State in which a title has been established, and
7. exequatur proceedings are the proceedings with which a foreign title is admitted for compulsory enforcement in Germany.

## **Division 2 Central Authority**

### **Section 4 Central Authority**

- (1) The Central Authority for judicial and extrajudicial recovery of maintenance claims under this Act is the Federal Office of Justice. The Central Authority deals directly with all the competent agencies in Germany and abroad. It forwards communications to the competent agencies without delay.
- (2) The process conducted by the Central Authority is deemed to be a judicial administration proceeding.
- (3) The Federal Ministry of Justice and Consumer Protection is authorised, in accordance with Article 51(3) of Council Regulation (EC) No 4/2009 or Article 6(3) of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance, to transfer functions of the Central Authority to another public body or to designate a legal person under private law with the corresponding functions. The designated person must be able to provide evidence of basic experience in the enforcement of maintenance claims abroad. The Federal Ministry of Justice and Consumer Protection determines the extent of transfer of functions. Notice of such transfer must be given by the Federal Ministry of Justice and Consumer Protection in the Federal Gazette. The designated person is subject to the specialist supervision of the Federal Ministry of Justice and Consumer Protection. Section 5 (6) and sections 7 and 9 do not apply to the activity of designated persons.

### **Section 5 Functions and powers of the Central Authority**

- (1) The judicial and extrajudicial recovery of maintenance claims under this Act is effected through the Central Authority as the receiving and transmitting authority.
- (2) The Central Authority takes all appropriate steps in order to enforce the maintenance claim of the person entitled. In so doing, it must comply with the interests and the wishes of the person entitled.
- (3) In the scope of application of Council Regulation (EC) No 4/2009, the functions of the Central Authority are governed by Articles 50, 51, 53 and 58 of that Regulation.
- (4) In the scope of application of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance, the functions of the Central Authority are governed by Articles 5, 6, 7 and 12 of that Convention.
- (5) In respect of incoming requests, the Central Authority, acting either by itself or by means of sub-authorisation through representatives, is deemed to be authorised to take extrajudicial action or to initiate court action on behalf of the applicant. In particular, it has the authority to deal with the maintenance claim by way of settlement or of recognition of the claim. Where necessary, it is also entitled to make a maintenance application and to pursue the enforcement of a maintenance title.
- (6) The Central Authority transmits, in conformity with the provisions governing federal budget funds, to the person entitled to maintenance the maintenance sums recovered from the person liable to pay. Sentence 1 applies to the return of amounts paid in excess or to other payments necessitated by the exercise of Central Authority functions accordingly.

### **Section 6 Assistance on the part of the youth welfare office**

If the Central Authority acts in order to recover and enforce maintenance for minors and young adults who have not yet reached the age of 21, it can request the assistance of the youth welfare office.

**Division 3**  
**Request for assistance in maintenance matters**

**Subdivision 1**  
**Outgoing requests**

**Section 7**  
**Prior examination by the local court; concentration of jurisdiction**

- (1) The receipt and examination of an application for assistance in maintenance matters is effected by the local court with jurisdiction over the seat of the higher regional court in whose district the applicant has his or her habitual residence. Pankow Local Court is competent to decide for the district of Berlin Higher Regional Court.
- (2) The prior examination is deemed to be a judicial administration proceeding.
- (3) No costs are imposed for the prior examination.

**Section 8**  
**Content and form of the application**

- (1) The content of an application addressed to another Member State, except for the Kingdom of Denmark, is governed by Article 57 of Council Regulation (EC) No 4/2009.
- (2) The content of an application addressed to another Contracting State of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance is governed by Article 11 of that Convention.
- (3) In cases not covered by subsections (1) and (2), the application must, as a rule, contain all information that may be of significance for the recovery of the claim, in particular:

1. the surname and given names of the person entitled to maintenance; further, that person's address, date of birth, nationality, profession or occupation, and where applicable, the name and the address of that person's statutory representative,
2. the surname and the given names of the person liable to pay maintenance; further, insofar as the person entitled has knowledge thereof, the former person's address, date, place and country of birth, nationality, profession or occupation, and
3. details
  - a) of the facts upon which the claim is based;
  - b) of the kind and amount of the maintenance claimed;
  - c) of the financial and family circumstances of the person entitled, so far as this information may be important for the decision;
  - d) of the financial and family circumstances of the person liable, so far as there is knowledge thereof.

An application from a person entitled within the meaning of section 3 no. 3 (b) is to contain the data referred to in nos. 1 and 3 (c) of the person in respect of whom passage of the claim has already occurred.

(4) The appropriate civil status certificates and other relevant documents are to be attached to an application under subsection (3). The court designated in section 7 can make all necessary investigations ex officio.

(5) In the cases covered by subsection (3), the application is to be signed by the applicant, by his or her statutory representative or by an authorised representative whose power of attorney is to be attached. So far as required by the law of the State to be requested, the accuracy of the information given by the applicant or by his or her statutory representative is

be subject to affirmation in lieu of an oath. Particular requirements of the State to be requested as regards form and content of the request must be complied with, unless barred by mandatory provisions under German law.

(6) In the cases covered by subsection (3), the application is to be addressed to the Receiving Agency of the State where the claim is to be recovered.

## **Section 9**

### **Extent of the prior examination**

(1) The senior judge of the local court or the judge designated within the allocation of judicial administrative business is to examine

1. in proceedings with formal reciprocity (section 1 (1) sentence 1 no. 3), whether, under German law, the intended legal pursuit would offer sufficient prospect of success,
2. in the other cases, whether the application is vexatious or manifestly unfounded.

If the judge affirms such prospect of success in the cases covered by sentence 1 no. 1, that judge issues a certificate to this effect, arranges for the translation thereof into the language of the State to be requested and attaches these documents to the request.

(1a) If the Central Authority has doubts concerning a forwarded application as to whether the prerequisites of Article 57 (2) of Council Regulation (EC) No 4/29, Article 3 (3) of the New York UN Convention of 20 June 1956 on the recovery abroad of maintenance or Article 11 (1) of the Hague Convention of 23 November 2007 on international recovery of child support and other forms of family maintenance have been fulfilled, the Central Authority forwards the question to the judge for an answer. The judge proceeds once again in accordance with subsection (1).

(2) If the intended legal pursuit does not offer sufficient prospect of success (subsection (1) sentence 1 no. 1) or if the application is vexatious or manifestly unfounded (subsection (1) sentence 1 no. 2), the judge must refuse to forward the application. The decision indicating refusal is to be furnished with reasons and served on the applicant together with instructions regarding his or her right to seek an appellate remedy. The decision is contestable under section 23 of the Introductory Act to the Courts Constitution Act (Einführungsgesetz zum Gerichtsverfassungsgesetz).

(3) If there are no grounds for refusal, the court sends the application together with the attached documents and submitted translations, each with three certified copies, direct to the Central Authority.

(4) In the scope of application of the New York UN Convention of 20 June 1956 on the recovery abroad of maintenance (Federal Law Gazette 1959 II p. 150) the judge, in the cases covered by subsection (2) sentence 1, submits the application to the Central Authority for a decision on whether to forward the application.

## **Section 10**

### **Translation of the application**

(1) Together with the application and the attached documents, the applicant must attach translations certified by a sworn translator in the language of the State to be requested. This also applies to documents requested by the foreign Central Authority in the further course of proceedings. Articles 20, 28, 40, 59 and 66 of Council Regulation (EC) No 4/2009 remain unaffected by this. If, in the scope of application of the international treaty to be implemented in the respective case, a translation of documents is required into a language that the State to be requested has indicated it can accept, the translation is to be done by a person qualified to do translations in one of the contracting parties.

(2) If the applicant does not himself, or herself, procure the necessary translation, in spite of being called upon to do so by the Central Authority, the Central Authority arranges for the translation at the applicant's expense.

(3) The local court with jurisdiction under section 7 (1), upon application, exempts the applicant from the duty to reimburse the costs of the translation arranged by the Central Authority if the applicant fulfils the personal and financial prerequisites for instalment-free legal aid under section 113 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit), read in conjunction with section 115 of the Code of Civil Procedure (Zivilprozessordnung).

(4) Section 1077 (4) of the Code of Civil Procedure remains unaffected.

### **Section 11**

#### **Forwarding of the application by the Central Authority**

(1) The Central Authority examines whether the application complies with the formal requirements of the proceedings to be instituted abroad. If these are met, the Central Authority forwards the application to the competent foreign agency. Where required, it encloses a translation of this Act with the application.

(2) The Central Authority supervises the proper execution of the application.

(3) In the event that the Central Authority refuses to forward the application, section 9 (2) sentences 2 and 3 applies accordingly.

(4) The German Central Authority is to forward questions transmitted to it by the foreign Central Authority to the court called upon to carry out a prior examination under section 7 (1). This court ensures that the questions are answered and forwards the answers to the German Central Authority. The further proceedings of the German Central Authority are carried out in accordance with subsection (1).

### **Section 12**

#### **Registration of an existing title abroad**

Where a domestic court decision or other title within the meaning of section 3 no. 5 already exists with regard to the maintenance claim, the person entitled to maintenance may also submit a request for registration of the decision abroad to the extent that the law applicable there so provides. Sections 7 to 11 are to be applied accordingly; there is no examination of the legitimacy of the domestic title produced.

### **Subdivision 2**

#### **Incoming applications**

### **Section 13**

#### **Translation of the application**

(1) If a translation of documents is required, this is to be drawn up in German.

(2) The accuracy of the translation is to be certified by a person qualified to do so in a State as designated below:

1. in a Member State or other Contracting Party to the Agreement on the European Economic Area;
2. in a State which is a contracting party to the international treaty to be implemented in the respective case, or
3. in a State with which reciprocity has been formally deemed to be guaranteed (section 1 (1) sentence 1 no. 3).

(3) The Central Authority may refuse to take action as long as communications or documents to be included have not been drawn up in German or translated into German. Within the scope of application of Council Regulation (EC) No 4/2009, however, it is authorised to do so only if it may demand a translation under that Regulation.

(4) The Central Authority may, in proceedings with formal reciprocity (section 1 (1) sentence 1 no. 3) in relations with certain States or in individual cases, dispense with the requirement of a translation and obtain the translation itself.



## **Section 14**

### **Content and form of the application**

- (1) The content of an application from another Member State, with the exception of the Kingdom of Denmark, is governed by Article 57 of Council Regulation (EC) No 4/2009.
- (2) The content of an application from another Contracting State to the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance is governed by Article 11 of that Convention.
- (3) In cases not covered by subsections (1) and (2), the application must, as a rule, contain all information that may be of significance for the recovery of the claim, in particular:

1. where a maintenance claim for which a title exists is subject to indexation, the method by which this indexation is to be calculated, and
2. where there is an obligation to pay statutory interest, the rate of statutory interest as well as the date on which the obligation to pay interest began.

In all other cases, section 8 subsection (3) applies accordingly.

(4) In cases covered by subsection (3), the application is to be signed by the applicant, by his or her statutory representative or by an authorised representative with the inclusion of the power of attorney, and is to be accompanied by a statement by the foreign agency that received and examined the application. As a rule, this statement must also designate the maintenance amount required at the place of residence of the person entitled. The application and the attached documents are to be transmitted in duplicate. The appropriate civil status certificates and other relevant documents are to be enclosed and other supporting documents clearly designated.

## **Section 15**

### **Treatment of a provisional decision**

In proceedings with formal reciprocity (section 1 (1) sentence 1 no. 3), a foreign decision that has been given without the person liable being heard, provisionally and subject to confirmation by the requested court, is deemed to be an incoming request for obtaining a maintenance title. Section 8 (3) and section 14 (3) sentence 1 apply accordingly.

## **Division 4**

### **Collection of data by the Central Authority**

## **Section 16**

### **Right of the Central Authority to procure information in order to obtain or amend a title**

- (1) If the current place of residence of the person entitled or the person liable is not known, the Central Authority may, in order to fulfil the functions incumbent on it under section 5, obtain information as to their addresses as well as their principal and secondary residences, from a competent registration authority.
- (2) Where it is not possible to determine the place of residence in accordance with subsection (1), the Central Authority may obtain the following information:

1. from statutory pension insurance agencies and from professional pension organisations within the meaning of section 6 (1) sentence 1 no. 1 of the Sixth Book of the Social Code (Sozialgesetzbuch Sechstes Buch): the current address known to them, the current or future place of residence of the person concerned;
2. from the Federal Motor Transport Authority: the vehicle keeper information of the person concerned in accordance with section 33 (1) sentence 1 no. 2 of the Road Traffic Act (Straßenverkehrsgesetz);
3. if the person concerned is a member of foreign armed forces stationed in Germany, from the competent authority of the unit: the address of the person concerned at which documents can be served.

The Central Authority may only obtain information from a professional pension organisation in accordance with sentence 1 no. 1 if factual indications suggest that the person concerned is a member of that professional pension organisation.

(3) If the Central Authority is unable to determine the place of residence of the person liable in accordance with subsections (1) and (2), it may arrange for a search notice to be entered in the Central Register.

### **Section 17**

#### **Right to procure information for the purpose of the recognition, declaration of enforceability and enforcement of a title**

(1) If the maintenance claim is legally enforceable, and if the debtor, on request by the Central Authority, refuses to provide information on his or her income and assets, or if complete satisfaction of the creditor cannot be expected to ensue from enforcement against the assets stated by the debtor, the Central Authority has the rights of information regulated in section 16 for the purpose of the recognition, declaration of enforceability and enforcement of a title. The Central Authority may furthermore, having given advance warning,

1. collect from the statutory pension insurance agencies and from professional pension organisations within the meaning of section 6 (1) sentence 1 no. 1 of the Sixth Book of the Social Code the surname and given names or the firm name and addresses of the debtor's current employers;
2. obtain information from the competent provider of basic security benefits for job-seekers as to the drawing of benefits in accordance with the Second Book of the Social Code (Sozialgesetzbuch Zweites Buch) – basic security benefits for job-seekers;
3. request the Federal Central Tax Office to retrieve from the credit institutions the data of the debtor referred to in Section 93b subsection (1) of the Tax Code (Abgabenordnung) (section 93 (8) of the Tax Code);
4. collect from the Federal Motor Transport Authority the vehicle and keeper data in accordance with section 33 (1) of the Road Traffic Act regarding a vehicle whose registered keeper is the debtor.

The Central Authority may only obtain information from a professional pension organisation in accordance with sentence 2 no. 1 if factual indications suggest that the debtor is a member of that professional pension organisation.

(2) The Central Authority may only obtain data on the debtor's assets if this is necessary for enforcement.

### **Section 18**

#### **Notification of the collection of data**

(1) In principle, the Central Authority notifies the applicant only of whether or not a request for information in accordance with sections 16 and 17 was successful.

(2) The Central Authority is to notify without delay the person concerned of the collection of data in accordance with sections 16 and 17 unless this would prevent the enforcement of the title or make it much more difficult. Notwithstanding sentence 1, notification is to take place at the latest 90 days after receipt of the information.

### **Section 19**

#### **Transmission of data**

The Central Authority may transmit personal data to other public and non-public agencies if this is necessary to perform the tasks incumbent on it in accordance with section 5. The data may only be processed for the purpose for which they were transmitted.

### **Division 5**

#### **Legal aid**



## **Section 20**

### **Prerequisites for the grant of legal aid**

Unless this Act provides otherwise, section 113 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, in conjunction with sections 114 to 127 of the Code of Civil Procedure, applies accordingly to the grant of legal aid.

## **Section 21**

### **Competence for applications for legal aid in accordance with Council Directive 2003/8/EC**

(1) In derogation from section 1077 (1) sentence 1 of the Code of Civil Procedure, the receipt and transmission of applications filed by natural persons for cross-border legal aid in accordance with section 1076 of the Code of Civil Procedure is to be effected in maintenance cases by the local court with jurisdiction over the seat of the higher regional court in whose district the applicant has his or her habitual residence. Pankow Local Court is competent to decide for the district of Berlin Higher Regional Court.

(2) Section 1078 (1) sentence 1 of the Code of Civil Procedure applies to incoming applications.

## **Section 22**

### **Legal aid in accordance with Article 46 of Council Regulation (EC) No 4/2009 and Articles 14 to 17 of the Hague Convention of 23 November 2007 on international recovery of child support and other forms of family maintenance**

(1) A person under the age of 21 is to receive legal aid regardless of his or her economic circumstances for applications

1. under Article 56 of Council Regulation (EC) No 4/2009 as provided for in Article 46 of that Regulation and
2. under Chapter III of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance as provided for in Article 15 of that Convention.

The grant of legal aid exempts him or her with final effect from having to pay the costs referred to in section 122 (1) of the Code of Civil Procedure. Subsection (3) remains unaffected.

(2) The grant of legal aid may only be refused if the application is vexatious or manifestly unfounded. In cases covered by Article 56(1) letters (a) and (b) of Council Regulation (EC) No 4/2009 and Article 10(1)(a) and (b) of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance and with regard to the cases covered by Article 20(4) of that Convention, there is to be no examination of the prospects of success.

(3) If the applicant loses a court action, the court, as provided for in Article 67 of Council Regulation (EC) No 4/2009 and as provided for in Article 43 of the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance, can demand reimbursement of the costs expended via legal aid if this is equitable in light of the applicant's financial circumstances.

## **Section 23**

### **Legal aid for the recognition, declaration of enforceability and enforcement of maintenance titles**

If the applicant has received full or partial legal aid in the state of origin for the adjudication proceedings, legal aid is to be granted to him or her for the proceedings for the recognition, declaration of enforceability and enforcement of the decision. Grant of legal aid exempts the applicant with final effect from having to pay the costs referred to in section 122 (1) of the Code of Civil Procedure. This does not apply if the grant is repealed under section 124 (1) no. 1 of the Code of Civil Procedure.

## **Section 24**

### **Legal aid for proceedings with formal reciprocity**

If, in proceedings in accordance with section 1 (1) sentence 1 no. 3, the intended legal pursuit of incoming requests offers sufficient prospect of success and does not appear to be vexatious, the person entitled is to be granted legal aid even in the absence of express application. In this case, he or she has to pay neither monthly instalments nor amounts payable from the assets. As a result of the granting of legal aid, the person entitled is exempted with final effect from having to pay the costs referred to in section 122 (1) of the Code of Civil Procedure, as long as the grant of legal aid is not set aside under section 124 (1) no. 1 of the Code of Civil Procedure.

## **Division 6**

### **Supplementary regulations on jurisdiction; concentration of jurisdiction**

## **Section 25**

### **International jurisdiction in accordance with Article 3 letter (c) of Council Regulation (EC) No 4/2009**

(1) The German courts have jurisdiction in maintenance cases under Article 3 letter (c) of Council Regulation (EC) No 4/2009 if

1. maintenance is claimed in conjunction with divorce or cancellation, and the German courts have jurisdiction for the matrimonial or the civil partnership matter in accordance with the following provisions:
  - a) within the scope of Council Regulation (EC) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction(OJ L 178 of 2 July 2019, p. 1) in accordance with Article 3 of Regulation (EU) 2019/1111,
  - b) under section 98 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, or
  - c) under section 103 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction;
2. maintenance is claimed in proceedings to determine the paternity of a child and the German courts have international jurisdiction for the proceedings to determine paternity in accordance with
  - a) section 100 no. 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction and both the person entitled and the person liable are Germans,
  - b) section 100 no. 2 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

(2) Subsection (1) no. 1 letters (b) and (c) are not applicable if German courts have jurisdiction because only one party has German nationality.

## **Section 26**

### **Territorial jurisdiction**

(1) Under Article 3 letter (c) of Council Regulation (EC) No 4/2009, the local court has territorial jurisdiction

1. at which the matrimonial or civil partnership matter is or was pending at first instance, for as long as the matrimonial or civil partnership matter is pending;

2. at which the proceedings for the determination of paternity are pending at first instance if child maintenance is claimed in the framework of proceedings to establish parentage.

Section 248 (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applies to the granting of a provisional order in cases falling under sentence 1 no. 2.

(2) Section 233 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction remains unaffected.

### **Section 27**

#### **Territorial jurisdiction for subsidiary jurisdiction and forum necessitatis; empowerment to issue ordinances**

(1) If the German courts have international jurisdiction under Article 6 or Article 7 of Council Regulation (EC) No 4/2009, the local court decides that has jurisdiction over the seat of the higher regional court in whose district the parties had their last joint domestic place of habitual residence or at which there is a sufficient connection with the Federal Republic of Germany within the meaning of Article 7 of Council Regulation (EC) No 4/2009. Section 28 (1) sentence 2 applies accordingly. If a domestic court does not have territorial jurisdiction under sentences 1 or 2, Pankow Local Court in Berlin has territorial jurisdiction.

(2) The governments of the Länder are authorised to assign jurisdiction in accordance with subsection (1) by statutory instrument to another local court in the higher regional court district or, where there is more than one higher regional court established in a Land, to a local court for the districts of all higher regional courts or a number of higher regional courts. The Land governments may transfer this authorisation by statutory instrument to the Land administrations of justice.

### **Section 28**

#### **Concentration of jurisdiction; empowerment to issue ordinances**

(1) If a party concerned does not have his or her habitual residence in Germany, the local court rules on applications in maintenance matters in cases falling under Article 3(a) and (b) of Council Regulation (EC) No 4/2009 which has jurisdiction for the seat of the higher regional court in the district of which the respondent or the person entitled has his or her habitual residence. For the district of Berlin Higher Regional Court the decision lies with Pankow Local Court.

(2) The governments of the Länder are authorised to assign this jurisdiction, by statutory instrument, to another local court in the higher regional court district or, where there is more than one higher regional court established in a Land, to a local court for the districts of all higher regional courts or a number of higher regional courts. The Land governments may transfer this authorisation by statutory instrument to the Land administrations of justice.

### **Section 29**

#### **Jurisdiction within the scope of Regulation (EC) No 1896/2006**

Section 1087 the Code of Civil Procedure remains unaffected with regard to the jurisdiction within the scope of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399 of 30 December 2006, p. 1).

## **Chapter 2**

### **Recognition and enforcement of decisions**

#### **Division 1**

#### **Proceedings without exequatur under Council Regulation (EC) No 4/2009**

### **Section 30**

#### **Waiver of endorsement for enforcement; documents**

- (1) If the prerequisites of Article 17 or 48 of Council Regulation (EC) No 4/2009 are met, the foreign title is to be enforced without an endorsement for enforcement being required.
- (2) The form to be submitted to the enforcement organ in accordance with Article 20(1)(b) or Article 48(3) of Council Regulation (EC) No 4/2009 must, as a rule, be inseparably bound together with the title that is to be enforced.
- (3) If the creditor in accordance with Article 20(1)(d) of Council Regulation (EC) No 4/2009 must submit a translation or a transcript, these documents are to be translated into German by a person qualified to do so in one of the Member States.

### **Section 31**

#### **Applications for refusal, restriction or suspension of enforcement in accordance with Article 21 of Council Regulation (EC) No 4/2009**

- (1) As the enforcement court, the local court has jurisdiction for applications for refusal, restriction or suspension of enforcement under Article 21 of Council Regulation (EC) No 4/2009. The court designated in section 764 (2) of the Code of Civil Procedure has territorial jurisdiction.
- (2) The decision on the application for refusal of enforcement (Article 21(2) of Council Regulation (EC) No 4/2009) is handed down by an order. Section 770 the Code of Civil Procedure applies accordingly. The order is subject to an immediate complaint in accordance with section 793 of the Code of Civil Procedure. The court may make orders in accordance with section 769 (1) and (3) of the Code of Civil Procedure until a decision is handed down in accordance with sentence 1.
- (3) The court rules via a provisional order on the application to suspend or restrict compulsory enforcement (Article 21(3) of Council Regulation (EC) No 4/2009). The decision is incontestable.

### **Section 32**

#### **Discontinuation of compulsory enforcement**

Compulsory enforcement is also to be discontinued or restricted in accordance with section 775 nos. 1 and 2 and section 776 of the Code of Civil Procedure if the debtor submits a decision of a court of the state of origin regarding non-enforceability or on the restriction of enforceability. A translation of the decision is to be submitted on request. In this case, the decision is to be translated into German by a person qualified to do so in one of the Member States.

### **Section 33**

#### **Temporary discontinuation in case of restoration, appellate remedies and objection**

- (1) Sections 707 and 719 (1) of the Code of Civil Procedure and section 120 (2) sentences 2 and 3 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply if the debtor has applied for restoration in the state of origin or has submitted an appeal or an appellate remedy against the decision that is to be enforced.
- (2) The court designated in section 35 (1) and (2) has jurisdiction.

### **Section 34**

#### **Determination of the enforceable content of a foreign title**

- (1) If the enforcement body rejects the compulsory enforcement of a foreign title which does not require an endorsement for enforcement for lack of sufficient precision, the creditor may apply for the determination of the enforceable content (concrete details) of the title. The court determined in section 35 (1) and (2) has jurisdiction.
- (2) The application can be made in writing to the court or placed on the record of the registry. The court may rule on the application without an oral hearing. The debtor is to be heard prior to the decision, which is to be issued by means of an order. The order is to be furnished with reasons.

(3) If the court provides concrete details for the foreign title, enforcement of this order is to be effected without there being a need for an endorsement for enforcement. The order is to be inseparably bound together with the foreign title and served on the debtor.

(4) A complaint in accordance with the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction is to be admissible against the decision. Section 61 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction does not apply.

## **Division 2**

### **Court jurisdiction for proceedings on the recognition and declaration of enforceability of foreign decisions**

#### **Section 35**

##### **Court jurisdiction; concentration of jurisdiction; authorisation to issue statutory instruments**

(1) Solely the local court with jurisdiction at the seat of the higher regional court in the district of which

1. the person against whom the title is directed has his or her place of habitual residence or
2. the enforcement is to be carried out

is competent to decide on an application for establishment of recognition or on an application for a declaration of enforceability of a foreign title under Divisions 3 to 5. Pankow Local Court is competent to decide for the district of Berlin Higher Regional Court.

(2) The governments of the Länder are authorised to assign this jurisdiction, by statutory instrument, to another local court in the higher regional court district or, where there is more than one higher regional court established in a Land, to a local court for the districts of all higher regional courts or a number of higher regional courts. The Land governments may transfer this authorisation by statutory instrument to the Land administrations of justice.

(3) In proceedings where the subject-matter concerns the declaration of enforceability of a notarial deed, this deed can be declared enforceable also by a notary within the scope of application of

1. Council Regulation (EC) No 4/2009 or
2. the Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The provisions for proceedings of declaration of enforceability by a court apply analogously.

## **Division 3**

### **Proceedings with exequatur in accordance with Council Regulation (EC) No 4/2009 and the agreements of the European Union**

#### **Subdivision 1**

##### **Admission of compulsory enforcement of foreign titles**

#### **Section 36**

##### **Application**

(1) The title that is enforceable in another State is to be admitted for compulsory enforcement on application through attachment of the endorsement for enforcement thereto.

(2) The application to issue the endorsement for enforcement can be submitted in writing to the court with jurisdiction or placed on the record of the registry orally.

(3) If the application is not drawn up in German counter to section 184 of the Courts Constitution Act (Gerichtsverfassungsgesetz), the court may require the applicant to furnish a translation, the correctness of which has been confirmed by a person who is qualified to do so in one of the following states:

1. in a Member State or in another Contracting Party to the Agreement on the European Economic Area, or
  2. in a contracting state of the respective international agreement that is to be implemented.
- (4) The authentic issue of the title, which is to be furnished with the endorsement for enforcement, and its translation, if one is submitted, are to be accompanied by two copies each.

### **Section 37**

#### **Service recipient**

- (1) Where in his or her application the applicant has not designated a person authorised to accept service within the meaning of section 184 (1) sentence 1 of the Code of Civil Procedure, every service on the applicant can, until subsequent designation, be effected by postage (section 184 (1) sentence 2 and section 184 (2) of the Code of Civil Procedure).
- (2) Subsection (1) does not apply if the applicant has nominated counsel for the proceedings on whom service may be effected in Germany.
- (3) Subsections (1) and (2) do not apply to proceedings in accordance with Council Regulation (EC) No 4/2009.

### **Section 38**

#### **Proceedings**

- (1) The ruling is handed down without an oral hearing. However, an oral discussion may take place with the applicant or his or her counsel if the applicant or party holding power of attorney agrees with this and the discussion serves the purpose of expedition.
- (2) Representation by an attorney is not required at first instance.

### **Section 39**

#### **Enforceability of foreign titles in special cases**

- (1) If compulsory enforcement in accordance with the content of the title is contingent on the payment of a security incumbent on the creditor, on the expiry of a deadline or on the occurrence of another event, or if the endorsement for enforcement is applied for in favour of a different creditor than the one designated in the title or against a different debtor than the one designated therein, the question as to the degree to which the admissibility of compulsory enforcement is contingent on the proof of special prerequisites, or whether the title is enforceable for or against the third party, is to be decided in accordance with the law of the State in which the title has been established. Proof is to be furnished by means of certificates unless the facts are apparent to the court.
- (2) If proof cannot be furnished by means of certificates, the respondent is to be heard, should the applicant so request. In this case, all evidence is admissible. The court can also order an oral hearing.

### **Section 40**

#### **Decision**

- (1) If compulsory enforcement of the title is to be admitted, the court orders that the title is to be provided with the endorsement for enforcement. In the order, the obligation that is to be enforced is to be given in German. Reference to Council Regulation (EC) No 4/2009 or to the respective international agreement to be implemented, as well as to certificates submitted by the applicant, generally suffice as reasoning for the order. Section 788 of the Code of Civil Procedure applies accordingly to the costs of the proceedings.
- (2) Where the application is not admissible or not well-founded, the court is to refuse the application in an order setting out the reasons. The costs are to be imposed on the applicant.
- (3) The order comes into effect upon notification of the participants.

### **Section 41**

#### **Endorsement for enforcement**



- (1) On the basis of the order in accordance with section 40 (1), the records clerk of the registry issues the endorsement for enforcement in the following form:  
“Endorsement for enforcement under section 36 of the Foreign Maintenance Act of 23 May 2011 (Federal Law Gazette I p. 898). In accordance with the order of ... (designation of the court and of the order) compulsory enforcement based on ... (designation of the title) to the benefit of ... (designation of the creditor) against ... (designation of the debtor) is admissible. The obligation to be enforced reads as follows:  
... (indication of the obligation incumbent on the debtor from the foreign title in German; to be taken from the order in accordance with section 40 (1)).  
Compulsory enforcement may not go beyond protective measures until the creditor submits a court order or a certificate that compulsory enforcement may take place without restriction.”  
If the title is for a payment of money, the endorsement for enforcement is to be supplemented as follows:  
“So long as compulsory enforcement may not go beyond protective measures, the debtor may avert compulsory enforcement by payment of a security of ... (statement of the amount in respect of which the creditor may enforce).”  
(2) Where compulsory enforcement is admitted only in respect of one, or more than one, claim granted by the foreign ruling or set down in another foreign title, or only in respect of part of the subject matter of the obligation, the endorsement for enforcement is to be designated “part-endorsement for enforcement under section 36 of the Foreign Maintenance Act of 23 May 2011 (Federal Law Gazette I p. 898)”.  
(3) The endorsement for enforcement is to be signed by the registry clerk and stamped with the court stamp. Such endorsement is to be made either on the authentic issue of the title or on a page to be joined thereto. If there is a translation of the title, it is to be joined to the authentic issue thereof.

#### **Section 42** **Announcement of the decision**

- (1) If the court permits compulsory enforcement (section 40 (1)), a certified copy of the order, a certified copy of the title, to which the endorsement for enforcement is attached, and where appropriate of its translation, as well as of the documents referred to in accordance with section 40 (1) sentence 3 are to be served ex officio on the respondent. A certified copy of the order, the authentic issue of the title, to which the endorsement for enforcement is to be attached, and a certificate of service having been effected, are to be sent to the applicant.  
(2) If the court rejects the application to issue the endorsement for enforcement (section 40 (2)), the order is to be served on the applicant.

#### **Subdivision 2** **Complaint, complaint on a point of law**

##### **Section 43** **Court hearing the complaint; filing a complaint; time limit for a complaint**

- (1) The court hearing the complaint is the higher regional court.  
(2) A complaint against a decision handed down at first instance regarding an application for grant of endorsement for enforcement is to be filed, by submission of a notice of complaint or by declaration to be recorded in the registry, to the court whose order is being contested. As a general rule, the notice of complaint must be accompanied by the number of copies necessary for its service.  
(3) Section 61 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction does not apply.  
(4) The respondent's complaint against the admission of compulsory enforcement is to be filed  
1. within the scope of Council Regulation (EC) No 4/2009 and of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on

jurisdiction and the recognition and enforcement of judgments in civil and commercial matters within the time limit stipulated by Article 32(5) of Council Regulation (EC) No 4/2009,

2. within the scope of the Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
  - a) within one month after service in a case where the respondent habitually resides in Germany, or
  - b) within two months after service in a case where the respondent habitually resides abroad.

The time limit begins to run on the day on which the declaration of enforceability is served on the respondent, either in person or at his or her dwelling. An extension of this deadline due to great distance is ruled out.

(5) The complaint is to be served ex officio on the respondent.

#### **Section 44 (deleted)**

#### **Section 45 Proceedings and decision on the complaint**

- (1) The complaint court pronounces its decision in an order for which reasons are to be stated and which can be given without holding an oral hearing. The respondent is to be heard prior to the decision.
- (2) So long as no order has been made for an oral hearing, applications can be made, and statements given, to be recorded by the registry. Where an order is made for an oral hearing, section 215 of the Code of Civil Procedure applies to the summons.
- (3) A complete authentic issue of the order is to be served ex officio on the applicant and the respondent, even after the order has been pronounced.
- (4) Where, according to the order of the court hearing the complaint, compulsory enforcement based on the title is to be admitted for the first time, the registry clerk of the court hearing the complaint grants the endorsement for enforcement. Section 40 (1) sentences 2 and 4 and sections 41 and 42 (1) apply accordingly. An additional stipulation that compulsory enforcement may not go beyond the scope of protective measures is only to be included if the court hearing the complaint has issued an order in accordance with section 52 (2). The content of the additional stipulation is to be determined in accordance with the content of the order.

#### **Section 46 Admissibility and time limit for a complaint on a point of law**

- (1) A complaint on a point of law is admissible in respect of the order of the court hearing the complaint.
- (2) Such complaint on a point of law is to be filed within one month.
- (3) The time limit for the complaint on a point of law commences when the order is served (section 45 (3)).
- (4) Section 75 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction does not apply.

#### **Section 47 Filing, and grounds for, a complaint on a point of law**

- (1) A complaint on a point of law is filed by submitting a notice of complaint to the Federal Court of Justice.
- (2) The complaint on a point of law is to be furnished with reasons. Section 71 (1) sentence 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction does not apply. So far as a complaint on a point of law is based on the argument that the

court hearing the complaint has diverged from a decision of the Court of Justice of the European Union, the decision from which the contested order diverges must be designated.

#### **Section 48**

##### **Proceedings and decision on a complaint on a point of law**

- (1) The Federal Court of Justice can only examine whether the order is based on a violation of European Union law, of a material international agreement or other federal law or of another provision in force for an area extending beyond the district of a higher regional court.
- (2) The Federal Court of Justice can give a decision on a complaint on a point of law without holding an oral hearing. Sections 73 and 74 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply accordingly to the proceedings on the complaint on a point of law.
- (3) Where compulsory enforcement based on the title is admitted for the first time by the Federal Court of Justice, the registry clerk of this court grants the endorsement for enforcement. Section 40 (1) sentences 2 and 4 and sections 41 and 42 (1) apply accordingly. An additional stipulation regarding the restriction of compulsory enforcement does not apply.

#### **Subdivision 3**

##### **Restriction of compulsory enforcement to protective measures and unrestricted continuation of compulsory enforcement**

#### **Section 49**

##### **Review of the restriction**

Objections by the debtor that the restriction to protective measures in accordance with Council Regulation (EC) No 4/2009, or with the international agreement to be implemented, or on the basis of an order based on this Act (section 52 (2)), was not complied with in compulsory enforcement, or objections by the creditor that a specific measure of compulsory enforcement is compatible with this restriction, are to be asserted vis-à-vis the enforcement court by means of a reminder in accordance with section 766 of the Code of Civil Procedure (section 764 of the Code of Civil Procedure).

#### **Section 50**

##### **Security deposited by the debtor**

- (1) So long as compulsory enforcement of a title that is made out for the payment of money may not go beyond protective measures, the debtor may avert compulsory enforcement by paying the amount enforceable by the creditor as a security.
- (2) Compulsory enforcement is to be discontinued, and enforcement measures that have already been taken are to be repealed, if the debtor proves, by means of a public certificate, payment of the security necessary to avert compulsory enforcement.

#### **Section 51**

##### **Auctioning of moveables**

If a moveable has been pledged, and if compulsory enforcement may not go beyond protective measures, the enforcement court may order on application that the thing is auctioned and the proceeds deposited if it is exposed to the risk of a major reduction in value or if its retention would cause disproportionate costs.

#### **Section 52**

##### **Unrestricted continuation of compulsory enforcement; special court orders**

- (1) If the complaint court rejects the debtor's complaint against the admission of compulsory enforcement, or if it permits compulsory enforcement of the title in response to the creditor's complaint, compulsory enforcement may be continued over and above protective measures.
- (2) On application of the debtor, the complaint court may order that, until expiry of the deadline to submit the complaint on a point of law, or until a decision is made on this complaint, compulsory enforcement may not go beyond protective measures, or that it may

only do so in return for a security deposit. The order may only be issued if a plausible case is made that further enforcement would not place the debtor at an irreparable disadvantage.

Section 713 the Code of Civil Procedure applies accordingly.

(3) If a complaint on a point of law is submitted, the Federal Court of Justice, on application by the debtor, may issue an order in accordance with subsection (2). The Federal Court of Justice may, on application by the creditor, amend or rescind an order of the complaint court handed down in accordance with subsection (2).

### **Section 53**

#### **Unrestricted continuation of compulsory enforcement admitted by the first-instance court**

(1) The compulsory enforcement of the title to which the registry clerk of the first-instance court has attached the endorsement for enforcement, on application by the creditor, is to be continued over and above protective measures if the certificate of the registry clerk of this court is presented stating that compulsory enforcement may take place without restriction.

(2) The certificate is to be presented to the creditor upon his or her application

1. if the debtor has not submitted a notice of complaint by the time of expiry of the deadline for the complaint,
2. if the complaint court has rejected the debtor's complaint and has not handed down an order in accordance with section 52 (2),
3. if the Federal Court of Justice has repealed the order of the complaint court in accordance with section 52 (2) (section 52 (3) sentence 2), or
4. if the Federal Court of Justice has admitted the title for compulsory enforcement.

(3) Compulsory enforcement of the title, even if it is restricted to protective measures, may no longer take place as soon as an order of the complaint court has been pronounced or served stating that the title would not be admitted for compulsory enforcement.

### **Section 54**

#### **Unrestricted continuation of the compulsory enforcement permitted by the complaint court**

(1) Compulsory enforcement of the title on which the registry clerk of the complaint court has issued the endorsement for enforcement with the additional stipulation that compulsory enforcement may, because of the order of the court, not go beyond protective measures (section 45 (4) sentence 3), on application by the creditor, is to be continued over and above protective measures if the certificate of the registry clerk of this court is submitted stating that compulsory enforcement may take place without restriction.

(2) The certificate is to be presented to the creditor upon his or her application

1. if the debtor has not submitted a notice of complaint by the time of the expiry of the deadline to submit the complaint on a point of law (section 46 (2)),
2. if the Federal Court of Justice has repealed the order of the complaint court in accordance with section 52 (2) (section 52 (3) sentence 2), or
3. if the Federal Court of Justice has rejected the debtor's complaint on a point of law.

### **Subdivision 4**

#### **Establishment of the recognition of a foreign decision**

### **Section 55**

#### **Proceedings**

(1) Sections 36 to 38 and section 40 (2), sections 42 to 45 (1) to (3), sections 46, 47 as well as section 48 (1) and (2) apply accordingly to the proceedings which have as their subject matter the finding of whether a decision from another State is to be recognised.

(2) If the application for a finding is well-founded, the court decides to recognise the decision.

#### **Section 56**

##### **Decision on costs**

The costs are to be imposed on the respondent in cases falling under section 55 (2). The latter may restrict the complaint (section 43) to the decision on the cost point. In this case, the costs are to be imposed on the applicant if the respondent has not given any cause for the application for a determination through his or her conduct.

#### **Division 4**

##### **Recognition and enforcement of maintenance titles in accordance with international agreements**

##### **Subdivision 1**

##### **General**

#### **Section 57**

##### **Application of provisions**

The provisions contained in sections 36 to 56 apply accordingly to the recognition and declaration of enforceability of foreign maintenance titles in accordance with the international agreements designated in section 1 (1) sentence 1 no. 2, unless this division provides otherwise.

#### **Section 58**

##### **Hearing**

The court rules in the proceedings in accordance with section 36 without hearing the respondent.

#### **Section 59**

##### **Deadline for complaint**

(1) The complaint against the decision handed down at first instance on the application to issue the endorsement for enforcement is to be submitted within one month of service.  
(2) If service on the respondent needs to take place abroad or by public announcement, and if the court considers the time limit for a complaint in accordance with subsection (1) not to be sufficient, it determines a later time limit for a complaint in the order in accordance with section 40, or subsequently by a separate order which is issued without an oral hearing. The deadline set in accordance with sentence 1 for the submission of the complaint is to be noted on the certificate on the service that has been effected (section 42 (1) sentence 2). The stipulations regarding the commencement of the time limit for a complaint also remain unaffected in the case of subsequent setting of a deadline.

#### **Section 59a**

##### **Objections in complaint proceedings to the claim to be enforced**

(1) By way of a complaint against the admission of compulsory enforcement based on a decision, the debtor may also object to the claim itself insofar as the grounds on which the objections are based originated only after the decision was made.  
(2) With the complaint against the admission of compulsory enforcement based upon a judicial settlement or a public document, the debtor may also object to the claim itself, notwithstanding the limitation contained in subsection (1).

#### **Section 60**

##### **Restriction of compulsory enforcement by law**

Compulsory enforcement is restricted to protective measures as long as the deadline to submit the complaint is still running, and as long as a decision has not yet been taken on the complaint.

## **Subdivision 2**

### **Recognition and enforcement of maintenance titles under the Hague Convention of 23 November 2007 on the international recovery of child support and other forms of family maintenance**

#### **Section 60a**

##### **Complaint proceedings in the area of the Hague Convention**

In derogation from section 59, the time limits of Article 23(6) of the Hague Convention apply to the complaint proceedings.

## **Subdivision 3**

### **Recognition and enforcement of maintenance titles under the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations**

#### **Section 61**

##### **Restriction of recognition and enforcement**

(1) Public certificates from another Contracting State are only recognised and enforced if this state has submitted the declaration in accordance with Article 25 of the Convention.  
(2) The recognition and enforcement of decisions from another Contracting State regarding maintenance claims between persons who are related collaterally and between in-laws is to be refused at the request of the respondent if

1. no maintenance obligation exists in accordance with the substantive provisions of the law of the State to which the person liable and the person entitled belong, or
2. the person liable and the person entitled do not have the same nationality and no maintenance obligation exists in accordance with the law applicable at the habitual residence of the person liable.

#### **Section 62**

##### **Complaint proceedings within the scope of the Hague Convention**

(1) In derogation from section 59 (2) sentence 1, the period for the complaint of the debtor against the admission of compulsory enforcement is two months if service on the debtor must take place abroad.  
(2) The higher regional court may suspend its decision on the complaint against admission of compulsory enforcement, on application by the debtor, if an ordinary appellate remedy was submitted against the decision in the state of origin or the deadline for this has not yet expired. In the latter case, the higher regional court may set a deadline within which the appellate remedy is to be lodged. The court can also make compulsory enforcement dependent on payment of a security.  
(3) Subsection (2) applies accordingly in proceedings for the determination of recognition of a decision.

## **Subdivision 4**

### **Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters**

#### **Section 63**

##### **Special arrangements for the complaint proceedings**

(1) The deadline for the respondent's complaint against the decision on the admission of compulsory enforcement is two months, and starts to run from the day on which the decision was served on the respondent either in person or in his or her dwelling if the respondent has his or her place of abode or seat in another Contracting State of this Convention. An extension of this deadline due to great distance is ruled out. Section 59 (2) does not apply.  
(2) Section 62 (2) and (3) applies accordingly.



**Division 5**  
**Proceedings in case of formal reciprocity**

**Section 64**  
**Enforceability of foreign titles**

- (1) The enforceability of foreign titles in proceedings with formal reciprocity under section 1 (1) sentence 1 no. 3 is governed by section 110 (1) and (2) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Final and binding effect of the decision is not required for the declaration of enforceability.
- (2) If the foreign title is to be declared enforceable, the court may, upon application by one of the parties, modify in its enforcement order the sum of maintenance awarded in the foreign title in terms of the amount and the duration for which payments are to be made. If the foreign decision has obtained final and binding force, a modification is permissible only in accordance with section 238 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

**Chapter 3**  
**Enforcement, application for aversion of enforcement, separate proceedings;  
compensation**

**Division 1**  
**Enforcement, application for aversion of enforcement, separate proceedings**

**Section 65**  
**Enforcement**

Section 120 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applies to the enforcement of foreign maintenance titles unless Council Regulation (EC) No 4/2009 and the present Act provide otherwise.

**Section 66**  
**Application for aversion of enforcement**

- (1) If a foreign title is enforceable in accordance with Council Regulation (EC) No 4/2009 without exequatur proceedings or declared enforceable in accordance with that Regulation or one of the other instruments named in section 1 (1) sentence 1 no. 1, the debtor may assert objections against the claim itself in proceedings in accordance with section 120 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in conjunction with section 767 of the Code of Civil Procedure. If the title is a court decision, this only applies to the extent that the reasons on which the objections are based only arose after the issuance of the decision.
- (2) If compulsory enforcement of a title is admitted in accordance with the treaties named in section 1 (1) sentence 1 no. 2, the debtor may only make objections against the claim itself in proceedings in accordance with section 120 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in conjunction with section 767 of the Code of Civil Procedure if the reasons on which his or her objections are based did not arise:
1. until after expiry of the deadline within which he or she could have lodged the complaint, or
  2. if the complaint has been lodged after termination of these proceedings.

(3) The application in accordance with section 120 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in conjunction with section 767 of the Code of Civil Procedure is to be lodged with the court which must rule on the application for issuance of the endorsement for enforcement. In cases falling under subsection (1), jurisdiction is in accordance with section 35 (1) and (2).

### **Section 67**

#### **Proceedings after repeal or amendment of a foreign title in the state of origin which had been declared enforceable**

- (1) If the title is repealed or amended in the State in which it was issued, and if the debtor can no longer assert this fact in the proceedings to admit compulsory enforcement, he or she can apply to have admission repealed or amended in separate proceedings.
- (2) The court has exclusive jurisdiction for the decision on the application which ruled at first instance on the application to issue the endorsement for enforcement.
- (3) The application can be lodged with the court in writing or for the record of the registry. The application can be ruled on without an oral hearing. Prior to the decision, which is to be handed down via an order, the creditor is to be heard. Section 45 (2) and (3) applies accordingly.
- (4) The order is subject to a complaint. The deadline for the submission of the complaint is one month. Moreover, sections 58 to 60, 62, 63 (3) and 65 to 74 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply accordingly.
- (5) Sections 769 and 770 of the Code of Civil Procedure apply accordingly to the discontinuation of compulsory enforcement and to the repeal of enforcement measures that have already been taken. The repeal of an enforcement measure is also permissible without a security payment.

### **Section 68**

#### **Rescission or amendment of foreign decisions whose recognition has been established**

Section 67 (1) to (4) applies accordingly if the decision is rescinded or amended in the State in which it was handed down, and if the party favoured thereby is no longer able to assert this fact in the proceedings on the application for the establishment of recognition.

### **Division 2**

#### **Compensation because of unjustified enforcement**

### **Section 69**

#### **Compensation because of unjustified enforcement**

- (1) If the admission of compulsory enforcement with regard to the complaint (section 43) or the complaint on a point of law (section 46) is repealed or amended, the creditor is obliged to compensate for the damage incurred by the debtor through the enforcement of the title or by a payment made to avert enforcement.
- (2) The same applies if
1. admission of compulsory enforcement is repealed or amended in accordance with section 67 where, at the time of admission, the decision admitted for compulsory enforcement could still be appealed with an ordinary appellate remedy in accordance with the law of the State in which it was handed down, or
  2. a title that is enforceable in accordance with Article 17 of Council Regulation (EC) No 4/2009 without exequatur proceedings was repealed in the state of origin and the title could have been appealed with an ordinary appellate remedy at the time of the compulsory enforcement measure.
- (3) The court which ruled at first instance on the application to attach the endorsement for enforcement to the title has exclusive jurisdiction for the assertion of the claim. In cases falling under subsection (2) no. 2, jurisdiction is in accordance with section 35 (1) and (2).

### **Chapter 4**

#### **Decisions of German courts; order for payment procedure**

## **Section 70**

### **Application of the debtor in accordance with Article 19 of Council Regulation (EC) No 4/2009**

- (1) The application of the debtor for a review of the decision in accordance with Article 19 of Council Regulation (EC) No 4/2009 is to be lodged with the court which handed down the decision. Section 719 (1) of the Code of Civil Procedure applies accordingly.
- (2) If the debtor has not lodged the application within the time limit stipulated in Article 19(2) of Council Regulation (EC) No 4/2009, or if the prerequisites of Article 19(1) of Council Regulation (EC) No 4/2009 do not apply, the court rejects the application by means of an order. The order may be handed down without an oral hearing.
- (3) If the prerequisites of Article 19 of Council Regulation (EC) No 4/2009 apply, the proceedings are to be continued. They are to be restored to the position in which they were prior to the occurrence of the omission. Sections 343 to 346 of the Code of Civil Procedure apply accordingly. On application of the debtor, compulsory enforcement is also to be discontinued without payment of a security.

## **Section 71**

### **Certificates regarding domestic titles**

- (1) The courts, authorities or notaries responsible for granting an enforceable copy are competent for issuing
1. the form in accordance with Article 20(1)(b), Article 28(1)(b), Article 40(2) and Article 48(3) of Council Regulation (EC) No 4/2009,
  2. the certificates, documents and instruments in accordance with Articles 54, 57 and 58 of the Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- (2) Insofar as, in accordance with subsection (1), the courts have jurisdiction for issuing the form or the certificates, these documents are to be issued by the court of first instance or, if the proceedings are pending with a higher court, by the latter. In functional terms, jurisdiction lies with the agency on which the grant of an enforceable title is incumbent. The provisions on the contestability of the decision on the issuance of the endorsement for enforcement applies accordingly to the contestability of the decision on the issuance of the form or of the certificate.
- (3) The issuance of the form in accordance with Article 20(1)(b) and Article 48(3) of Council Regulation (EC) No 4/2009 does not rule out the right to issue a court certificate in accordance with section 724 of the Code of Civil Procedure.

## **Section 72**

### **Quantification of index-linked maintenance titles for compulsory enforcement abroad**

Section 245 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applies if a maintenance title ascertaining maintenance in accordance with section 1612a of the German Civil Code (Bürgerliches Gesetzbuch) as a percentage of the applicable minimum maintenance is to be enforced abroad.

## **Section 73**

### **Completion of domestic decisions for use abroad**

- (1) If a person concerned wishes to assert a judgment by default or by consent which has been formulated in abbreviated form in accordance with section 38 (4) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in another Contracting Party or Member State, the order is to be completed on application by this person concerned. The application may be made in writing to the court issuing the order or placed on the record of the registry. A decision on the application is made without an oral hearing.

(2) To complete the order, the reasoning is to be subsequently formulated, signed by the judges separately and handed to the registry; the reasoning can also be signed by judges who did not take part in the order.

(3) Section 113 (1) sentence 2 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction and section 320 of the Code of Civil Procedure apply to the correction of the statement of facts in the subsequently formulated reasoning. However, judges may also participate in the decision on an application for correction who did not take part in the order or in the subsequent formulation of the reasoning.

(4) The above subsections apply accordingly to the completion of attachment orders and provisional orders which are to be asserted in another Contracting Party or Member State and are not furnished with reasons.

#### **Section 74**

##### **Endorsement for enforcement for use abroad**

Enforcement notices, attachment orders and provisional orders whose compulsory enforcement is to be pursued in another Contracting Party or Member State are to be furnished with an endorsement for enforcement even if this would not be necessary for compulsory enforcement in Germany in accordance with section 796 (1) and section 929 (1) of the Code of Civil Procedure and in accordance with section 53 (1) and section 119 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

#### **Section 75**

##### **Order for payment procedure with service abroad**

(1) The order for payment procedure also takes place if the service of the order for payment must be effected in another Contracting Party or Member State. In this case, the claim can also have as its subject matter the payment of a specific amount of money in foreign currency.

(2) If the applicant asserts that the court addressed has jurisdiction on the basis of an agreement on court venue, he or she is to enclose with the application for a payment order the necessary documents relating to the agreement.

(3) The period for filing an objection (section 692 (1) no. 3 of the Code of Civil Procedure) is one month.

#### **Chapter 5**

##### **Costs; transitional provisions**

##### **Division 1**

##### **Costs**

#### **Section 76**

##### **Translations**

The amount of remuneration for the translations arranged by the Central Authority is governed by the Judicial Remuneration and Compensation Act (Justizvergütungs- und Entschädigungsgesetz).

##### **Division 2**

##### **Transitional Provisions**

#### **Section 77**

##### **Transitional provisions**

(1) For proceedings which had already been initiated on 18 June 2011, the recognition and declaration of enforceability of a foreign maintenance title is to be in accordance with the Recognition and Enforcement Implementation Act (Anerkennungs- und Vollstreckungsausführungsgesetz) in the version of 3 December 2009 (Federal Law Gazette I p. 3830) in the scope of application of

1. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12 of 16 January 2001, p. 1),
  2. the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 299 of 16 November 2005, p. 62),
  3. the Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 339 of 21 December 2007, p. 3),
  4. the Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters (Federal Law Gazette 1994 II p. 2658), and
  5. the Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations (Federal Law Gazette 1986 II p. 826).
- (2) For proceedings with formal reciprocity (section 1 (1) sentence 1 no. 3) which had already been initiated on 18 June 2011, the recognition and declaration of enforceability of a foreign title are in accordance with the Foreign Maintenance Act of 19 December 1986 (Federal Law Gazette I p. 2563), most recently amended by Article 4 paragraph 10 of the Act of 17 December 2006 (Federal Law Gazette I p. 3171).
- (3) Court jurisdiction for maintenance cases not yet concluded on 18 June 2011 and pending proceedings to grant legal aid remains unaffected.
- (4) Sections 30 to 34 are only applicable to titles which have been handed down on the basis of the Hague Protocol of 23 November 2007 on the applicable law (OJ L 331 of 16 December 2009, p. 19).
- (5) Sections 16 to 19 also apply to requests already pending with the Central Authority on 18 June 2011.