

System applicable to support obligations
COUNCIL REGULATION (EC) No 4/2009 of 18 December 2008

Introduction

The EC Regulation N°4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations entered into force on 18 June 2011.

This regulation is applicable in all countries of the European Union.

1. Spirit of the EC regulation N°4/2009

The recitals of the Regulation specify that one of its objectives is to promote the compatibility of the rules of conflict of laws and jurisdiction applicable in the Member States in matters relating to maintenance obligations.

This text therefore includes common procedural rules aimed at speeding up and simplifying cross-border litigation on maintenance claims.

2. Scope of application of the EC Regulation N°4/2009

a) The concept of support obligations

As stated in the 11^e recital, the Regulation is intended to apply to *"all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to ensure equal treatment of all maintenance creditors"*.

The very notion of maintenance obligations must be understood in a broad sense. Thus, the compensatory allowance, which may have an indemnity and/or maintenance nature in France, falls within the scope of this Regulation.

b) Title establishing the maintenance claim

Like the above, the regulation takes a broad view.

Thus, article 2 provides that this title may be a decision, a judicial transaction, or an authentic instrument, these different terms being defined.

Thus, a "decision" must be considered to be the decision rendered by a court, regardless of the terminology used in national law (judgment, order, ruling, etc.).

A "court settlement" is a transaction approved or entered into before a court.

An "authentic instrument" means an instrument drawn up or registered by the competent authority as such, the authenticity of which is indicated by the signature it contains or its content, or an agreement concluded or authenticated with the administrative authorities of the Member State of origin.

c) Territorial application

The regulation applies throughout the European Union regardless of the nationality of the parties.

3. Jurisdiction of the judge

a. Multiplicity of possible competent jurisdictions

The principle laid down in Article 3 of the Regulation is that several courts may have concurrent jurisdiction:

- the court(s) of the defendant's habitual residence
- the one(s) of the creditor's habitual residence
- the one(s) that deal(s) or have dealt with a dispute between the parties relating to the status of persons
- that deals or has dealt with a dispute between the parties relating to parental responsibility

In the latter two cases, the choice of jurisdiction is excluded if it is based exclusively on the nationality of the parties.

The CJEU also ruled in a judgment of 17 December 2020 that "*a public body which pursues, by way of a recourse action, the recovery of sums paid by way of maintenance is entitled to rely on the jurisdiction of the court of the place of the creditor's habitual residence*".

b. The election of

With the exception of cases where maintenance is owed to minors, Article 4 of the Regulation provides that the parties may choose the judge who will deal with the dispute that has arisen or will arise from among the following judges

- The competent judge of the habitual residence of one of the parties
- The competent judge of the Member State of the nationality of one of the parties
- The judge competent to settle the matrimonial dispute for a dispute between spouses (or ex-spouses) or that of their last common habitual residence

c. The absence of a challenge by the defendant

According to Article 5 of the Regulation, the appearance of the defendant implies the jurisdiction of the court seized.

d. The exceptions

When none of the above-mentioned courts has jurisdiction, the judge of the common nationality of the parties has jurisdiction (Art. 6).

Moreover, in the absence of jurisdiction of the above-mentioned courts, including that of the common nationality of the parties, the judge with "a sufficient connection" with the parties may have jurisdiction (Art. 7).

- e. Existence of specific jurisdictional rules regarding the modification of the decision

When it is a question of modifying a decision already given in a maintenance matter, Article 8 of the Regulation provides for special rules of jurisdiction. The principle is that the plaintiff in the action may bring the action only before the court which rendered the decision in question (Art 8).

- f. Referral to the judge and his office

The court is seized either by the service of the document instituting the proceedings on the defendant, provided that the latter is regularly placed before the competent court by the deposit of the document in the competent court (again provided that the defendant had knowledge of this document) or that the necessary steps have been taken for him to have knowledge of it by way of service (Art. 9).

In order to ensure uniformity of the rules applicable in the Member States of the European Union, the application to modify the maintenance decision must be made using the standard form provided for this purpose (Annex VII).

Articles 10 and 11 of the Regulation provide that the court seized of the case must verify its jurisdiction *ex officio* and thus declare itself incompetent if necessary (except in matters of provisional/conservative measures, Article 14). Moreover, when a dispute is referred to the court, the judge must verify the admissibility of the claim presented to him, particularly with regard to respect for the principle of adversarial proceedings and, more specifically, the regular summoning of the defendant to the hearing.

Under Articles 12 and 13 of the Regulation, the second judge seized must stay the proceedings in matters of *lis pendens* and may stay the proceedings in matters of *connexity*.

4. Applicable Law - Reference to the Hague Protocol

Once the judge is seized, it remains to determine which law will apply to the dispute.

The regulation refers to the Hague Protocol of 23 November 2007. This protocol is in force within and beyond the borders of the European Union (for example, it has been ratified by Ukraine, Brazil and Ecuador).

- a. The choice of parties

Under this protocol, the parties may choose the law applicable to their dispute in writing (except in cases where maintenance is owed to minors or incompetent adults), including when proceedings are already underway, between the law of one or both of their nationalities, that of their habitual residence, that of their matrimonial regime or that of their divorce.

- b. Principle of the law of the State of the creditor's habitual residence

With the exception of cases where maintenance is owed to children, and where the parties have not chosen the applicable law, Article 3 of the Protocol provides for the application of the law of the creditor's habitual residence.

5. Recognition and Enforcement of Maintenance Decisions

The Regulation contains three types of provisions: general rules, provisions applying when the decision ordering maintenance is given in a Member State party to the 2007 Hague Protocol and rules applying when the decision is given in a Member State not bound by the 2007 Hague Protocol.

a. Common rules

The judge who rendered the decision may declare it provisionally enforceable (Art. 39).

Furthermore, the enforcement of the maintenance decision is carried out by means of the rules of enforcement procedure in force in the Member State of enforcement.

A tool has been developed for professionals who are likely to assist parties in their efforts to obtain information on enforcement procedures in the Member States of the European Union (see <https://www.enforcementatlas.eu/>).

Finally, the recovery of costs does not take priority over the recovery of maintenance.

b. Decision rendered in a State bound by the 2007 Hague Protocol

The cooperation mechanism and the efficiency of the enforcement of the decision rendered is increased when the decision is rendered in a State bound by the 2007 Hague Protocol.

The exequatur procedure is thus purely and simply abolished (Art. 17).

The decision rendered in the Member State of origin allows, for example, the implementation of precautionary measures, without prior authorization in the Member State of enforcement (Art. 18).

However, it remains possible for the defendant to obtain a refusal of enforcement of the decision where there is a statute of limitations or where the decision given by the Member State of origin is irreconcilable with a decision given in the Member State of enforcement.

The authorities of the Member State of enforcement may also, at the request of the defendant, stay the enforcement of the decision where the enforceability of the decision in question is suspended in the Member State of origin or where the court of the Member State of origin is seised of an application for review (Art. 21).

Under Article 20 of the Regulation, in order to recover the maintenance owed to him or her, the applicant will have to provide the competent enforcement authority (in France, the commissaires de justice) with:

- A copy of the decision,
- The form provided for in Annex I of the Regulation, which is used to produce an extract from the decision or settlement in matters of maintenance obligations. If there is more than one decision, one form should be sent for each decision. As for all the forms provided for by the European regulations, it is advisable to fill them in online on the European e-Justice portal. This form must then be converted into a language accepted by the Member State of enforcement.
- A statement of account if necessary (in particular in the case of alimony)

In order to minimize the costs of the proceedings, a translation of the decision on which the proceedings are based is not normally required. If the enforcement of the decision is contested, a translation may be requested and must be done by an authorized person.

c. Decision rendered in a State not bound by the Hague Protocol

A decision rendered in a Member State not bound by the 2007 Hague Protocol is in principle recognised in another Member State, without any prior formality.

There are, however, grounds for refusing recognition related to public policy, failure to respect the adversarial principle or incompatibility with a previous decision (Art. 24).

The court before which recognition of a decision is sought must also stay the proceedings if the enforceability of the decision is suspended in the Member State of origin (Art. 25).

In accordance with the provisions of Article 26 of the Regulation, prior to its enforcement and in the absence of grounds for refusing recognition, the decision must be declared enforceable. On the other hand, the applicant may request that provisional measures be implemented to guarantee his rights before the declaration of enforceability is obtained (Art. 36).

According to Article 28 of the Regulation, the application for a declaration shall be submitted to the court or competent authority of the Member State of enforcement accompanied by :

- a copy of the decision
- the form provided for in Annex II of the Regulation used to provide an extract from the decision or a court settlement. As mentioned above, it is necessary to produce as many forms as there are decisions. The form must also be completed by the court or competent authority of the Member State of origin that issued the judgment or approved the settlement. The form should preferably be filled in directly on the e-justice portal and then converted into a language accepted by the Member State of enforcement.
- if necessary, the translation or transliteration of the content of the above-mentioned certificate into a language accepted by the requested Member State

The translation of the decision itself is not necessary as a matter of principle unless an appeal is filed.

Moreover, the judge of the Member State of enforcement also has the possibility of dispensing with the above-mentioned certificate if he considers himself sufficiently informed (Art. 29).

Once the above-mentioned formalities have been completed, the decision is declared enforceable, without control (Art. 30), within a maximum of 30 days.

The parties then have 30 days from the service of the declaration of enforceability to lodge an appeal against the declaration of enforceability. This period is 45 days when the party against whom enforcement is sought is habitually resident in another Member State.

6. The central authorities

In order to increase cooperation between Member States in the application of the "food" regulation, one or more central authorities are designated within the Member States (Art. 49).

They have in particular the task of seeking possible solutions to the problems raised by the regulation and take measures to this end, in particular by using the European Judicial Network in civil and commercial matters (Art. 50).

In general, the Central Authorities shall facilitate the application of the Maintenance Regulation by their action and shall in principle bear the costs arising from the implementation of this Regulation (Art. 51 and 54).