

Foreign Maintenance Act (AUG) 2011 – Extract

The following extract of the Foreign Maintenance Act (AUG) 2011 is an unofficial translation of the Federal Ministry of Justice.

Article 1 Act on the Recovery of Maintenance in Relations with Foreign States (Foreign Maintenance Act – AUG)

Chapter 1 General Part

Division 1 Scope of application Definitions of terms

Section 1

Scope of application

(1) This Act shall serve

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 10.1.2009, 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 16.11.2005, p. 62), so far 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 21.12.2007, p. 3), so far as this Convention is to be applied to maintenance matters;

2. to implement the following international treaties:

a) 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);

b) the Convention of 16 September 1988 on jurisdiction and the enforcement of judgements in civil and commercial matters (Federal Law Gazette 1994 II p. 2658), so far as this Convention is to be applied to maintenance matters;

c) 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 pursuant to the first sentence, number 3, shall be deemed to be guaranteed if the Federal Ministry of Justice has so declared and has published this in the Federal Law Gazette (formal reciprocity). States within the meaning of the first sentence, number 3, shall also include partial states and provinces of a federal state.

(2) Provisions in international agreements, so far as they have become directly applicable domestic law, shall take precedence over the provisions of this Act. The provisions of the Regulation and the instruments referred to in subsection (1), first sentence, number 1, being directly applicable law of the European Union, shall not be affected by the implementing provisions of this Act.

Division 2 Central Authority

Section 4

Central Authority

(1) The Central Authority for judicial and extrajudicial recovery of maintenance claims under this Act shall be the Federal Office of Justice. The Central Authority shall deal directly with all the competent agencies in Germany and abroad. Communications shall be forwarded by the Central Authority to the competent agencies without delay.

(2) The process conducted by the Central Authority shall be deemed

to be a judicial administration proceeding.

(3) The Federal Ministry of Justice shall be authorised, in accordance with Article 51 paragraph 3 of Regulation (EC) No. 4/2009, 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 shall determine the extent of transfer of functions. Notice of such transfer shall be given by the Federal Ministry of Justice in the Federal Gazette. The designated person shall be subject to the specialist supervision of the Federal Ministry of Justice. Section 5 subsection (5) and Sections 7 and 9 shall not be applied 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 shall be effected through the Central Authority as the receiving and transmitting authority.

(2) The Central Authority shall take all appropriate steps in order to enforce the maintenance claim of the person entitled. Here the Central Authority has to comply with the wishes and the interests of the person entitled.

(3) In the scope of application of Regulation (EC) No. 4/2009, the functions of the Central Authority shall be governed by Articles 50, 51, 53 and 58 of this Regulation.

(4) In respect of incoming requests, the Central Authority, acting either by itself or by means of sub-authorisation through representatives, shall be deemed to be authorised to take extrajudicial action or to initiate court action on behalf of the applicant. In particular, the Central Authority shall have the authority to deal with the maintenance claim by way of settlement or of recognition of the claim. Where necessary, the Central Authority shall be entitled also to make a maintenance application and to pursue the enforcement of a maintenance title.

(5) The Central Authority shall transmit, 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. The first sentence shall apply to the return of amounts paid in excess or *mutatis mutandis* to other payments necessitated by the exercise of Central Authority functions.

Section 7

Prior examination by the Local Court; concentration of jurisdiction

(1) The receipt and examination of an application for assistance in maintenance matters shall be

effected by the Local Court with jurisdiction over the seat of the Higher Regional Court in whose district the applicant has his habitual residence. For the district of the Berlin Higher Regional Court the decision shall lie with Pankow-Weißensee Local Court.

(2) The prior examination shall be deemed to be a judicial administration proceeding.

(3) No costs shall be 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, shall be governed by Article 57 of Regulation (EC) No. 4/2009.

(2) In the cases not covered by subsection (1) the application shall contain all the information that may be important for recovery of the claim, in particular

1. the surname and forenames 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 forenames 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, number 3 letter b), shall contain the data referred to in numbers 1 and 3 letter c) of the person in respect of whom passage of the claim has already occurred.

(3) The appropriate civil status certificates and other relevant documents shall be attached to an application pursuant to subsection (2). The court designated in Section 7 can make all necessary investigations *proprio motu*.

(4) In the cases covered by subsection (2) the application shall be signed by the applicant, by his statutory representative or by an authorised representative whose power of attorney shall 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 statutory representative shall 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 shall be complied with, unless barred by mandatory provisions under German law.

(5) In the cases covered by subsection (2) the application shall 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 shall examine

1. in proceedings with formal reciprocity (Section 1 subsection (1), first sentence, number 3), whether the intended legal pursuit under German law would offer sufficient prospect of success;

2. in the other cases, whether the application is vexatious or manifestly unfounded.

If he affirms such prospect of success in the cases covered by the first sentence, number 1, he shall issue a certificate to this effect, shall arrange for the translation thereof into the language of the State to be requested and shall attach these documents to the request.

(2) If the intended legal pursuit does not offer sufficient prospect of success (subsection (1), first sentence, number 1) or if the application is vexatious or manifestly unfounded (subsection (1), first sentence, number 2), the judge shall refuse to forward the application. The decision indicating refusal shall be furnished with reasons and is to be served on the applicant together with instructions regarding his or her right to seek an appellate remedy. The decision shall be contestable pursuant to section 23 of the Introductory Act to the Courts Constitution Act.

(3) If there are no grounds for refusal, the court shall send 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 shall, in the cases covered by subsection (2), first sentence, submit 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 shall attach translations certified by a sworn translator in the language of the State to be

requested. Articles 20, 28, 40, 59 and 66 of Regulation (EC) No. 4/2009 shall 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 shall 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 shall arrange for the translation at the applicant's expense.

(3) The Local Court with jurisdiction under Section 7 subsection (1) shall, upon application, exempt 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 requirements for instalment-free legal aid pursuant to section 113 of the Act on Procedure in Family Matters and in Non-Contentious Matters, read in conjunction with section 115 of the Civil Procedure Code.

(4) Section 1077 subsection (4) of the Civil Procedure shall remain unaffected.

Section 11

Forwarding of the application by the Central Authority

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

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

(3) In the event that the Central Authority refuses to forward the application, Section 9, subsection (2), second and third sentences shall be applied *mutatis mutandis*.

Section 12

Registration of an existing title abroad

Where a domestic court decision or other title within the meaning of Section 3, number 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 shall be applied *mutatis mutandis*; there shall be 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 should 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, subsection (1), first sentence, number 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 Regulation (EC) No. 4/2009, however, it is authorised to do so only if it may demand a translation pursuant to that Regulation.

(4) The Central Authority may, in proceedings with formal reciprocity (Section 1, subsection (1), first sentence, number 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, shall be governed by Article 57 of Regulation (EC) No. 4/2009)

(2) In cases not covered by subsection (1), the application shall 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.

Section 8, subsection (2), shall otherwise apply *mutatis mutandis*.

(3) In cases covered by subsection (2), the application shall 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 shall be accompanied by a statement by the foreign agency that received and examined the application. This statement shall

also designate the maintenance amount required at the place of residence of the person entitled. The application and the attached documents shall be transmitted in duplicate. The appropriate civil status certificates and other relevant documents shall be attached and other supporting documents should be clearly referred to.

Section 15

Treatment of a provisional decision

In proceedings with formal reciprocity (Section 1, subsection (1), first sentence, number 3) a foreign decision that has been given without the person liable being heard, provisionally and subject to confirmation by the requested court, shall be deemed to be an incoming request for obtaining a maintenance title. Section 8, subsection (2) and Section 14, subsection (2), first sentence, shall apply *mutatis mutandis*.

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 its functions 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 pursuant to subsection (1), the Central Authority may obtain the following information:

1. from statutory pension insurance agencies: 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 pursuant to section 33, subsection (1), first sentence, number 2 of the Road Traffic Act;

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.

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

Section 24

Legal aid for proceedings with formal reciprocity

If, in proceedings under Section 1, subsection (1), first sentence, number 3, the intended legal pursuit of incoming requests offers

sufficient prospect of success and does not appear to be vexatious, the person entitled shall 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 shall be exempted with final effect from having to pay the costs referred to in section 122, subsection (1) of the Code of Civil Procedure, as long as the grant of legal aid is not set aside pursuant to section 124, number 1 of the Code of Civil Procedure.

...

Section 35

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

(1) Solely the Local Court that is competent at the seat of the Higher Regional Court in the district of which ... shall be competent to decide on an application for establishment of recognition or on an application for a declaration of enforceability of a foreign title under Division 3 or 4.

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.

Pankow-Weissensee Local Court shall be competent to decide for the

district of Berlin Higher Regional Court.

(2) The governments of the *Länder* shall be 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. 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 shall apply analogously.

...

Section 64

Enforceability of foreign titles

(1) The enforceability of foreign titles in proceedings with reciprocity

pursuant to Section 1, subsection (1), first sentence, no. 3 shall be governed by section 110, subsections (1) and (2) of the Act on Procedure in Family Matters and Non-Contentious Matters. 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 Procedure in Family Matters and Non-Contentious Matter

