



European Chapter Half Day Education Programme

Friday 1st October 2021

Panel 2: Maintenance – some practical thoughts from
the EU and the US, and a look to the future....
Touching on Hague 2007 and what about Lugano?

Supporting Documents

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Maintenance obligations in Romania

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Spousal maintenance

- General principle -According to the Romanian legislation- art. 389 of the Romanian Civil Code- following a divorce the maintenance obligation imposed by the law between parties ceases.
- There is no automatic right to apply for maintenance

2

Spousal maintenance

Exception- To receive maintenance from the other party after a divorce, a party must prove - he/she is in need due to an incapacity to work – the incapacity which occurred before the marriage or during the marriage.

He/she will also be entitled to receive maintenance, if the incapacity arose within 1 year from the date of the divorce, but only if the incapacity is caused by a circumstance that is directly connected to the previous marriage.

3

Child maintenance

- the maintenance support is determined based on the incomes of the non custodial parent
- based on the regular income, not the additional payment, overtime work, travel or transfer allowances, etc.
- The amount is paid monthly

Proportions

- $\frac{1}{4}$ from the monthly income for a child;
- $\frac{1}{3}$ from the monthly income for two children;
- $\frac{1}{2}$ from the monthly income for three or more children.

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Child maintenance

- In case the non custodial parent cannot prove his income - undeclared work or he/she doesn't have a job at the moment of the trial, the court will determine the maintenance support according to the amount representing the national minimum salary.
- Currently the gross monthly minimum wage is 2300 RON (€471.75)

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Child maintenance -duration

- The maintenance support shall be paid until the child reaches the age of majority -18 according to the Romanian law;
- In case the child reached majority and he is attending the university /other form of higher institutionalized education (day classes), shall be entitled at the latest until the age of 26;

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Child maintenance -sanctions

- Regarding art 305 of the Criminal Code for family abandonment
- not paying the child support can be sanctioned with imprisonment from 3 months to 2 years or with a fine,
- Not paying maintenance support, for two consecutive months as set by the court, shall be subject to imprisonment from 1 to 3 years or to fine.
- The criminal procedure shall be initiated at the complaint of the other parent.
- Reconciliation of the parties exempts the offender from criminal liability;
- If during the trial the defendant fulfills his obligations, the court, shall decide the conditional suspension of sentence.
- In practice in very few cases the parties make criminal complaints in this sense

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International child maintenance

In case the debtor lives in Romania, the creditor in a foreign country

- An applicant from a foreign country can address a request
- directly, in person or through a lawyer, to the Romanian court having jurisdiction at the place where the defendant's or debtor's domicile is located.
- through the Ministry of Justice, of his/ her country forward to Ministry of Justice in Romania, who will send directly to the Court of to the competent local Bar association.

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International International child maintenance

In case the creditor lives in Romania, the debtor in a foreign country

- An applicant may submit his/ her application for maintenance through the Romanian Ministry of Justice
- Directorate for International Law and Judicial Cooperation, a department from the Ministry of Justice, considered to be the Central Authority designated pursuant to Council Regulation (EC) No 4/2009, the 2007 Hague Convention or the 1956 New York Convention.

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Enforcement of the decisions

- In the majority of the cases the maintenance pension is established in cash, the most common way of enforcement is the garnishment of salary.
- Regarding the procedure of the enforcement,
 1. the creditor requests the start of the enforcement from the bailiff
 2. The bailiff requests from the court the approval of the forced execution,
 3. After the approval communicate with the debtor's company in order to apply the garnishment.
- Uncommon are enforcement measures through the forced sale of the debtor's movable and immovable property.
- As regards the recovery of maintenance, only up to $\frac{1}{2}$ of the debtor's regular net monthly income may be subject to enforcement for amounts owed as maintenance.
- Regarding the legal provisions has to be mentioned that the right to obtain enforcement is subject to a prescription period of three years, can be suspended or annulled, if it is undue the party being entitled to have enforcement reversed.

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Personal considerations

- Even if the legislation is very clear in practice, the parties only resort requesting the maintenance obligation in Romania, regarding the international maintenance obligation usually do not apply to the Ministry of Justice, given the lack of trust in the institution, and last but not least given the extremely high costs of international litigation and their implementation.
- Moreover, since England is no longer part of Lugano Convention, Romanian families no longer have even this possibility to resort to the Ministry of Justice, they can request a maintenance decision and enforcement only in private, and many will be harmed by the costs, and ultimately this aspect will affect the interests of the children.

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Thank you for your attention!

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Number 26 of 1995

FAMILY LAW ACT, 1995

Periodical
payments and
lump sum orders.

8.—(1) On granting a decree of judicial separation, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders, that is to say:

(a) a periodical payments order, that is to say—

- (i) an order that either of the spouses shall make to the other spouse such periodical payments of such amount, during such periods and at such times as may be specified in the order, or
- (ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amount, during such period and at such times as may be so specified,

(b) a secured periodical payments order, that is to say—

- (i) an order that either of the spouses shall secure, to the satisfaction of the court, to the other spouse such periodical payments of such amounts during such period and at such times as may be so specified, or
- (ii) an order that either of the spouses shall secure, to the satisfaction of the court, to such person as may be so specified for the benefit of such (if any) dependent member of the family such periodical payments of such amounts, during such period and at such times as may be so specified,

(c) (i) an order that either of the spouses shall make to the other spouse a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified,

(ii) an order that either of the spouses shall make to such person as may be so specified for the benefit of such (if any) dependent member of the family a lump sum payment or lump sum

payments of such amount or amounts and at such time or times as may be so specified.

(2) The court may—

- (a) order a spouse to pay a lump sum to the other spouse to meet any liabilities or expenses reasonably incurred by that other spouse before the making of an application by that other spouse for an order under *subsection (1)* in maintaining himself or herself or any dependent member of the family, or
- (b) order a spouse to pay a lump sum to such person as may be specified to meet any liabilities or expenses reasonably incurred by or for the benefit of a dependent member of the family before the making of an application on behalf of the member for an order under *subsection (1)*.

(3) An order under this section for the payment of a lump sum may provide for the payment of the lump sum by instalments of such amounts as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.

(4) The period specified in an order under *paragraph (a) or (b) of subsection (1)* shall begin not earlier than the date of the application for the order and shall end not later than the death of either of the spouses concerned.

(5) (a) Upon the remarriage of the spouse in whose favour an order is made under *paragraph (a) or (b) of subsection (1)*, the order shall, to the extent that it applies to that spouse, cease to have effect, except as respects payments due under it on the date of the remarriage.

(b) If, after the grant of a decree of judicial separation, either of the spouses concerned remarries, the court shall not, by reference to that decree, make an order under *subsection (1)* in favour of that spouse.

(6) (a) Where a court makes an order under *subsection (1) (a)*, it shall in the same proceedings, subject to *paragraph (b)*, make an attachment of earnings order (within the meaning of the Act of 1976) to secure payments under the first-mentioned order if it is satisfied that the person against whom the order is made is a person to whom earnings (within the meaning aforesaid) fall to be paid.

(b) Before deciding whether to make or refuse to make an attachment of earnings order by virtue of *paragraph (a)*, the court shall give the spouse concerned an opportunity to make the representations specified in *paragraph (c)* in relation to the matter and shall have regard to any such representations made by that spouse.

- (c) The representations referred to in *paragraph (b)* are representations relating to the questions—
 - (i) whether the spouse concerned is a person to whom such earnings as aforesaid fall to be paid, and
 - (ii) whether he or she would make the payments to which the relevant order under *subsection (1) (a)* relates.
- (d) References in this subsection to an order under *subsection (1) (a)* include references to such an order as varied or affirmed on appeal from the court concerned or varied under [section 18](#).

Property adjustment orders.

9.—(1) On granting a decree of judicial separation, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make a property adjustment order, that is to say, an order providing for one or more of the following matters:

- (a) the transfer by either of the spouses to the other spouse, to any dependent member of the family or to any other specified person for the benefit of such a member of specified property, being property to which the first-mentioned spouse is entitled either in possession or reversion;
- (b) the settlement to the satisfaction of the court of specified property, being property to which either of the spouses is so entitled as aforesaid, for the benefit of the other spouse and of any dependent member of the family or of any or all of those persons;
- (c) the variation for the benefit of either of the spouses and of any dependent member of the family or of any or all of those persons of any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the spouses;
- (d) the extinguishment or reduction of the interest of either of the spouses under any such settlement.

(2) An order under *paragraph (b), (c) or (d)* may restrict to a specified extent or exclude the application of [section 18](#) in relation to the order.

(3) If, after the grant of a decree of judicial separation, either of the spouses concerned remarries, the court shall not, by reference to that decree, make a property adjustment order in favour of that spouse.

(4) Where a property adjustment order is made in relation to land, a copy of the order certified to be a true copy by the registrar or clerk of the court concerned shall, as appropriate, be lodged by him or her in the Land Registry for registration pursuant to [section 69 \(1\) \(h\)](#) of the [Registration of Title Act, 1964](#), in a register maintained under that Act or be registered in the Registry of Deeds.

(5) Where—

- (a) a person is directed by an order under this section to execute a deed or other instrument in relation to land, and
- (b) the person refuses or neglects to comply with the direction or, for any other reason, the court considers it necessary to do so,

the court may order another person to execute the deed or instrument in the name of the first-mentioned person; and a deed or other instrument executed by a person in the name of another person pursuant to an order under this subsection shall be as valid as if it had been executed by that other person.

(6) Any costs incurred in complying with a property adjustment order shall be borne, as the court may determine, by either of the spouses concerned, or by both of them in such proportions as the court may determine, and shall be so borne in such manner as the court may determine.

(7) This section shall not apply in relation to a family home in which, following the grant of a decree of judicial separation either of the spouses concerned, having remarried, ordinarily resides with his or her spouse.

Miscellaneous
ancillary orders.

10.—(1) On granting a decree of judicial separation, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, make one or more of the following orders:

- (a) an order—
 - (i) providing for the conferral on one spouse either for life or for such other period (whether definite or contingent) as the court may specify the right to occupy the family home to the exclusion of the other spouse, or
 - (ii) directing the sale of the family home subject to such conditions (if any) as the court considers proper and providing for the disposal of the proceeds of the sale between the spouses and any other person having an interest therein,
- (b) an order under [section 36](#),
- (c) an order under [section 4](#), [5](#), [7](#) or [9](#) of the [Family Home Protection Act, 1976](#),
- (d) an order under section 2 or 3 of the Act of 1981,
- (e) an order for the partition of property or under the Partition Act, 1868, and the Partition Act, 1876,
- (f) an order under section 11 of the Act of 1964.

(2) The court, in exercising its jurisdiction under *subsection (1) (a)*, shall have regard to the welfare of the spouses and any dependent member of the family and, in particular, shall take into consideration—

Financial compensation orders.

(a) that, where a decree of judicial separation is granted, it is not possible for the spouses concerned to continue to reside together, and

(b) that proper and secure accommodation should, where practicable, be provided for a spouse who is wholly or mainly dependent on the other spouse and for any dependent member of the family.

11.—(1) Subject to the provisions of this section, on granting a decree of judicial separation or at any time thereafter, the court, on application to it in that behalf by either of the spouses concerned or by a person on behalf of a dependent member of the family, may, during the lifetime of the other spouse or, as the case may be, the spouse concerned, if it considers—

(a) that the financial security of the spouse making the application (“the applicant”) or the dependent member of the family (“the member”) can be provided for either wholly or in part by so doing, or

(b) that the forfeiture, by reason of the decree of judicial separation, by the applicant or the dependent, as the case may be, of the opportunity or possibility of acquiring a benefit (for example, a benefit under a pension scheme) can be compensated for wholly or in part by so doing,

make a financial compensation order, that is to say, an order requiring either or both of the spouses to do one or more of the following:

(i) to effect such a policy of life insurance for the benefit of the applicant or the member as may be specified in the order,

(ii) to assign the whole or a specified part of the interest of either or both of the spouses in a policy of life insurance effected by either or both of the spouses to the applicant or to such person as may be specified in the order for the benefit of the member,

(iii) to make or to continue to make to the person by whom a policy of life insurance is or was issued the payments which either or both of the spouses is or are required to make under the terms of the policy.

(2) (a) The court may make a financial compensation order in addition to or in substitution in whole or in part for orders under [sections 8 to 10](#) and [12](#) and in deciding whether or not to make such an order it shall have regard to whether adequate and reasonable financial provision exists or can be made for the spouse concerned or the dependent member of the family concerned by orders under those sections.

(b) An order under this section shall cease to have effect on the remarriage or death of the applicant in so far as it relates to the applicant.

- (c) The court shall not make an order under this section if the spouse who is applying for the order has remarried.
- (d) An order under [section 18](#) in relation to an order under *paragraph (i) or (ii) of subsection (1)* may make such provision (if any) as the court considers appropriate in relation to the disposal of—
 - (i) an amount representing any accumulated value of the insurance policy effected pursuant to the order under the said *paragraph (i)*, or
 - (ii) the interest or the part of the interest to which the order under the said *paragraph (ii)* relates.

Pension adjustment orders.

12.—(1) In this section, save where the context otherwise requires—

“the Act of 1990” means the [Pensions Act, 1990](#) ;

“active member”, in relation to a scheme, means a member of the scheme who is in reckonable service;

“actuarial value” means the equivalent cash value of a benefit (including, where appropriate, provision for any revaluation of such benefit) under a scheme calculated by reference to appropriate financial assumptions and making due allowance for the probability of survival to normal pensionable age and thereafter in accordance with normal life expectancy on the assumption that the member concerned of the scheme, at the effective date of calculation, is in a normal state of health having regard to his or her age;

“approved arrangement”, in relation to the trustees of a scheme, means an arrangement whereby the trustees, on behalf of the person for whom the arrangement is made, effect policies or contracts of insurance that are approved of by the Revenue Commissioners with, and make the appropriate payments under the policies or contracts to, one or more undertakings;

“contingent benefit” means a benefit payable under a scheme, other than a payment under *subsection (7)* to or for one or more of the following, that is to say, the widow or the widower and any dependants of the member spouse concerned and the personal representative of the member spouse, if the member spouse dies while in relevant employment and before attaining any normal pensionable age provided for under the rules of the scheme;

“defined contribution scheme” means a scheme which, under its rules, provides retirement benefit, the rate or amount of which is in total directly determined by the amount of the contributions paid by or in respect of the member of the scheme concerned and includes a scheme the contributions under which are used, directly or indirectly, to provide—

- (a) contingent benefit, and

(b) retirement benefit the rate or amount of which is in total directly determined by the part of the contributions aforesaid that is used for the provision of the retirement benefit;

“designated benefit”, in relation to a pension adjustment order, means an amount determined by the trustees of the scheme concerned, in accordance with relevant guidelines, and by reference to the period and the percentage of the retirement benefit specified in the order concerned under *subsection (2)*;

“member spouse”, in relation to a scheme, means a spouse who is a member of the scheme;

“normal pensionable age” means the earliest age at which a member of a scheme is entitled to receive benefits under the rules of the scheme on retirement from relevant employment, disregarding any such rules providing for early retirement on grounds of ill health or otherwise;

“occupational pension scheme” has the meaning assigned to it by section 2 (1) of the Act of 1990;

“reckonable service” means service in relevant employment during membership of any scheme;

“relevant guidelines” means any relevant guidelines for the time being in force under section 10 (1) (c) of the Act of 1990;

“relevant employment”, in relation to a scheme, means any employment (or any period treated as employment) or any period of self employment to which a scheme applies;

“retirement benefit”, in relation to a scheme, means all benefits (other than contingent benefits) payable under the scheme;

“rules”, in relation to a scheme, means the provisions of the scheme, by whatever name called;

“scheme” means a pension scheme;

“transfer amount” shall be construed in accordance with *subsection (4)*;

“undertaking” has the meaning assigned to it by the [Insurance Act, 1989](#) .

(2) Subject to the provisions of this section, where a decree of judicial separation (“the decree”) has been granted, the court, if it so thinks fit, may, in relation to retirement benefit under a scheme of which one of the spouses concerned is a member, on application to it in that behalf at the time of the making of the order for the decree or at any time thereafter during the lifetime of the member spouse by either of the spouses or by a person on behalf of a dependent member of the family, make an order providing for the payment, in accordance with the provisions of this section, to either of the following, as the court may determine, that is to say:

(a) the other spouse and, in the case of the death of that spouse, his or her personal representative, and

(b) such person as may be specified in the order for the benefit of a person who is, and for so long only as he or she remains, a dependent member of the family,

of a benefit consisting, either, as the court may determine, of the whole, or such part as the court considers appropriate, of that part of the retirement benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme and has accrued at the time of the making of the order for the decree and, for the purpose of determining the benefit, the order shall specify—

- (i) the period of reckonable service of the member spouse prior to the granting of the decree to be taken into account, and
- (ii) the percentage of the retirement benefit accrued during that period to be paid to the person referred to in *paragraph (a) or (b)*, as the case may be.

(3) Subject to the provisions of this section, where a decree of judicial separation (“the decree”) has been granted, the court, if it so thinks fit, may, in relation to a contingent benefit under a scheme of which one of the spouses concerned is a member, on application to it in that behalf not more than one year after the making of the order for the decree by either of the spouses or by a person on behalf of a dependent member of the family concerned, make an order providing for the payment, upon the death of the member spouse, to either of the following, or to both of them in such proportions as the court may determine, that is to say:

- (a) the other spouse, and
- (b) such person as may be specified in the order for the benefit of a dependent member of the family,

of, either, as the court may determine, the whole, or such part (expressed as a percentage) as the court considers appropriate, of that part of any contingent benefit that is payable (or which, but for the making of the order for the decree, would have been payable) under the scheme.

Provisions relating to certain orders under [sections 7 to 13](#) and [18](#).

16.—(1) In deciding whether to make an order under [section 7](#), [8](#), [9](#), [10 \(1\) \(a\)](#), [11](#), [12](#), [13](#), [14](#), [18](#) or [25](#) and in determining the provisions of such an order, the court shall endeavour to ensure that such provision is made for each spouse concerned and for any dependent member of the family concerned as is adequate and reasonable having regard to all the circumstances of the case.

(2) Without prejudice to the generality of *subsection (1)*, in deciding whether to make such an order as aforesaid and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,
- (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise),
- (c) the standard of living enjoyed by the family concerned before the proceedings were instituted or before the spouses separated, as the case may be,
- (d) the age of each of the spouses and the length of time during which the spouses lived together,
- (e) any physical or mental disability of either of the spouses,
- (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial resources of the other spouse and any contribution made by either of them by looking after the home or caring for the family,
- (g) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived together and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,
- (h) any income or benefits to which either of the spouses is entitled by or under statute,
- (i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,
- (j) the accommodation needs of either of the spouses,

(k) the value to each of the spouses of any benefit (for example, a benefit under a pension scheme) which by reason of the decree of judicial separation concerned that spouse will forfeit the opportunity or possibility of acquiring,

(l) the rights of any person other than the spouses but including a person to whom either spouse is remarried.

(3) (a) The court shall not make an order under a provision referred to in *subsection (1)* for the support of a spouse if the spouse had deserted the other spouse before the institution of proceedings for the decree or, as the case may be, a decree, specified in that provision and had continued such desertion up to the time of the institution of such proceedings unless, having regard to all the circumstances of the case (including the conduct of the other spouse), the court is of opinion that it would be unjust not to make the order.

(b) A spouse who, with just cause, leaves and lives apart from the other spouse because of conduct on the part of that other spouse shall not be regarded for the purposes of *paragraph (a)* as having deserted that spouse.

(4) Without prejudice to the generality of *subsection (1)*, in deciding whether to make an order referred to in that subsection in favour of a dependent member of the family concerned and in determining the provisions of such an order, the court shall, in particular, have regard to the following matters:

(a) the financial needs of the member,

(b) the income, earning capacity (if any), property and other financial resources of the member,

(c) any physical or mental disability of the member,

(d) any income or benefits to which the member is entitled by or under statute,

(e) the manner in which the member was being and in which the spouses concerned anticipated that the member would be educated or trained,

(f) the matters specified in *paragraphs (a), (b) and (c) of subsection (2)*,

(g) the accommodation needs of the member.

(5) The court shall not make an order under a provision referred to in *subsection (1)* unless it would be in the interests of justice to do so.

(6) In this section "desertion" includes conduct on the part of one of the spouses concerned that results in the other spouse, with just cause, leaving and living apart from the first-mentioned spouse.



STATUTORY INSTRUMENTS.

S.I. No. 594 of 2019



EUROPEAN UNION (HAGUE MAINTENANCE CONVENTION)
REGULATIONS 2019

EUROPEAN UNION (HAGUE MAINTENANCE CONVENTION)
REGULATIONS 2019

Regulation

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S.I. No. 594 of 2019

EUROPEAN UNION (HAGUE MAINTENANCE CONVENTION)
REGULATIONS 2019

I, CHARLES FLANAGAN, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance approved on behalf of the European Union by Council Decision 2011/432/EU of 9 June 2011¹, make the following Regulations:

Citation

1. These Regulations may be cited as the European Union (Hague Maintenance Convention) Regulations 2019.

Interpretation

2. (1) In these Regulations -

“Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance done at The Hague on 23 November 2007;

“decision” means -

- (a) a decision within the meaning of Article 19, and
- (b) a maintenance arrangement within the meaning of Article 3(e);

“declaration of enforceability” has the meaning assigned to it by Regulation 12(4) and a reference to a declaration of enforceability includes a reference to such a declaration as made or varied -

- (a) on appeal from a determination of the Master under that Regulation, or
- (b) on appeal from a decision of the High Court on such an appeal;

“enforceable maintenance order” shall be construed in accordance with Regulation 14(1);

¹ OJ L 192 39, 22.7.2011

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 3rd December, 2019.*

“maintenance creditor” means, in relation to a decision, the person entitled to the payments for which the decision provides;

“maintenance debtor” means, in relation to a decision, the person who is liable to make a payment under the decision;

“Minister” means the Minister for Justice and Equality;

“recognition order” has the meaning assigned to it by Regulation 12(3) and a reference to a recognition order shall include a reference to such an order as made or varied -

- (a) on appeal from a determination of the Master under that Regulation, or
- (b) on appeal from a decision of the High Court on such an appeal;

“relevant district court clerk” shall be construed in accordance with Regulation 3(3);

“requesting Central Authority” means a Central Authority in a state bound by the Convention;

“state bound by the Convention” means a state, other than the State, in respect of which the Convention has entered into force in accordance with Article 60 and a reference to such a state shall be taken to include a reference to any territorial unit of that state in respect of which that state has made a declaration, pursuant to Article 61(1), that the Convention shall extend to that territorial unit.

(2) References in these Regulations to numbered Articles without qualification are references to the Articles so numbered of the Convention.

(3) Unless provided otherwise, a word or expression used in these Regulations and in the Convention has the same meaning in these Regulations as it has in the Convention.

District Court and district court clerk

3. (1) The jurisdiction vested in the District Court by these Regulations may be exercised by the judge of that Court for the time being assigned to -

- (a) where the maintenance debtor resides in the State, the district court district in which the debtor resides or carries on any profession, business or occupation, or
- (b) where the maintenance debtor does not reside in the State but is employed by a person residing or having a place of business in the State or by a body whose seat of management or control is in the State, the district court district in which the person resides or the body has its seat.

(2) For the purposes of these Regulations the Dublin Metropolitan District is deemed to be a district court area.

(3) In these Regulations, a reference to a relevant district court clerk shall be construed -

- (a) where the maintenance debtor resides in the State, as a reference to a district court clerk for the district court area in which the debtor resides or carries on any profession, business or occupation, or
- (b) where the maintenance debtor does not reside in the State but is employed by a person residing or having a place of business in the State or by a body whose seat of management or control is in the State, as a reference to a district court clerk for the district court area in which the person resides or the body has its seat.

Convention to have force of law

4. The Convention has the force of law in the State and judicial notice shall be taken of it.

Interpretation of Convention

5. (1) Judicial notice shall be taken of any judgments, concerning the Convention, delivered by courts of states bound by the Convention and a court shall, when interpreting and applying the Convention, take due account of the principles laid down by those judgments.

(2) Judicial notice shall be taken of the explanatory report prepared by Alegría Borrás and Jennifer Degeling on the Convention and that report may be considered by any court when interpreting the meaning of the Convention and shall be given such weight as is appropriate in the circumstances.

States bound by the Convention and declarations, reservations and denunciations under Convention

6. (1) The Minister may, by order declare -

- (a) that a state specified in the order is a state bound by the Convention, or
- (b) that -
 - (i) a declaration (the text of which shall be set out in the order), referred to in Article 2, 11, 16, 24, 30, 44, 59 or 61, has been made in accordance with Article 63,
 - (ii) a modification or withdrawal of a declaration (the text of which shall be set out in the order) has been made pursuant to Article 63,
 - (iii) a reservation (the text of which shall be set out in the order), referred to in Article 2, 20, 30, 44 or 55, has been made in accordance with Article 62,
 - (iv) a withdrawal of a reservation (the text of which shall be set out in the order) has been made pursuant to Article 62, or
 - (v) a denunciation (the text of which shall be set out in the order) has been made pursuant to Article 64,

to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

(2) An order that is in force under paragraph (1) shall be evidence -

- (a) as respects any declaration by the Minister in that order under subparagraph (a) of that paragraph, that any state to which the declaration relates is a state bound by the Convention, and
- (b) as respects any declaration by the Minister in that order under subparagraph (b) of that paragraph, that the declaration, reservation, modification, withdrawal or denunciation, as the case may be, was made and of its contents.

Designation of Central Authority

7. The Minister is designated as the Central Authority for the State for the purposes of the Convention and these Regulations.

Application under Article 10 to Central Authority

8. Where an application referred to in Article 10 is made by a requesting Central Authority to the Central Authority, the Central Authority shall, on behalf of the applicant, take any action which is required to be taken by it under the Convention and, in that context, references in the Convention to the

applicant, the party or other analogous terms shall be construed, where appropriate, as references to the Central Authority.

Application to Central Authority for recognition or recognition and enforcement of decision given in a state bound by Convention

9. (1) Without prejudice to the generality of Regulation 8, the Central Authority shall send an application to the Master of the High Court for determination in accordance with Regulation 12 where -

(a) the application is -

- (i) received from a requesting Central Authority, and
- (ii) in accordance with Article 10(1)(a), for the recognition or for the recognition and enforcement of a decision made in a state bound by the Convention,

and

(b) it is satisfied the requirements of Article 25, Article 30 (in so far as the decision referred to in paragraph (a)(ii) is a decision which is a maintenance arrangement) and, where applicable, Article 26, have been complied with in respect of that application.

(2) The Central Authority shall, as soon as practicable after the making of a determination by the Master of the High Court under Regulation 12 in respect of an application referred to in paragraph (1), send the following to the requesting Central Authority:

- (a) the determination of the Master of the High Court and a copy of the recognition order or declaration of enforceability made (if any), and
- (b) a statement of Article 23(5), (6), (7) and (8).

(3) The Central Authority shall send a copy of a declaration of enforceability to the relevant district court clerk for the purposes of enforcement under Regulation 14 on being notified -

(a) that either -

- (i) the Master has determined an application for the recognition and enforcement of a decision under Regulation 12 by making a declaration of enforceability and no appeal has been made in respect of that determination within the time allowed for an appeal under Article 23(6), or
- (ii) where an appeal against a determination referred in paragraph (a) has been made, that the determination has been upheld,

and

- (b) that the Master of the High Court has not made an order under Regulation 12(10).

Application to Central Authority for enforcement of decision recognised in the State

10. (1) Without prejudice to the generality of Regulation 8, and subject to paragraph (2), the Central Authority shall send an application and the documents referred to in Article 25 and, where applicable, Article 30 to the relevant district court clerk where -

- (a) the application is -
 - (i) received from a requesting Central Authority, and
 - (ii) in accordance with Article 10(1)(b), for the enforcement of a decision which is the subject of a recognition order in force in the State at the date of application,

and

- (b) it is satisfied the requirements of Article 25, Article 30 (in so far as the decision referred to in paragraph (a)(ii) is a decision which is a maintenance arrangement) and, where applicable, Article 26, have been complied with in respect of that application.

(2) The Central Authority may bring an application under paragraph (11) of Regulation 12 to the Master of the High Court for an order under paragraph (12) of that Regulation where -

- (a) the District Court does not have jurisdiction under Regulation 14 to enforce a decision which is the subject of a recognition order referred to in paragraph (1), and
- (b) the maintenance debtor has assets in the State.

Application directly to Master of High Court or District Court (Article 19(5))

11. For the purposes of Article 19(5), an application shall, in accordance with rules of court, be made -

- (a) for the recognition or the recognition and enforcement of a decision made in a state bound by the Convention, to the Master of the High Court, and
- (b) where no order has been made by the Master of the High Court under Regulation 12(10), for the enforcement of an enforceable maintenance order where -
 - (i) the decision, which is the subject of the order, relates to the payment of a lump sum (whether payable with a periodic payment or not) or where the District Court does not have jurisdiction under Regulation 14 to enforce the order and the maintenance debtor has assets in the State, to the Master of the High Court under Regulation 12(11), or
 - (ii) the District Court has jurisdiction under Regulation 14, to the District Court.

Determination by Master of High Court of application for recognition or recognition and enforcement of decision given in a state bound by the Convention

12. (1) The Master of the High Court shall, in accordance with the Convention, determine an application for the recognition or the recognition and enforcement of a decision made in a state bound by the Convention -

- (a) sent by the Central Authority to the Master under Regulation 9(1), or
- (b) made to the Master under Regulation 11(1)(a).

(2) An application referred to in paragraph (1) shall be determined by the Master of the High Court in private.

(3) Subject to paragraphs (5) and (6), where the application under paragraph (1) is for the recognition of a decision, the Master of the High Court shall by order (in these Regulations referred to as a “recognition order”) recognise the decision.

(4) Subject to paragraphs (5) and (7), where the application under paragraph (1) is for the recognition and enforcement of a decision, the Master of the High Court shall make a declaration (in these Regulations referred to as “a declaration of enforceability”) recognising the decision and declaring the decision enforceable.

(5) The Master of the High Court may refuse to make a recognition order or a declaration of enforceability on the ground set out in Article 22(a).

(6) A recognition order may provide for the recognition of all or part of the decision concerned.

(7) A declaration of enforceability may provide for the recognition and enforceability of all or part of the decision concerned.

(8) Where in accordance with the law of the state bound by the Convention, interest on a sum of money payable under a decision which is the subject of an application under paragraph (1) is recoverable under the decision at a particular rate or rates and from a particular date or time, the person liable under that decision to pay the sum of money shall also be liable to pay the interest in accordance with the particulars noted in the recognition order or declaration of enforceability, as the case may be, and the interest shall be recoverable as though it were part of the sum.

(9) Interest shall be payable on a sum payable under a decision referred to in paragraph (8) only as provided for in that paragraph.

(10) Where -

- (a) the Master of the High Court makes a declaration of enforceability in relation to a decision or part of a decision, and
- (b) the decision, to the extent it is the subject of the declaration, relates to a lump sum (whether that sum is payable with a periodic payment or not) which is payable but not paid before that declaration was made,

the Master shall, at the same time as making the declaration, by order declare the decision, to the extent it is the subject of that declaration, to be of the same force and effect as a judgment of the High Court which may be enforced by the High Court and proceedings taken on it as if it were a judgment of that Court.

(11) For the purposes of enforcing an enforceable maintenance order, the Central Authority, or an applicant under Regulation 11(b)(i), shall apply to the Master of the High Court for an order under paragraph (12) where -

- (a) the decision, which is the subject of the enforceable maintenance order, relates to the payment of a lump sum (whether payable with a periodic payment or not), or
- (b) the District Court does not have jurisdiction under Regulation 14 to enforce that enforceable maintenance order and the maintenance debtor has assets in the State.

(12) On application to him or her under paragraph (11), the Master of the High Court shall, subject to paragraph (13), by order, declare the decision, to the extent that it is the subject of the enforceable maintenance order concerned, and to the extent the decision relates to -

- (a) a sum payable under that decision as a periodic payment but not paid before the enforceable maintenance order was made,
- (b) a lump sum (not being a sum referred to in paragraph (a)) which is payable under the decision but not paid before the enforceable maintenance order was made,

to be of the same force and effect as a judgement of the High Court and such a decision, to the extent it is the subject of that enforceable maintenance order, may be enforced by the High Court and proceedings taken on it as if it were a judgment of that Court.

(13) The Master of the High Court shall not make an order under paragraph (12) in relation to an application referred to in paragraph (11)(b) unless he or she is satisfied that the maintenance debtor has assets in the State.

(14) Where the Master of the High Court makes a determination on an application referred to in paragraph (1)(a), he or she shall cause the determination and a copy of a recognition order or declaration of enforceability (if any), made by him or her under this Regulation to be sent to the Central Authority as soon as practicable after the making of the determination.

(15) Where the Master of the High Court makes, or refuses to make, a recognition order or a declaration of enforceability under this Regulation, he or she shall cause notice of its making or of such refusal to be served on the maintenance debtor and where the application is one referred to in paragraph (1)(b), the maintenance creditor, and that notice shall include a statement of Article 23(5), (6), (7) and (8).

(16) Service of a notice under paragraph (15) may be effected -

- (a) personally, or
- (b) in any manner in which service of a superior court document within the meaning of section 23 of the Courts Act 1971 may be effected in accordance with that section of that Act.

(17) Where a recognition order or declaration of enforceability is made on application under paragraph (1)(b), the Master of the High Court may provide for the payment to the applicant by the maintenance debtor of the reasonable costs of or incidental to that application.

(18) A person required to pay costs under paragraph (17) shall be liable to pay interest on the costs as if the costs were the subject of an order for the payment of costs made by the High Court on the date on which the recognition order or declaration of enforceability, as the case may be, was made.

Appeal on point of law to Court of Appeal

13. Where a determination of the Master of the High Court to make, or refuse to make, a recognition order or a declaration of enforceability under Regulation 12 has been appealed to the High Court, an appeal shall, by leave of the High Court, lie from a decision of that Court on a point of law to the Court of Appeal.

Enforcement in District Court of recognition order or declaration of enforceability

14. (1) In this Regulation, “enforceable maintenance order” means -

- (a) a recognition order, or
- (b) a declaration of enforceability.

(2) Subject to paragraph (3), the District Court has jurisdiction to enforce an enforceable maintenance order where -

- (a) the maintenance debtor resides in the State, or
- (b) he or she does not reside in the State but is employed by a person residing or having a place of business in the State or by a body whose seat of management or control is in the State.

(3) Paragraph (2) does not apply to an enforceable maintenance order -

- (a) which is a declaration of enforceability in respect of which the Master of the High Court has made an order under Regulation 12(10), or
- (b) to which Regulation 12(11)(a) applies.

(4) Where the District Court has jurisdiction to enforce an enforceable maintenance order that order shall be deemed to be an order, made on the date of the decision to which the enforceable maintenance order relates, of the

District Court under section 5, 5A, 5B or 5C of the Act of 1976 as may be appropriate for the purposes of exercising that jurisdiction and an order for the purposes of -

- (a) section 98(1) of the Defence Act 1954 (No. 18 of 1954), and
- (b) subject to the Convention, the variation or discharge of that order under section 6 of the Act of 1976.

(5) The District Court has jurisdiction under this Regulation notwithstanding that an amount payable under an enforceable maintenance order exceeds the maximum amount the District Court has jurisdiction to award under an enactment referred to in paragraph (4).

(6) For the purposes of these Regulations, where paragraph (4) applies, in addition to any sum payable under an order under section 5, 5A, 5B or 5C of the Act of 1976, there shall also be payable under the order -

- (a) any sum payable (including interest as referred to in Regulation 12(8)) under a decision, to the extent to which the decision is the subject of an enforceable maintenance order, and
- (b) to the extent to which that sum is not paid before the making of the enforceable maintenance order.

(7) Notwithstanding anything to the contrary in a decision which is the subject of an enforceable maintenance order, the maintenance debtor shall pay any sum payable referred to in paragraph (6), to the relevant district court clerk for transmission to the maintenance creditor or, if a public authority in a state bound by the Convention has been authorised by the maintenance creditor to receive the sum, to the public authority.

(8) Where any sum payable referred to in paragraph (7) is not duly paid -

- (a) the Central Authority may apply, in writing, to the relevant district court clerk for the issue of a summons under section 8 (1) of the Act of 1940, or
- (b) the Central Authority may, in writing, request the relevant district court clerk concerned to make an application to the District Court respecting that sum under section 10 of the Act of 1976.

(9) For the purposes of paragraph (8)(a), a reference to an applicant in section 8(1) of the Act of 1940 shall be construed as including a reference to the relevant district court clerk.

(10) Nothing in this Regulation shall affect the right of a maintenance creditor under an enforceable maintenance order to institute proceedings for the recovery of a sum payable to a relevant district court clerk under paragraph (7).

(11) In this Regulation -

“Act of 1940” means the Enforcement of Court Orders Act 1940 (No. 23 of 1940);

“Act of 1976” means the Family Law (Maintenance of Spouses and Children) Act 1976 (No. 11 of 1976).

Requests for appropriate measures for purposes referred to in Article 6(2)(i)

15. (1) The Central Authority shall make an application to the High Court requesting any appropriate measures for the purposes referred to in Article 6(2)(i) where -

- (a) an application has been made to it under Article 10 and the Authority receives a request for such measures from a requesting Central Authority and is satisfied the request comes within the scope of the Convention, or
- (b) the Authority receives a request in accordance with Article 7(1) for the taking of such measures from a requesting Central Authority.

(2) The Central Authority may make an application to the High Court requesting any appropriate measures for the purposes referred to in Article 6(2)(i) where the Authority receives a request in accordance with Article 7(2) for the taking of such measures for those purposes from a requesting Central Authority.

(3) The High Court may, on application to it under paragraph (1) or (2) direct the taking of such appropriate measures as it considers necessary having regard to the Convention if the Court would have power to do so in proceedings, other than in an application under this Regulation, that are within its jurisdiction.

Taking of evidence for purposes of Article 6(2)(g) and Article 7

16. (1) The Central Authority shall refer a request for appropriate measures to the Master of the High Court where the Central Authority is satisfied the request comes within the scope of the Convention and is made to it by a requesting Central Authority -

- (a) for the purposes referred to in Article 6(2)(g), or
- (b) in accordance with Article 7(1), for the purposes of Article 6(2)(g).

(2) The Central Authority may refer a request for appropriate measures to the Master of the High Court where the Central Authority is satisfied the request comes within the scope of the Convention and is made to it by a requesting Central Authority in accordance with Article 7(2) for the purposes of Article 6(2)(g).

(3) The Master of the High Court shall, in accordance with paragraph (4), on receipt of a request referred to in paragraph (1) or (2), where he or she is satisfied the measures requested are necessary to satisfy the requirements of the Convention, request a judge of the District Court to take the evidence of a person residing in the State.

(4) The Master of the High Court shall make the request under paragraph (3) to a judge of the District Court for the time being assigned to the district court district in which the person to whom the request is made resides.

(5) Where a judge of the District Court is requested to take evidence under paragraph (3), a district court clerk for the district court area in which the person to whom the request is made resides shall cause notice of the time and place at which evidence is to be taken to be served on the person concerned, the Central Authority for communication to the requesting Central Authority and to such other persons as the judge thinks fit.

(6) A judge of the District Court taking evidence in accordance with this Regulation shall have the same powers in relation to compelling the attendance of persons, the production of documents and the taking of evidence as the District Court has on the hearing of an action.

(7) The judge of the District Court shall take the evidence as requested by the Master of the High Court under paragraph (3) and shall cause a record thereof to be sent to the Central Authority for transmission to the requesting Central Authority concerned.

(8) Where it is not possible to take the evidence within a reasonable period of time, not exceeding three months from the receipt of the request by the Central Authority, the judge of the District Court to whom the request has been made shall cause the reasons for the inability to take the evidence or for any delay in taking the evidence to be sent to the Central Authority for transmission to the requesting Central Authority concerned.

Proof and admissibility of decisions and certain translations

17. (1) For the purposes of the Convention and these Regulations a document, duly authenticated, which purports to be a copy of a decision within the meaning of Article 19 made in a state bound by the Convention shall without further proof be presumed to be a complete text of the decision, unless the contrary is shown.

(2) A document shall be regarded as being duly authenticated for the purposes of paragraph (1) if the document -

- (a) purports to bear the seal of the judicial authority or administrative authority referred to in Article 19, or
- (b) purports to be certified by a judge, officer of the court or administrative authority to be a true copy of the decision within the meaning of Article 19.

(3) A document which -

- (a) purports to be a translation of a decision given in a state bound by the Convention, and
- (b) is certified as correct by a person competent to do so,

shall be admissible as evidence of the text of the decision of which it purports to be a translation.

Currency of payments

18. (1) A sum of money payable under a decision, to the extent that the decision is the subject of a recognition order or a declaration of enforceability, shall be payable in the currency of the State.

(2) If the sum referred to in paragraph (1) is stated in the decision in any other currency, payment shall be made on the basis of the exchange rate prevailing between the currency of the State and the other currency on the date the recognition order or declaration of enforceability, as the case may be, is made.

(3) For the purposes of this Regulation, a certificate purporting to be signed by an officer of an authorised institution and to state the exchange rate prevailing on a specified date between a specified currency and the currency of the State shall be admissible as evidence of the facts stated in the certificate.

(4) In this Regulation, 'authorised institution' means -

- (a) a credit institution (as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013²),
- (b) a trustee savings bank within the meaning of the Trustee Savings Banks Acts 1989 and 2001, or
- (c) An Post.

² OJ L 176 27.6.2013, p.1.

Request by Central Authority for information and documentation

19. (1) The Central Authority may, for the purposes of the performance by it of its functions under the Convention and these Regulations, request a person to provide any of the information specified in paragraph (2) or documentation specified in paragraph (3), or both, as the case may be, held by, or in the possession of, that person, within such period of time as may be specified in the request, or such period of time as may be subsequently agreed between the Central Authority and that person.

(2) The information referred to in paragraph (1) is:

- (a) the address of a maintenance debtor or of a maintenance creditor;
- (b) details of the income and financial circumstances of a maintenance debtor or maintenance creditor;
- (c) the identity and contact details of the employer of the maintenance debtor or maintenance creditor;
- (d) details of any bank account held by the maintenance debtor;
- (e) details, including the location, of the assets of a maintenance debtor or maintenance creditor.

(3) The documentation referred to in paragraph (1) is:

- (a) where any information referred to in paragraph (2) is or has been the subject of a request under paragraph (1), any supporting documentation considered necessary for that information;
- (b) any other documentary evidence required to enable the Central Authority to comply with a request received from a requesting Central Authority for the purposes referred to in Article 6(2)(g) or received, in accordance with Article 7(1), for the purposes of Article 6(2)(g).

(4) The person to whom a request is made under paragraph (1) shall, within the period of time referred to in that paragraph, provide the information or documentation, or both, as the case may be, requested to the extent it is held by, or in the possession of, that person.

(5) Where the person to whom a request has been made fails to comply with a request within the period of time referred to in paragraph (1), the Central Authority may apply to the District Court for an order directing compliance with the request and the Court may, where it is satisfied that it is appropriate to do so, order that person to provide such information or documentation, or both as the case may be.

(6) The Central Authority may, where necessary for the performance of its functions under the Convention, send the information or documentation, or both, as the case may be, to a requesting Central Authority.

(7) For the purposes of this regulation, the jurisdiction vested in the District Court may be exercised by the judge of that Court for the time being assigned to the district court district in which the person to whom the request is made resides or carries on any profession, business or occupation.



GIVEN under my Official Seal,
25 November, 2019.

CHARLES FLANAGAN,
Minister for Justice and Equality.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The European Union (Hague Maintenance Convention) Regulations 2019 ensures that the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance done at The Hague on 23 November 2007 (the “Hague Maintenance Convention”) has an appropriate “fit” in the Irish system. The Convention seeks to ensure that maintenance obligations are respected in cases with an international dimension by providing for a network of co-operation between central authorities and by providing for a system of recognition and enforcement insofar as relevant judgments are concerned.

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(LCJ-4) 85. 11/19. Propylon.

VAN DEN BOOGAARD v LAUMEN

(Case C-220/95)

European Court of Justice (Fifth Chamber)

J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann,
D.A.O. Edward, J.-P. Puissechet and P. Jann (Rapporteur)

27 February 1997

Financial relief – Capitalised maintenance – Enforcement abroad – Wife seeking to enforce lump sum order in Netherlands under Brussels Convention – Whether Convention applicable – Whether purpose of lump sum is to ensure maintenance or to determine property rights

The husband and wife were married in the Netherlands in 1957. The parties moved to London in 1982. The marriage was dissolved by the High Court in 1990. The wife applied for ancillary relief and was awarded, *inter alia*, a lump sum by way of capitalised maintenance in the sum of £340,000 on a clean break basis. In 1992 the wife applied to the Dutch court to enforce the ancillary relief order in the Netherlands. The Dutch court referred to the European Court of Justice for its opinion as to whether the award could be enforced under the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, or whether the application of the Brussels Convention was excluded under Art 1 of the Convention on the basis that the order dealt with property rights arising out of a matrimonial relationship.

Held – referring the matter back to the Dutch court –

(1) The Brussels Convention laid down jurisdictional rules and provided for the reciprocal enforcement of judgments in civil and commercial matters throughout the Member States. Article 1 of the Brussels Convention provided that it did not apply to orders relating to property rights arising from a marriage. Under Art 5 of the Convention, however, it was provided that proceedings relating to maintenance could, *inter alia*, be taken in the State in which a maintenance creditor was domiciled or habitually resident.

(2) It was clear from the text of the Convention that ancillary relief orders could not be enforced outside England and Wales under the Brussels Convention insofar as they related to rights of property arising out of the matrimonial relationship, but proceedings could be taken in another Member State to enforce a maintenance order made by the court in England and Wales.

(3) On an application for ancillary relief in England and Wales the court had the task of regulating in a single decision the property rights as between the parties and the future payment of maintenance by one party to the other. The English courts enjoyed a wide discretion to make financial provision in both respects. Where leave to enforce an English order under the Brussels Convention in the courts of another Member State was sought, the enforcing court was therefore required to distinguish between those rights as found by the English court which related to property only, which were outwith the scope of the Convention, and those which related to maintenance, which could be enforced under Art 5.

(4) That distinction could be drawn by reference to the specific aims of the decision given as set out in the judgment of the court. Where a decision was solely concerned with the division of property between the spouses, any order would not be enforceable under the Brussels Convention. A decision designed to enable a spouse to provide for him/herself, or where the needs or resources of each party were taken into account, went to maintenance, however, and as such was enforceable under the Convention.

(5) In the present case, the fact that maintenance was capitalised rather than periodic did not affect the position that it was none the less a maintenance right rather than a property right. The choice of method of payment did not alter the court's objective in making an award in the first place. Since the purpose of the award was to ensure the former spouse's maintenance, the order fell within the Brussels Convention and was enforceable under its provisions.

Statutory provision considered

Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters¹

Case referred to in judgment

Enderby v Frenchay Health Authority and Health Secretary (C-127/92) [1994] 1 All ER 495, ECJ

Advocate General: *F.G. Jacobs*

Registrar: *H. von Holstein, Deputy Registrar*

Written observations:

F. Cede, Ambassador at the Federal Ministry of Foreign Affairs, acting as agent, for the Austrian Government

B.J. Drijber, acting as agent, for the Commission

Oral observations:

M. Wigleven (Amsterdam Bar) for the husband

R.Th.R.F. Carli (Hague Bar) for the wife

B.J. Drijber for the Commission

JUDGMENT:

(1) By judgment of 14 June 1995, received at the Court on 21 June 1995, the Arrondissementsrechtbank te Amsterdam referred to the Court for a preliminary ruling under the Protocol of 3 June 1971, on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p 77) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p 1, hereinafter 'the Brussels Convention') a question on the interpretation of the second paragraph of Art 1 of that Convention.

(2) The question has been raised in proceedings between Antonius van den Boogaard and Paula Laumen concerning an application for enforcement, in the Netherlands, of a judgment given on 25 July 1990 by the High Court of Justice of England and Wales.

(3) According to the order for reference, Mr Van den Boogaard and Miss Laumen were married in the Netherlands in 1957 under the regime of community of property. In 1980 they entered into a marriage contract, again in the Netherlands, which altered their matrimonial regime into one of separation of goods. In 1982 they moved to London. By judgment of 25 July 1990 the High Court dissolved the marriage and also dealt with an

1 Editorial note: the Convention is set out in Sch 1 to the Civil Jurisdiction and Judgments Act 1982, by virtue of which it has the force of law in the UK.

application made by Miss Laumen for full ancillary relief. Since the wife sought a 'clean break' between herself and her husband, the English court awarded her a capital sum so that periodic payments of maintenance would be unnecessary. It also held that the Netherlands' separation of goods agreement was of no relevance for the purposes of its decision in the case.

(4) In its decision the High Court set the total amount which Miss Laumen should be awarded in order to provide for herself at £875,000. Part of that amount, £535,000, was covered by her own funds, by the sale of movable property, by the transfer of a painting and, finally, by the transfer of immovable property. For the rest, the English court ordered Mr Van den Boogaard to pay Miss Laumen a lump sum of £340,000, to which was added £15,000 to meet the costs of earlier proceedings.

(5) By application lodged on 14 April 1992 at the Arrondissementsrechtbank te Amsterdam, Miss Laumen sought enforcement of the English judgment, relying on the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations (hereinafter 'the Hague Convention').

(6) On 21 May 1992 the President of the Arrondissementsrechtbank granted that application.

(7) On 19 July 1993 Mr Van den Boogaard appealed against the grant of leave to enforce.

(8) The Arrondissementsrechtbank te Amsterdam, which had jurisdiction to hear and determine that appeal, was uncertain whether the High Court's judgment of 25 July 1990 was to be classified as a 'judgment given in matters relating to maintenance', in which case leave to enforce would be properly granted, or whether it was to be classified as a 'judgment given in a matter relating to rights in property arising out of a matrimonial relationship' in which the case the Hague Convention could provide no basis for enforcement.

(9) The Amsterdam court considered that the High Court's judgment had such consequences for the parties' relations as regards property rights that it could not be regarded as a 'decision in respect of maintenance obligations' within the meaning of Art 1 of the Hague Convention. It therefore considered that enforcement was not to be granted on the basis of that Convention. It then went on to consider whether the Brussels Convention could provide a basis for granting leave for enforcement.

(10) Article 1 of the Brussels Convention provides:

'This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
...

(11) Article 5 of the Convention provides:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

- 1 ...
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties; ...'

(12) The first paragraph of Art 57 of the Brussels Convention provides:

'This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.'

(13) Article 23 of the Hague Convention is worded as follows:

'This Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.'

(14) Unsure about the interpretation to be given to the Brussels Convention, the Arrondissementsrechtbank te Amsterdam referred the following question to the Court for a preliminary ruling:

'Must the decision of the English judge, which in any case relates in part to a maintenance obligation, be regarded as a decision which relates (in part) to rights in property arising out of a matrimonial relationship within the meaning of indent 1 of the second paragraph of Article 1 of the Brussels Convention even though:

- (a) the income requirement is capitalised;
- (b) an order was made to transfer the house and the De Heem painting which, according to the decision, belong to the husband;
- (c) in his decision, the English judge himself expressly stated that he did not regard the marriage settlement as binding;
- (d) it cannot be made out from that decision to what extent the factor mentioned in (c) influence the English judge's decision?'

(15) By this question the national court is asking in substance whether a decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse is excluded from the scope of the Brussels Convention by virtue of point 1 of the second paragraph of Art 1 thereof on the ground that it relates to rights in property arising out of a matrimonial relationship, or whether it may be covered by that Convention on the ground that it relates to maintenance. It also inquires whether the fact that the court of origin disregarded a marriage contract in arriving at its decision is relevant.

(16) As a preliminary point, it must be observed that at the hearing it was

asserted that Mr Van den Boogaard had lodged an appeal after the 2-month period laid down in Art 36 of the Brussels Convention for appealing against decisions authorising enforcement had expired. That fact does not affect in any way the Court's jurisdiction to give a preliminary ruling since, according to settled case-law, it is solely for national courts before which disputes are brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court (see the judgment in *Enderby v Frenchay Health Authority and Health Secretary (C-127/92)* [1994] 1 All ER 495, para 10).

(17) It must also be observed that, for the reasons explained by the Advocate General in paras 24 to 29 of his Opinion, the Hague Convention, by virtue of Art 23 thereof, does not preclude application of the Brussels Convention, notwithstanding Art 57 of the latter Convention.

(18) It is common ground that the Brussels Convention does not define 'rights in property arising out of a matrimonial relationship' or 'maintenance'. These two terms must be distinguished, however, since only maintenance is covered by the Brussels Convention.

(19) As is stated in the Schlosser Report, in no legal system of a Member State 'do maintenance claims between spouses derive from rules governing "matrimonial regimes" ' (Report on the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and to the Protocol on its interpretation by the Court of Justice, OJ 1979 C 59, p 71, para 49).

(20) As the Advocate General points out in paras 54 to 62 of his Opinion, divorce courts in England and Wales have a wide discretion to make financial provision. They may, in particular, order periodical payments or lump sum payments to be made and ownership in property belonging to one spouse to be transferred to the former spouse. Thus, they have the task of regulating, in a single decision, the matrimonial relationships and maintenance obligations arising from dissolution of a marriage.

(21) Owing precisely to the fact that on divorce an English court may, by the same decision, regulate both the matrimonial relationships of the parties and matters of maintenance, the court from which leave to enforce is sought must distinguish between those aspects of the decision which relate to rights in property arising out of a matrimonial relationship and those which relate to maintenance, having regard in each particular case to the specific aim of the decision rendered.

(22) It should be possible to deduce that aim from the reasoning of the decision in question. If this shows that a provision awarded is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be concerned with maintenance. On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship and will not therefore be enforceable under the Brussels Convention. A decision which does both these things may, in accordance with Art 42 of the Brussels Convention, be enforced in part if it clearly shows the aims to

which the different parts of the judicial provision correspond.

(23) It makes no difference in this regard that payment of maintenance is provided for in the form of a lump sum. This form of payment may also be in the nature of maintenance where the capital sum set is designed to ensure a predetermined level of income.

(24) In the present case, as the Advocate General points out in para 59 of his Opinion, the court of origin was under an obligation to consider whether it had to impose a clean break between the spouses and to order payment of a lump sum instead of periodical payments. It is clear that the choice of method of payment made by the court of origin cannot alter the nature of the aim pursued by the decision.

(25) Likewise, the fact that the decision of which enforcement is sought also orders ownership in certain property to be transferred between the former spouses cannot call in question the nature of that decision as an order for the provision of maintenance. The aim is still to make provision, by means of a capital sum, for the maintenance of one of the former spouses.

(26) Finally, for the reasons explained by the Advocate General in paras 69 to 72 of his Opinion, the English court's statement that it did not consider itself bound by the separation of goods agreement should be read in its context and in any event is not relevant for the purposes of defining the nature of the decision in question.

(27) Consequently, the answer to be given must be that a decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the Brussels Convention if its purpose is to ensure the former spouse's maintenance. The fact that in its decision the court of origin disregarded a marriage contract is of no account in this regard.

Costs

(28) The costs incurred by the Austrian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.


On those grounds, THE COURT (Fifth Chamber), in answer to the question referred to it by the Arrondissementsrechtbank te Amsterdam by judgment of 14 June 1995, hereby rules:

A decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on

the accession of the Hellenic Republic, if its purpose is to ensure the former spouse's maintenance. The fact that in its decision the court of origin disregarded a marriage contract is of no account in this regard.

CHRISTOPHER WAGSTAFFE
Barrister

**INTERNATIONAL CASE
PROCESSING UNDER THE
2007 HAGUE CONVENTION**



U.S. Department of Health and Human Services

Office of Child Support Enforcement
Division of Policy and Training

1

**U.S. Central Authority & Public Bodies Performing
Functions under Article 6**

- HHS who, in turn, has delegated Central Authority functions to OCSE
- OCSE's primary Article 6 function – location of debtor or creditor
 - U.S. state of residence
- HHS has designated state IV-D child support agencies as public bodies to perform functions under Article 6, under the supervision of OCSE
 - Transmission and receipt of Convention applications
 - Initiation or facilitation of institution of proceedings in respect of such applications
- Structure of U.S. state child support enforcement agencies:
administrative – judicial – combination

2

Other OCSE Activities in Convention Cases

- Provide policy guidance, tools, and training to both state child support workers and Convention countries
- Respond to customer service inquiries
 - Parents living in Convention countries
 - Parents from U.S. when other parent lives in Convention country
 - State and local child support offices
 - Central Authority in Convention country
 - Congressional inquiries on behalf of parents
 - Other inquiries (attorneys, researchers, etc.)



3

Role of Requested Central Authority State Child Support Enforcement Agencies

- Mandatory Functions – Article 6 of Convention
 - Legal assistance, where needed
 - Location of debtor or creditor
 - Financial information about debtor or creditor
 - Amicable solutions
 - Ongoing enforcement, including any arrears
 - Collection and expeditious transfer of payments
 - Obtaining of documentary or other evidence
 - Assistance in establishing parentage
 - Proceedings to obtain any necessary provisional measures that are territorial in nature, in order to secure outcome of pending application
 - Service of documents



4

Role of Requested Central Authority State Child Support Enforcement Agencies (cont'd)

- Responsibilities – Article 12 of Convention

- Within 6 weeks from receipt of application

- Send acknowledgment
 - Inform requesting Central Authority of steps taken
 - Request any needed documents and information
 - Provide requesting Central Authority with name and contact details of person/unit responsible for answering questions about application



- Within 3 months of acknowledgment

- Inform requesting Central Authority of application status

5

Responsibilities of Central Authorities in Requesting and Requested States – Article 12 of Convention

- Keep each other informed of
 - Person or unit responsible for case
 - Progress of case
- Provide timely responses to inquiries
- Process a case as quickly as a proper consideration of the issues will allow
- Employ most rapid and efficient means of communication at their disposal



6

Applications through Central Authority

CREDITOR

- Establishment of a Decision, including, if necessary, Determination of Parentage
 - No existing order
 - Recognition of foreign support order refused for certain reasons
- Recognition or Recognition and Enforcement of a Foreign Decision
- Enforcement of a Decision Made or Recognized in Requested State
- Modification of a Decision
 - Decision made in requested State
 - Decision made in State other than requested State

DEBTOR

- Recognition of a Foreign Decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested State
- Modification of a Decision
 - Decision made in requested State
 - Decision made in State other than requested State

7

Application vs. Direct Request

Can an applicant request services from any Central Authority?

- No. In order to receive services of a Central Authority under the Convention, the applicant must transmit the application through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State.

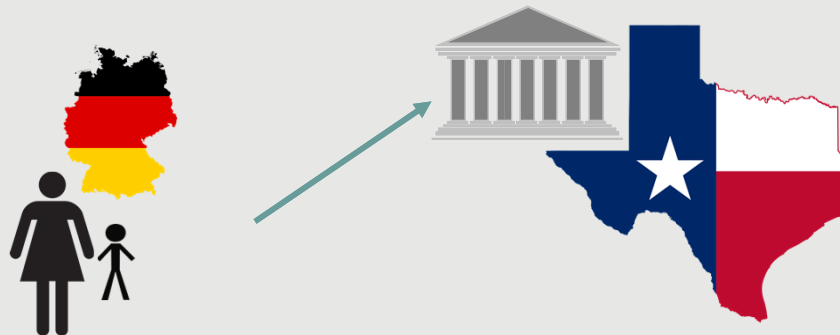


8

Application vs. Direct Request (cont'd)

Can an applicant proceed without using Central Authority services?

- Yes. An applicant from a Contracting State can also make a direct request to a court in the requested State without Central Authority services.



9

Domestic Law: UIFSA 2008 UNIFORM INTERSTATE FAMILY SUPPORT ACT

- The 2007 Hague Convention is implemented in the U.S. through a domestic law entitled, **the Interstate Uniform Family Support Act (UIFSA)**. All states were required to enact UIFSA as a condition of receiving federal funding for their child support program.
- UIFSA applies to both private or public cases.
- Recognition and Enforcement of **Maintenance Arrangements** under Conv.Art. 30, is addressed in UIFSA Section 710, Maintenance Agreements are referred to as **“Foreign Support Agreements.”**

10

Issuing Country – Recognition and Enforcement

If a Convention application requests recognition and enforcement of an order, does it matter which country issued the order?

- Yes. The Convention requires that the issuing country be a Contracting State
 - A Contracting State may seek recognition and enforcement of its own order; or
 - A Contracting State may seek recognition and enforcement of an order issued by another Contracting State

11

Issuing Country – Modification

If a Convention application requests modification of an order, does it matter which country issued the order?

- No. An applicant in a Contracting State may request modification of an order issued by a non-Contracting State. HOWEVER ...
 - Any modification will be processed under the law of the requested State
 - If the order is modified by a Contracting State, the applicant may seek recognition and enforcement of the order in any Contracting State because the modified order is an order issued by a Contracting State

12

Specific Measures – Article 7(I)

- Request by Central Authority to another Central Authority for assistance when no Article 10 application is pending
 - Location of debtor or creditor
 - Financial information about debtor or creditor
 - Obtaining of documentary or other evidence
 - Assistance in establishing parentage
 - Institution of proceedings to obtain any provisional measures that are territorial in nature and necessary to secure the outcome of a pending support application
 - Service of documents
- Must be supported by reasons
- Requested Central Authority must take appropriate measures if satisfied they are necessary to help a potential applicant:
 - Make an application under Article 10, or
 - Determine whether such an application should be initiated

13

Required Documents: Incoming Application for Recognition and Enforcement

Required by UIFSA Section 706	When Used	Form/Document Used
Transmittal	Always	Convention Transmittal
Application	Always	Convention Application
	If risk of harm	Convention Restricted Information on the Applicant
Complete text of order	Always unless your state allows an abstract or extract of order	Order itself or Convention Abstract, if acceptable
Record stating order is enforceable in issuing country	Always	Convention Statement of Enforceability

14

Required Documents: Incoming Application for Recognition and Enforcement (cont'd)

Required by UIFSA Section 706	When Used	Form/Document Used
Record attesting to proper notice and opportunity to be heard	Always if respondent did not appear and was not represented	Convention Statement of Proper Notice
Record of arrears	Always if there are any	Domestic document showing amount and date calculated
Information about obligor	Always	Convention Financial Circumstances form (for applications by creditor only. Complete sections related to obligor)
Record showing reqt for automatic adjustment and explaining how to adjust or index support amount	Always if order provides for automatic adjustment or indexation	Domestic document

15

Defenses – Section 708, UIFSA (2008)

Tribunal must recognize and enforce a registered Convention support order, unless respondent timely raises and proves:

- Recognition and enforcement of order is manifestly ***incompatible with public policy***, including failure of issuing tribunal to observe minimum standards of due process
- Issuing tribunal ***lacked personal jurisdiction*** consistent with Section 201
- Order is ***not enforceable*** in issuing country
- Order was obtained by ***procedural fraud***
- A record transmitted under Section 706 ***lacks authenticity/integrity***
- ***Pending proceeding filed first***

16

Defenses (cont'd)

- Order ***incompatible with more recent support order***, which is entitled to recognition and enforcement
- Alleged ***arrears have been paid***
- If default order, there was a ***lack of due process*** regarding notice and opportunity to be heard
- Order was made in ***violation of Section 711*** (limitation on modification jurisdiction)

17

Bases for Jurisdiction: UIFSA Section 201

- In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this State may exercise personal jurisdiction over a nonresident individual [or the individual's guardian or conservator] if:
- the individual is personally served with [citation, summons, notice] within this State state;
- the individual submits to the jurisdiction of this State state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- the individual resided with the child in this State state;
- the individual resided in this State state and provided prenatal expenses or support for the child;
- the child resides in this State state as a result of the acts or directives of the individual;
- the individual engaged in sexual intercourse in this State state and the child may have been conceived by that act of intercourse;
- the individual asserted parentage of a child in the [putative father registry] maintained in this State state by the [appropriate agency]; or
- there is any other basis consistent with the constitutions of this State state and the United States for the exercise of personal jurisdiction.



18

Possible Application Outcomes

- Recognition and enforcement
 - Partial recognition and enforcement
 - Recognition refused because of valid defense
 - Recognition not possible because of U.S. reservation
-
- If recognition and enforcement is not possible, may seek to establish an order

19

Foreign Support Agreement

- Review by tribunal
 - May vacate registration on own motion only if finding that recognition and enforcement would be manifestly incompatible with public policy
 - If respondent challenges, may refuse recognition and enforcement if it finds:
 - Recognition and enforcement **manifestly incompatible with public policy**
 - Agreement obtained by fraud or falsifications
 - Agreement is incompatible with support order involving same parties and purpose if support order is entitled to recognition and enforcement under UIFSA
 - Record submitted with application lacks authenticity or integrity
- Documents
 - Complete text of foreign support agreement
 - Record stating agreement is enforceable as a support order in issuing country

20

Central Authority Costs – Article 8



- Each Central Authority must bear its own costs in implementing the Convention
- Central Authorities may not charge an applicant for their services under the Convention except for exceptional costs arising from a request for a specific measure under Article 7
 - Requested Central Authority may not recover exceptional costs related to a specific measure without prior consent of the applicant

21

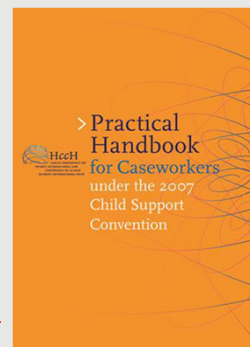
Hague Child Support Convention – Resources

<https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support>

- Convention text
- Explanatory report
- Forms
- Country Profiles
- Handbook for caseworkers

OCSE Website

<https://www.acf.hhs.gov/css/partners/international>



22

Resources for International Case Processing in the United States of America

U.S. Department of Health and Human Services/Office of Child Support Enforcement (OCSE), International Support Enforcement

List of Resources available on (OCSE) webpage with webpage links:

<https://www.acf.hhs.gov/css/partners/international>

Resources

Convention Documents

- Text of Hague Convention
- Hague Convention Country Profiles
- Practical Handbook for Caseworkers (PDF)
- Hague Conference on Private International Law, Child Support
- Explanatory Report on the Convention

Other Resources

- Hague Child Support Convention Judicial Guide - 2018.pdf (PDF)
- Judicial Bench Cards for UIFSA and Hague Convention Cases (IM-19-05)
- U.S. Ratification of the Hague Child Support Convention (DCL-16-11)
- Uniform Interstate Family Support Act (2008) and Hague Treaty Provisions (IM-15-01)
- Uniform Interstate Family Support Act 2008 Visit
- Federal Register Notice: Designating State IV-D Agencies as "Public Bodies" under the Hague Convention (PDF)

UIFSA: <https://www.uniformlaws.org/viewdocument/final-act-with-comments-120?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb&tab=librarydocuments>

Federal Regulations for Intergovernmental Cases: 45 Code of Federal Regulations (CFR) section 303.7: <https://www.ecfr.gov/current/title-45/subtitle-B/chapter-III/part-303/section-303.7>

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