



*Project No JUST/2010/JCIV/AG/0011-30-CE-0421092/00-75 „Developments in the field of cross-border family matters within EU: maintenance obligations and law applicable to divorce”*

**Training course “Jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations”**

**June 11, 2012**

**Council Regulation (EC) No 4/2009 of  
18 December 2008 on jurisdiction, applicable  
law, recognition and enforcement of decisions  
and cooperation in matters relating to  
maintenance obligations – Central Authorities**

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June 11-13, 2012*



# Designation of Central Authorities

Each Member State shall designate a Central Authority to discharge the duties which are imposed by this Regulation on such an authority (Article 49 (1) of Regulation No.4/2009), Federal Member States shall be free to appoint more than one Central Authority.

The designation of the Central Authority, their contact details, and where appropriate the extent of their functions shall be communicated by each Member State to the Commission

Central Authority of particular Member State can be found at:

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/mo\\_centralauthorities\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/mo_centralauthorities_lv.htm)

Latvian Central Authority of Regulation  
No.4/2009 :

**Administration of the Maintenance  
Guarantee Fund**

<http://www.ugf.gov.lv/eng/>



# **General functions of Central Authorities of Regulation No.4./2009 (Article 50)**

## **1. Central Authorities shall:**

- (a) cooperate with each other, including by exchanging information, and promote cooperation amongst the competent authorities in their Member States to achieve the purposes of this Regulation;**
- (b) seek as far as possible solutions to difficulties which arise in the application of this Regulation.**

## **2. Central Authorities shall take measures to facilitate the application of this Regulation and to strengthen their cooperation.**

# **Specific functions of Central Authorities of Regulation No.4./2009 (Article 51)**

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

- (a) transmit and receive such applications;
- (b) initiate or facilitate the institution of proceedings in respect of such applications.

2. In relation to such applications Central Authorities shall take all appropriate measures:

- (a) where the circumstances require, to provide or facilitate the provision of legal aid;
- (b) to help locate the debtor or the creditor, in particular pursuant to Articles 61, 62 and 63;
- (c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets, in particular pursuant to Articles 61, 62 and 63;
- (d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
- (e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
- (f) to facilitate the collection and expeditious transfer of maintenance payments;
- (g) to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001;
- (h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
- (i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;
- (j) to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007.



# **Function of transmit and receiving of applications of Central Authorities - I**

Any person living in Latvia may turn to the central authority of Latvia responsible for application of the Regulation No.4/2009, i.e. the Administration of the Maintenance Guarantee Fund, in order to achieve enforcement of a decision taken by Latvian authorities on recovery of maintenance (maintenance for children or maintenance for parents, or means necessary to ensure or maintain the previous level of welfare of the spouse) in any other Member State. The Administration of the Maintenance Guarantee Fund shall prepare all and any documents and forwards the application of this person on the enforcement of a decision taken by Latvian authorities on recovery of maintenance to the relevant foreign central authority responsible for application of the Regulation No.4/2009, which in turn carries out the relevant measures in the respective country to achieve the enforcement of the decision taken by Latvian authorities. Same refers to the situation, where a person living in Latvia wishes to achieve decision-taking on recovery of maintenance in a foreign country, i.e. any other Member State, should the defendant live in that country. Considering the principle of reciprocity, similar guarantees shall be ensured for persons living in other Member States, but turning to Latvian authorities in same matters.

# Function of transmit and receiving of applications of Central Authorities - II

According to the Regulation No.4/2009 there are special forms for the forwarding of applications through the central authorities.

- Annex IV of the Regulation No.4/2009 includes the Form with a view to recognition, declaration of enforceability or enforcement
- Annex VII includes the Form with the view to obtain or have modified a decision in matters relating to maintenance obligations.
- These application forms are filled in by both parties – the requesting central authority and the applicant – the maintenance creditor.
- Should Latvia from any other Member State receive such filled-in forms according to Annex VI and Annex VII of the Regulation No.4/2009, these shall be regarded accordingly:
  - The application form pursuant to Annex VI shall be deemed as the submission for recognition of decision of maintenance obligations from a foreign country (Article 638 (2<sup>1</sup>) of the Civil Procedure Law of Latvia)
  - The application form pursuant to Annex VII shall be deemed as foreign claim statement in maintenance obligations case (Article 128(4) of the Civil Procedure Law of Latvia)
- If person living in another EU Member State, applies directly, not through Central Authorities, to Latvian court/ bailiff in order to establish decision or to recognize and enforce or enforce foreign decision, these application forms shall not be filed in, but person shall follow Civil Procedure Law of Latvia



## **Function of Central Authorities of initiation or facilitation of the institution of proceedings in respect of applications**

- This function is logical, considering the function of transmit and receiving of applications and this function is closely related to the function of providing legal aid.
- In Latvia Central Authority of of Regulation No.4/2009 (the Administration of the Maintenance Guarantee Fund) as representative of a foreign, i.e. other Member State, maintenance creditor and sometimes also of a debtor shall itself start the proceedings in relation to the applications.
- Still in other countries other solutions may be applied, therefore the wording of the Regulation No.4/2009 is that flexible (to initiate or facilitate the institution of proceedings). In other countries, for example, the Central Authority may transmit such application received from foreign countries to other authority or body, for example, to a law office, which shall start proceedings in relation to the foreign applications as the representative of a maintenance creditor and sometimes representative of a debtor.

# Function of Central Authorities of provision or facilitation of the provision of legal aid and legal aid in Regulation No.4/2009 - I

Article 45 “Content of legal aid” of Regulation No.4/2009 provides:

“Legal aid granted under this Chapter shall mean the assistance necessary to enable parties to know and assert their rights and to ensure that their applications, lodged through the Central Authorities or directly with the competent authorities, are fully and effectively dealt with. It shall cover as necessary the following:

- (a) pre-litigation advice with a view to reaching a settlement prior to bringing judicial proceedings;
- (b) legal assistance in bringing a case before an authority or a court and representation in court;
- (c) exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings;
- (d) in Member States in which an unsuccessful party is liable for the costs of the opposing party, if the recipient of legal aid loses the case, the costs incurred by the opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seised;
- (e) interpretation;
- (f) translation of the documents required by the court or by the competent authority and presented by the recipient of legal aid which are necessary for the resolution of the case;
- (g) travel costs to be borne by the recipient of legal aid where the physical presence of the persons concerned with the presentation of the recipient’s case is required in court by the law or by the court of the Member State concerned and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.”



## **Function of Central Authorities of provision or facilitation of the provision of legal aid and legal aid in Regulation No.4/2009 - II**

- Article 46 of Regulation No.4/2009 ensures automatic, unconditional free legal aid about all application by the maintenance creditor (application about the decision-taking, the modification, the recognition, the declaration of enforceability or the enforcement of a decision on the recovery of maintenance), which are received by central authorities (from foreign countries) and refer to recovery of maintenance for a child up to 21 years old.
- Article 46(2) of the Regulation No.4/2009 stipulates that free legal aid in respect to recovery of maintenance for children may be refused if it considers that, on the merits, the application or any appeal or review is manifestly unfounded. Free legal aid may not be refused in case of applications about the recognition, the declaration of enforceability or the enforcement of a decision on recovery of maintenance.

# **Function of Central Authorities of provision or facilitation of the provision of legal aid and legal aid in Regulation No.4/2009 - III**

- For the rest of maintenance cases, which are not cases of maintenance for children under the age of 21, the applications of which have been received via central authorities, free legal aid is provided, having checked the financial situation of a person (Article 47(1) of the Regulation No.4/2009).
- The party who, in the Member State of origin, have already benefited from free legal aid in the case, he/she shall be entitled to free legal aid in any proceedings for recognition, enforceability or enforcement in Latvia and to benefit from the most favourable legal aid provided for by the law of Latvia (Article 47(2) of Regulation No.4/2009).
- Persons living in Latvia willing to achieve establishment of a decision on the recovery of maintenance in any other Member State, i.e. persons, which are not addressed within decisions by Latvian authorities on the recovery of maintenance, will be subject to the means test according to the law of the respective Member State in order to receive free legal aid in the respective Member State (also in proceedings related to recognition and declaration of enforceability or in the stage of enforcement even if the person will have passed the foreign means test, although it will not be entitled to free legal aid in Latvia).



## **Function of Central Authorities of provision or facilitation of the provision of legal aid and legal aid in Regulation No.4/2009 - IV**

- Central authority of Latvia in terms of Regulation No.4/2009 – the Administration of the Maintenance Guarantee Fund - will be itself a representative of a foreign, i.e. other Member State, maintenance creditor and sometimes also of a debtor in the courts of Latvia in the proceedings in relation to the recovery of maintenance.
- Law on the Administration of the Maintenance Guarantee Fund, where the Clause 4 of Article 5(2) stipulates that the Administration of the Maintenance Guarantee Fund shall upon necessity without special authorisation represent foreign persons in court and other governmental and municipal authorities, provided the persons are entitled to receipt of legal aid according to Regulation No.4/2009.

## **Function of Central Authorities – take all appropriate measures to provide assistance in establishing parentage where necessary for the recovery of maintenance**

- This function in Latvia shall probably take form in the information of the foreign interested party about the ways, how that person may carry out the paternity test in Latvia, and informing the person about authorities, where such tests may be carried out.
- Legal aid refers also to covering costs of the DNA or the paternity tests (In Latvia it is ensured via Article 43 (4) of the Civil Procedure Law of Latvia (not from the budget of the Central Authority) in order not to discriminate national plaintiffs.
- As to the paternity tests in cross-border cases, i.e. in cases where one – the mother of the child, the child or the probable father live in another country, Latvia State Centre for Forensic Medical Examination shall be mentioned. This Centre has cooperation with similar bodies through EU.



## **Function of Central Authorities – take all appropriate measures to:**

- to help locate the debtor or the creditor;**
- to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;**
- to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001.**

- Regulation No.4/2009 establishes an efficient, fast and cheap mechanism for the obtaining of proof and information in parallel to the already existing instruments by the EU – Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters
- Mostly each Central Authority shall bear its own costs in applying this Regulation No.4/2009.
- As to the efficiency of the mechanism for the obtaining of proof and information by the Regulation No.4/2009 time will show, since Regulation No.4/2009 has not set the aim to lift restrictions in relation to provision of private information, nor other restrictions in Member States and other countries.
- The scope of information, which the Latvian Central Authority will be able to receive from other Central Authorities, will first of all depend on the country, the stage of proceedings and whether the information will be provided to a court, bailiff or private person, and other circumstances (see Article 61 and 62 of Regulation No.4/2009).

## **Function of Central Authorities – take all appropriate measures to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes**

- This function of the Central Authority shall be directly related to the mediation development in Latvia and adoption on the Law on Mediation.
- So far such cases have not been registered with the Central Authority of Latvia.
- By further development of the mediation introduction in Latvia it is anticipated that parties of maintenance cases may choose cross-border mediation in order to achieve amicable solutions with a view to obtaining voluntary payment of maintenance. Most probably, in such cases the Latvian Central Authority of Regulation No.4/2009 will provide the parties contact information of qualified mediators, which will be able to provide mediation service for the parties in the cross-border maintenance case.



**Function of Central Authorities – take all appropriate measures to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007.**

- With the Regulation No.4/2009 a parallel (as to Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000), cheaper, more efficient and faster document handing-out mechanism is established
- The efficiency of the mechanism provided by the Regulation No.4/2009 may also depend on the national restrictions as to the service of documents.

## **Function of Central Authorities – take all appropriate measures to:**

- to facilitate the ongoing enforcement of maintenance decisions, including any arrears;**
- to facilitate the collection and expeditious transfer of maintenance payments.**

- This refers to the enforcement stage
- It is not clear how it will work in Latvia



## **Function of Central Authorities – take all appropriate measures to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application - I**

- Order described in Regulation No.4/2009 in relation to implementation of temporary measures is the same as in other civil law instruments of the EU (for comparison see Article 14 of Regulation No.4/2009 and, for example, Article 31 of Regulation No.44/2001).
- In cases stipulated by Regulation No.4/2009, upon request by a foreign central authority of Regulation No.4/2009, Latvian central authority may submit an application on the securing of proof or an application requesting provisional measures to district (city) court, pursuant to jurisdiction stipulated by Civil Procedure Law of Latvia. The application about the securing of proof shall be reviewed in order stipulated by Section 16 of the Civil Procedure law. The application requesting provisional measures shall be reviewed in order stipulated by Section 19 of the Civil Procedure Law.
- Upon submission of such application the central authority of Latvia will have to observe the general provision of the Civil Procedure Law.

**Function of Central Authorities – take all appropriate measures to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application - II**

- From Regulation No.4/2009 it follows that a foreign, for example, Irish central authority may request the Latvian central authority to secure the proof or obtain provisional measures also in cases, where the principal proceedings are held in the respective foreign country, i.e. Ireland.
- Such cases, where the principal proceedings are held abroad, while the proof shall be secured or the provisional measures shall be obtained in Latvia, are not stipulated by the Civil Procedure Law
- Therefore such request by a foreign Central Authority from Ireland, will not be able to be processed (fulfilled) in Latvia.
- Similar – a Latvian Central Authority may turn to a Central Authority of another Member State with similar applications about securing the proof or obtaining the provisional measures.



# Functions of Central Authorities– requests for specific measures – special form

- Special form is included in Annex V of the Regulation No.4/2009 – Request for specific measures.
- The form is linked and may be used for requests sent to a foreign central authority by requesting central authority, in order to:
  - 1) to help locate the debtor or the creditor;
  - 2) to help obtain relevant information concerning the income and assets of the debtor or creditor;
  - 3) to facilitate the obtaining of documentary or other evidence;
  - 4) to provide assistance in establishing parentage;
  - 5) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature;
  - 6) to facilitate the service of documents.
- The application form contained within Annex V shall be filled in by the submitting central authority, but the proposal of such requests may be made by parties of the maintenance case or the court.

## Central Authorities' costs

- Article 54 of the Regulation No.4/2009 stipulates: each central authority shall bear its own costs in applying this Regulation.
- Central Authorities may not impose any charge on an applicant for the provision of their services under this Regulation save for exceptional costs arising from a request for a specific measure (to help locate the creditor; to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets; to facilitate the obtaining of documentary or other evidence; to provide assistance in establishing parentage where necessary for the recovery of maintenance; to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application; to facilitate the service of documents). The costs may not always be related to the measures listed in the brackets and, whether there will be any costs at all, depends on the involved Member State and the nature of the measure.
- Any way – according to Article 54(3) the Central Authority of the requested Member State may not recover the service costs, unless the applicant has not previously accepted the services for a set fee.



**Thank you for your attention!**