

**House of Representatives of the Netherlands**

Session year 2010-2011

**32 617**

**Hague, 23<sup>rd</sup> of November 2007**

**For the implementation of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (EU OJ [...]) and 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 (EU OJ L 7/1) (Implementing law for international recovery of child support)**

**No. 2**

**DRAFT LAW**

We, Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc. etc.,

Do hereby greet all who shall see or hear this read, and do announce that

Having considered that legal acts are desirable and necessary for the implementation of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded in Hague on 23 November 2007 (EU OJ [...]), and the Hague Protocol of 23 November 2007 by the European Community on the Law Applicable to Maintenance Obligations (EU OJ L 331/17, 2009), and the 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 (EU OJ L 7/1).

We, having heard the Council of State and in consultation with Parliament do hereby understand and approve:

*Section 1 General rules*

**Article 1**

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The law includes the following definitions.

(a) *Convention*: the Convention of Hague of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (EU OJ [...]);

(b) *Regulation*: the 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 (EU OJ L 7/1).

## **Article 2**

1. The National Maintenance Collection Agency (*Landelijk Bureau Inning Onderhoudsbijdragen*) is designated as the Central Authority in the context of Article 4 of the Convention and Article 49 of the Regulation.

2. The Central Authority is delegated to carry out the duties mentioned in the Annexes I and II of the Convention and Chapter VII of the Regulation respectively.

## **Article 3**

1. The Central Authority shall act in judicial and extrajudicial way, based on a legal application by the Central Authority of the requesting State acting on behalf of the person who has submitted an application to the Central Authority of the requesting State in accordance with Article 10 of the Convention or Article 56 of the Regulation. The Central Authority shall act in judicial and extrajudicial way, also based on a legal application submitted by the Central Authority in accordance with Article 7 of the Convention or Article 53 of the Regulation.

2. If the Central Authority acts in judicial way at first instance proceedings and appellate instance, which has been initiated based on a petition, then the authority does not require a lawyer.

## **Article 4**

The Central Authority by acting under Paragraph 1, Article 3 as regards proceedings that have been initiated based on a petition shall not be charged any stamp duties.

### *Section 2 Recognition and enforcement of applications based on the Convention*

## **Article 5**

1. Applications that are related to the recognition and enforcement of decisions concerning the recovery of maintenance under the Convention shall be submitted in a form of a petition to a regional court judge who determines judgements of temporary adjustment. As regards the decision on judgement enforcement, Articles 985 to 990 incl. of the Dutch Civil Code apply.

2. In cases when applications go under Paragraph 1, the competence to act belongs to the judge making judgements of temporary adjustment from the regional court covering the person's residence place that is associated with the request for the recognition and enforcement of a judgement, or it belongs to the judge making judgements of temporary adjustment from the regional court covering the expected place of the enforcement of judgement.

3. An application in the context of Paragraph 1 should be submitted to the Central Authority or, in cases when the Central Authority is not the applicant, to a lawyer or a law enforcement officer. In case if an application is submitted by a lawyer or a law enforcement officer, the address of the lawyer's or law enforcement officer's office is to be considered as the applicant's designated residence place.

4. Withdrawing from the provisions of Paragraph 3, in cases when the Central Authority is not the applicant, the participation of a lawyer or a law enforcement officer is not required if the amount to be covered by the person in association with whom the enforcement of judgement is requested, in full amount does not exceed the amount mentioned in Paragraph (a) Article 93 of the Dutch Civil Code. If the before-mentioned amount is defined in the currency of a different state, it needs to be recalculated by applying the exchange rate valid on the day when the application was submitted to allow the enforcement of judgement. The applicants, who are submitting applications without the participation of a lawyer or a law enforcement officer, have to select a residence place within the territory of the Netherlands.

5. An application in the context of Paragraph 1 should be submitted in Dutch language without affecting the provisions set out by the Law on the usage of Frisian language in judicial matters, Article 7. The documents attached to the application should be translated in Dutch.

6. In cases when it is detected that the documents attached to the application are incomplete, an opportunity is given to complement them.

7. In the context of Paragraph 1, an application is satisfied by means of giving a simple permission in relation with a copy of the decision that has been confirmed by the competent authority.

8. The judge making judgements of temporary adjustment shall order the debtor to cover the expenses derived as the result of applying.

9. The judge recognizes the permission to enforce judgement as temporary executable.

10. By applying the law on stamp duties in civil cases, an application in the context of Paragraph 1 does not include an obligation to pay a certain amount.

#### **Article 6**

1. The regional court, whose judge making judgements of temporary adjustment has made a decision based on an application under Paragraph 1, Article 5, shall be aware of the legal remedies mentioned in the Paragraph 5, Article 23 of the Convention.

2. The legal remedy mentioned in Paragraph 10, Article 23 of the Convention is further appeal.

3. By applying the law on stamp duties in civil cases, an application that has been submitted using legal remedies, shall not include an obligation to pay a certain amount.

#### *Section 3 Recognition and enforcement of decisions based on the Regulation*

#### **Article 7**

1. An application concerning the review of an earlier decision, based on Article 19 of the Regulation, may be submitted to the court that has made the relevant decision in accordance with the reasons mentioned in this Article and within the defined timeline.

2. In order to submit an application concerning the review of an earlier decision, participation of a lawyer is not required.

#### **Article 8**

1. As regards applications concerning the recognition and enforcement of decisions related to the recovery of maintenance, based on Part 2, Chapter IV of the Regulation, then Paragraph 1, Paragraph 3, Paragraph 4 and first sentence of Paragraph 5, and Paragraph 7 to 10 of Article 5 shall be applied respectively.

2. The form mentioned in Subparagraph (b), Paragraph 1, Article 28 of the Regulation should be translated into Dutch.

3. Without affecting the provisions of the Article 29 of the Regulation, in cases when deficiencies of the attached documents are established, an opportunity is given to complement the documents.

#### **Article 9**

1. The regional court, whose judge making judgements of temporary adjustment has made a decision based on an application under Paragraph 1, Article 8, shall be aware of the legal remedies mentioned in Article 32 of the Regulation.

2. The legal remedies in the context of Article 32 of the Regulation, when used by the applicant and directed against the recognition in the context of Paragraph 1, Article 8, must be applied within one month after the announcement of the relevant decision.

3. Paragraph 3, Article 6 shall be applicable respectively.

4. The legal remedy mentioned in Article 33 of the Regulation is further appeal.

#### *Section 4 Additional law amendments*

#### **Article 10**

The Law on the National Maintenance Collection Agency shall be amended as follows.

Paragraph 4, Article 2 shall be amended as follows:

The Agency shall become the Central Authority in the context of Article 4 of the Convention of Hague of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (EU OJ [...]), and Article 49 of the 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 (EU OJ L 7/1).

#### **Article 11**

In case if the draft law announced by the King on 18 September 2009 on the adoption and implementation of the Book 10 (Private International Law) of the Dutch Civil Code (Law on the adoption and implementation of the Book 10 of the Dutch Civil Code) is or shall be adopted and enforced, the Law shall be amended as follows:

A

Article 90 shall be amended as follows:

## **Article 90**

Rights that apply to the obligations of covering maintenance during the time of registered partnerships and after their liquidation are regulated by

- a. the Hague Protocol of 23 November 2007 by the European Community on the Law Applicable to Maintenance Obligations (EU OJ L 331/17, 2009) or
- b. the Hague Convention of 2 October 1973 on law applicable to maintenance obligations (official journal *Tractatenblad*, 1974, 86).

## **B**

Article 116, where Subparagraphs (a) and (b) are now titled as Subparagraphs (b) and (c), includes a new subparagraph that foresees: (a) the Hague Protocol of 23 November 2007 by the European Community on the Law Applicable to Maintenance Obligations (EU OJ L 331/17).

## *Section 5 Final provisions*

### **Article 12**

The Law shall take effect on the date announced in the Royal Decree.

### **Article 13**

The title of the law is Implementing Law for International Recovery of Child Support.

Orders and directions shall be published on the official journal *Staatsblad* together with this law. All competent ministries, authorities, councils and officers shall ensure accurate implementation of the law.

Published

State Secretary for Security and Justice,