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Brussels IIb Regulation - Matrimonial matters and matters of parental responsibility (recast)

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Germany

Article 103 (1) (a) (1st part) – Public authorities or other authorities authorized to establish an authentic instrument referred to in point (2)(b) of Article 2(2), and public authorities authorized to register an agreement referred to in point (3) of Article 2(2)

Not applicable.

In German law, there are currently no authentic instruments or agreements on legal separation and divorce within the meaning of Article 65(1) which have binding legal effect in Germany; nor are there any authentic instruments or agreements in matters of parental responsibility within the meaning of Article 65 (2) which are enforceable in Germany. There are therefore no German authentic instruments or agreements to be recognised or enforced in another Member State under the Regulation. It follows that there is no need to designate authorities responsible for drawing up authentic instruments within the meaning of Article 2(2)(2)(b) and for registering agreements within the meaning of Article 2(2)(3).

Article 103 (1) (a) (2nd part) – Administrative authorities granting legal aid referred to in Article 74(2)

None.

The German legal system does not currently provide for any free proceedings before an administrative authority within the meaning of Article 74(2).

Article 103 (1) (b) (1st part) – Courts competent to issue certificates for a decision pursuant to Article 36(1), and courts and authorities competent to issue a certificate for an authentic instrument or agreement referred to in Article 66

Court competent to issue the certificate for a decision (Article 36(1)):

the court which delivered the decision.

Courts or authorities competent to issue a certificate for an authentic instrument or agreement (Article 66):

none.

In German law, there are currently no authentic instruments or agreements to be recognised or enforced in other Member States under Article 65 of the Regulation. There is therefore no need to issue certificates under Article 66 or to determine the competency to issue them.

Article 103 (1) (b) (2nd part) – Courts competent to rectify certificates referred to in Article 37(1), Article 48(1), and courts competent to issue a certificate specifying that the lack or limitation of a certified decision referred to in Article 49; and courts and authorities competent to rectify the certificate, issued under Article 66(1), referred to in Article 67(1);

The court competent to rectify (Article 37(1) and Article 48(1)) a certificate (Article 36 and Article 48) for a decision: the court that issued the certificate.

The court competent to issue a certificate on lack or limitation of enforceability of a certified decision (Article 49): the court that suspended or limited the enforceability of the decision.

Courts and authorities competent to rectify (Article 67(1)) a certificate (Article 66) for an authentic instrument or agreement: none. In German law, there are currently no authentic instruments or agreements to be recognised or enforced in other Member States under Article 65 of the Regulation. There is therefore no need to issue certificates under Article 66, to rectify them under Article 67 or to determine the responsibility for issuing and rectifying them.

Article 103 (1) (c) – Courts competent for recognition of a decision (Article 30(3)) and for the refusal of recognition (Article 40(2)), as well as the courts and authorities competent for refusal of enforcement, for challenge or appeal, and for further challenge or appeal referred to in 58(1), 61(2) and 62

The court competent for the recognition of a decision (Article 30(3))

refusal of recognition (Article 40(1))

refusal of enforcement (Article 58(1)) on the grounds provided for in Article 39 in conjunction with Articles 41, 50, 56(6), 68(2) and 68(3)

is

a) in the first instance: the family court with jurisdiction over the habitual place of residence of the person against whom the application is directed or of the child whom the decision concerns, at the time when the proceedings are launched;

b) if there is no competency based on the above: the family court with jurisdiction over the place where the interest in the determination arises or where the need for care becomes known, at the time when the proceedings are launched;

c) if there is still no competency based on the above: the court called upon to rule (Pankow Family Court) in the district of the *Kammergericht* (the Higher Regional Court in the *Land* of Berlin).

Competency according to a) and b) for the whole district of a higher regional court is in each case concentrated at the family court within whose district the higher regional court has its seat. The competency of this family court thus extends to the entire district of the higher regional court. Moreover, the governments of the *Länder* are empowered to concentrate the competency at another family court within the district of the higher regional court, or, if there are multiple higher regional courts within one *Land*, to concentrate it at one family court for the districts of several or all higher regional courts. How much use the governments of the *Länder* will make of this power remains to be seen.

For the refusal of enforcement (Article 58(1)) on the basis of the grounds provided for in German national enforcement law and approved under Article 57, a distinction must be made:

An **immediate appeal under Section 87(4) FamFG** (Act on proceedings in family matters and in matters of non-contentious jurisdiction) against a decision in enforcement proceedings can be filed with the family court which issued the decision or with the competent court of appeal (the higher regional court in whose district the family court which issued the contested decision is located).

For a decision on the **objection (*Erinnerung*) against the manner of compulsory enforcement by the court-appointed officer under Section 766 ZPO** (Code of Civil Procedure), competency lies with the family court competent for the compulsory enforcement of that order. See the information concerning Article 103(1) (d).

For an **action opposing enforcement under Section 767 ZPO** (Code of Civil Procedure) **in orders for reimbursement of the costs of proceedings (decisions on costs)**, competency lies solely with the court which decided on the application for refusal of enforcement at first instance or the court which would be competent to decide on such an application (see above).

An **appeal (Article 61(2))** may be filed with the family court whose decision is being contested or with the higher regional court with competency over the family court. For **further appeal (Article 62)**, the competency lies with the Federal Court of Justice.

Article 103 (1) (d) – Authorities competent for enforcement referred to in Article 52

A distinction must be made:

For the compulsory enforcement of an order in accordance with Chapter IV of Regulation (EU) 2019/1111, concerning the surrender or return of persons or regulating access, the same competency rules apply as provided under Article 103(1)(c) for the recognition of a decision, the refusal of the recognition and the refusal of enforcement on grounds of Union law.

For the compulsory enforcement of an order in accordance with Chapter IV of Regulation (EU) 2019/1111, not concerning the surrender or return of persons or regulating access (primarily decisions on costs), competency is governed by the general provisions on the enforcement of titles in civil and commercial matters. Please see the information available at https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?GERMANY&init=true&member=1

Article 103 (1) (e) – Redress procedures against a decision on the application for refusal of enforcement referred to in Articles 61 and 62

The appeal referred to in Article 61 is the immediate appeal (*sofortige Beschwerde*). The further appeal referred to in Article 62 is the appeal on a point of law (*Rechtsbeschwerde*).

Article 103 (1) (f) – Names, addresses and means of communication for the Central Authorities designated to assist with the application of the Regulation in matters of parental responsibility. In case more than one Central Authority is designated, geographical and functional jurisdiction of each Central Authority to be indicated as referred to in Article 76

The Central Authority referred to in Article 76 is the Federal Office of Justice (*Bundesamt für Justiz*).

Its postal address is:

Bundesamt für Justiz

Unit II 3

53094 Bonn.

The Office can be contacted by telephone, fax or email:

Telephone: +49 228 99 410-5212

Fax: +49 228 410-5401

Email: int.sorgerecht@bfj.bund.de.

Article 103 (1) (g) – If applicable, categories of close relatives, in addition to parents, with which the child may be placed within the territory of a Member State, without the prior consent of that Member State as referred to in Article 82

None.

Germany has not made use of the option under Article 82 to exclude certain categories of close relatives from the requirement to obtain consent for cross-border placement of children in Germany.

Article 103 (1) (h) – Languages of the institutions of the European Union other than the own language of a Member State, in which communications to its Central Authorities can be accepted as referred to in Article 91(3))

In addition to German, English is also accepted for communications to the Central Authority.

Article 103 (1) (i) – Languages accepted for the translations of requests and accompanying documents sent under Articles 80, 81, 82, and of the free text fields of the certificates as referred to in Article 91(2)

German

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