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Act to Implement Certain Legal Instruments in the Field of International Family Law

(Internationales Familienrechtsverfahrensgesetz – IntFamRVG)

International Family Law Procedure Act in the version published on 26 January 2005 (Federal Law Gazette I, p. 162), as last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I, p. 3424)

Division 1 Scope of application; definitions

Section 1 Scope of application

This Act serves

1. to execute Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abductions (OJ EU No. L 178 of 2 July 2019, p. 1);
2. to implement the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Federal Law Gazette 2009 II, p. 602) – hereinafter referred to as the Hague Child Protection Convention;
3. to implement the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Federal Law Gazette 1990 II, p. 207) – hereinafter referred to as the Hague Child Abduction Convention;
4. to implement the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Federal Law Gazette 1990 II, p. 220) – hereinafter referred to as the European Custody Convention;
5. to implement the European Convention of 27 November 2008 on the Adoption of Children (revised) (Federal Law Gazette 2015 II, p. 3) – hereinafter referred to as the European Convention on Adoption.

Section 2 Definitions

For the purposes of this Act, the term “title” means decisions, agreements and public documents in respect of which there is application of the EU Regulation requiring implementation or the respective Convention requiring implementation.

Division 2 Central and National Authority; Youth Welfare Office

Section 3 Designation of the Central and National Authority

(1) The Central Authority under

Article 76 of Regulation (EU) 2019/1111,
Article 29 of the Hague Child Protection Convention,
Article 6 of the Hague Child Abduction Convention,
Article 2 of the European Custody Convention

is the Federal Office of Justice. This is also the National Authority within the meaning of Article 15 sentence 2 of the European Convention on Adoption.

(2) Proceedings before the Central Authority and the National Authority are deemed to be a judicial administrative proceeding.

Section 4 Translations in the case of incoming applications

(1) The Central Authority receiving an application from another State, pursuant to Regulation (EU) 2019/1111 or the European Custody Convention, may refuse to take action so long as applications or documents that have to be enclosed are not drawn up in German or accompanied by a translation into German. Sentence 1 also applies to communications pursuant to the European Custody Convention. Sentence 1 applies in relation to communications pursuant to Regulation (EU) 2019/1111, so long as they have not been drawn up in German or English, or are accompanied by a translation into one of these languages.

(2) Where by way of exception a document is not accompanied by a German translation pursuant to Article 54 of the Hague Child Protection Convention or Article 24 (1) of the Hague Child Abduction Convention, the Central Authority is to arrange for a translation.

Section 5 Translations in the case of outgoing applications

(1) Where the applicant does not themselves procure translations required for applications that are to be dealt with in another State, the Central Authority is to arrange for the translations at the applicant's expense.

(2) The local court must, upon application being made, exempt an applicant who is a natural person having his or her habitual residence or, in the absence of such residence, actually residing within the district of the court, from the duty of reimbursement pursuant to subsection (1) if the applicant fulfils the personal and financial requirements for the grant of legal aid, without his or her having to make a contribution towards the costs pursuant to the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen und in Angelegenheiten der freiwilligen Gerichtsbarkeit*).

Section 6 Performance of tasks by the Central Authority

(1) For the purpose of fulfilment of the tasks incumbent on it, the Central Authority takes all necessary measures with the assistance of the competent agencies. It corresponds directly

with all competent agencies in Germany and abroad. Communications must be forwarded without delay to the competent agencies.

(2) For the purpose of implementing the Hague Child Abduction Convention and the European Custody Convention, the Central Authority commences court proceedings if necessary. Within the framework of these Conventions, the Central Authority is, for the purpose of returning a child, deemed to be authorised, on behalf of the applicant, to take action in or out of court, either on its own or by power of attorney delegated to persons representing it. Its authority to take relevant action, on its own behalf, in order to secure compliance with the Conventions remains unaffected.

Section 7

Ascertainment of whereabouts

(1) The Central Authority takes all necessary measures including bringing in the police enforcement authorities to ascertain the child's whereabouts in cases where the child's place of abode is unknown and there are indications to the effect that the child is in Germany.

(2) So far as is necessary for ascertainment of the child's whereabouts, the Central Authority is authorised to collect vehicle keeper data required, pursuant to section 33 (1) sentence 1 no. 2 of the Road Traffic Act (*Straßenverkehrsgesetz*), at the Federal Motor Transport Authority, and to request the providers of benefits, within the meaning of sections 18 to 29 of Book 1 of the Social Code (*Sozialgesetzbuch*), for notification of a person's current whereabouts.

(3) Under the conditions stated in subsection (1), the Central Authority may cause issuance, by the Federal Criminal Police Office, of a notice for ascertainment of a person's whereabouts. It may also initiate the storage of a search notice in the Central Register.

(4) Where other agencies are brought in, the Central Authority transmits such personal data to these agencies as are necessary for carrying out the measures; such data may only be used for the purpose for which they were transmitted.

Section 8

Recourse to the higher regional court

(1) Where the Central Authority does not accept an application or where it refuses to take action, an application for a decision may be made to the higher regional court.

(2) The higher regional court in whose district the Central Authority has its seat has jurisdiction.

(3) The higher regional court gives its decision in proceedings for non-contentious matters. Section 14 (2) and (3) as well as Divisions 4 and 5 of Book 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply accordingly.

Section 9

Youth Welfare Office participation in proceedings

(1) Without prejudice to the responsibilities of the Youth Welfare Office in relation to cross-border cooperation, the Youth Welfare Office must assist the courts and the Central Authority in respect of all measures taken under this Act. In particular it must

1. give information, upon request, regarding the social background of the child and his or her environment,
2. support an amicable resolution in every situation,
3. give assistance, in appropriate cases, in the conduct of proceedings, also in relation to securing the child's residence,
4. give assistance, in appropriate cases, in the exercise of the right of personal access, in the delivery or return of the child as well as in the enforcement of court decisions.

(2) Competence lies with the Youth Welfare Office in whose area the child habitually resides. Where the Central Authority or a court is seized of an application for delivery or return or the enforcement thereof, or where the child does not habitually reside in Germany, or where the competent Youth Welfare Office does not take action, competence lies with the Youth Welfare Office in whose district the child is actually residing. In the cases of Article 35 (2) sentence 1 of the Hague Child Protection Convention, local jurisdiction lies with the Youth Welfare Office in whose area of jurisdiction the applicant parent habitually resides.

(3) The court informs the competent Youth Welfare Office about decisions pursuant to this Act also in those cases where the Youth Welfare Office was not involved in the proceedings.

Division 3 Court jurisdiction and concentration of jurisdiction

Section 10

Local jurisdiction over recognition and enforcement

The family court in whose jurisdiction the person against whom the application is directed, or the child to which the decision relates habitually resides when proceedings are commenced has exclusive local jurisdiction for

1. proceedings pursuant to Article 30 (3), Article 40 (1), Article 54 (1), Article 56 (1), (2) and (4) as well as Article 59 of Regulation (EU) 2019/1111,
2. compulsory enforcement of titles pursuant to chapter IV of Regulation (EU) 2019/1111 regarding the delivery or return of persons or the regulation of access,
3. proceedings pursuant to Articles 24 and 26 of the Hague Child Protection Convention, and
4. proceedings pursuant to the European Custody Convention.

If no jurisdiction is established pursuant to this Act for proceedings pursuant to sentence 1 of this provision, then the exclusive local jurisdiction lies with that family court in whose jurisdiction the interest in determination falls at the time the proceedings are commenced, or where the need for care becomes known. If no jurisdiction is established for proceedings pursuant to sentence 1, either pursuant to the provisions of sentence 1 or sentence 2, then exclusive local jurisdiction lies in the district of Berlin Higher Regional Court, with the court that has been appointed to decide.

Section 11 Local jurisdiction pursuant to the Hague Child Abduction Convention

In respect of proceedings pursuant to the Hague Child Abduction Convention, local jurisdiction lies with the family court

1. in whose area of jurisdiction the child was residing upon receipt of the application at the Central Authority, or
2. in the absence of jurisdiction pursuant to no. 1, in whose area of jurisdiction the need for care becomes known.

Section 12 Concentration of jurisdiction

- (1) In proceedings on a matter referred to in sections 10 and 11, the decision lies with the family court in whose district a higher regional court has its seat for the district of such higher regional court.
- (2) In the district of the Berlin Higher Regional Court, the decision lies with Pankow Family Court.
- (3) The Land governments are authorised to assign this jurisdiction, by ordinance, to another family court in the higher regional court district or, where there is more than one higher

regional court established in a *Land*, to a family court for the districts of all higher regional courts or of more than one higher regional court. The *Land* governments may transfer this power of authorisation to the *Land* administrations of justice.

Section 13

Concentration of jurisdiction over other family matters

(1) The family court where a matter referred to in sections 10 to 12 becomes pending has, from that moment onwards and notwithstanding section 137 (1) and (3) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, jurisdiction over all family matters concerning the same child pursuant to section 151 nos. 1 to 3 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, including directions pursuant to section 44 and to sections 35 and 89 to 94 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Jurisdiction pursuant to sentence 1 does not arise in cases where the application is manifestly inadmissible. Jurisdiction ceases as soon as the court addressed is not competent by virtue of an incontestable decision; proceedings over which such court thus loses its jurisdiction are transferred *proprio motu* to the court with jurisdiction in accordance with section 281 (2) and (3) sentence 1 of the Civil Procedure Code (*Zivilprozeßordnung*).

(2) Another family matter pursuant to section 151 nos. 1 to 3 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction may also be brought before the family court with jurisdiction over applications of the kind referred to in subsection (1) sentence 1 in the higher regional court district where the child habitually resides, provided that a parent habitually resides in another Member State of the European Union or in another contracting State of the Hague Child Protection Convention, of the Hague Child Abduction Convention or of the European Custody Convention.

(3) In the case of subsection (1) sentence 1, another family court where a family matter concerning the same child pursuant to section 151 nos. 1 to 3 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction is, or becomes, pending at first instance, transfers such proceedings *proprio motu* to the court having jurisdiction pursuant to subsection (1) sentence 1. Upon concurrent application by both parents, other family matters in which they are participants are transferred to the court having jurisdiction pursuant to subsection (1) or subsection (2). Section 281 (2) sentences 1 to 3 and section 281 (3) sentence 1 of the Civil Procedure Code apply accordingly.

(4) On important grounds, the family court having jurisdiction pursuant to subsection (1) or subsection (2) or the family court to which the matter has been transferred pursuant to subsection (3) may transfer, or refer back, such matter to the family court that has jurisdiction pursuant to general provisions, provided that this does not lead to a substantial delay in the proceedings. As a rule, an important ground is deemed to exist where the particular expertise of the first court referred to above is not, or no longer, required for the proceedings. Section 281 (2) and (3) sentence 1 of the Civil Procedure Code applies accordingly. Refusal to effect a transfer pursuant to sentence 1 is incontestable.

(5) Section 4 and section 5 (1) no. 5, (2) and (3) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction remain unaffected.

Section 13a

Proceedings on cross-border transfer

(1) Where the family court requests the court of another contracting State to assume jurisdiction under Article 8 of the Hague Child Protection Convention, it sets a time limit within which the foreign court may give notice of its assumption of jurisdiction. Where the family court suspends proceedings under Article 8 of the Hague Child Protection Convention, it sets the parties a time limit within which the foreign court is to be addressed. If the time limit pursuant to sentence 1 has expired without the foreign court having notified its assumption of jurisdiction, it is generally to be assumed that the requested court has refused to assume jurisdiction. If the time limit pursuant to sentence 2 has expired without a party

having addressed the foreign court, jurisdiction remains with the family court. The court of the requested State and the parties are notified of these legal consequences.

(2) Where a court of another contracting State requests the family court to assume jurisdiction under Article 8 of the Hague Child Protection Convention, or where a party addresses the family court in pursuance of that provision, the family court may assume jurisdiction within six weeks.

(3) Subsections (1) and (2) are to be applied accordingly to applications, requests and decisions pursuant to Article 9 of the Hague Child Protection Convention.

(4) The family court's decision

1. to request the foreign court, pursuant to subsection (1) sentence 1 or pursuant to Article 12 (1) letter (b) of Regulation (EU) 2019/1111, to assume jurisdiction;
2. to suspend proceedings, pursuant to subsection (1) sentence 2 or pursuant to Article 12 (1) letter (a) of Regulation (EU) 2019/1111;
3. to request the foreign court with jurisdiction, pursuant to Article 9 of the Child Protection Convention or pursuant to Article 13 (1) of Regulation (EU) 2019/1111, to transfer jurisdiction;
4. to invite the parties to introduce a request to the foreign court with jurisdiction, pursuant to Article 9 of the Hague Child Protection Convention, for the transfer of jurisdiction to the family court; or
5. to transfer jurisdiction to the foreign court, upon request by a foreign court or application by the parties pursuant to Article 9 of the Hague Child Protection Convention, or upon request by a foreign court pursuant to Article 13 (2) of Regulation (EU) 2019/1111;

is contestable by way of a complaint subject to a time limit, upon applying sections 567 to 572 of the Civil Procedure Code accordingly. Complaints on a point of law are precluded. The decisions referred to in sentence 1 come into effect only when they become binding with final legal force. This is to be indicated in the order.

(5) In all other cases, the decisions pursuant to Articles 8 and 9 of the Hague Child Protection Convention and pursuant to Articles 12 and 13 of Regulation (EU) 2019/1111 are incontestable.

(6) Parties within the meaning of this provision, of Articles 8 and 9 of the Hague Child Protection Convention and of Article 12 of Regulation (EU) 2019/1111 are the participants referred to in section 7 (1) and (2) no. 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The provisions on the involvement of further participants remain unaffected.

Division 4 General rules of court

Section 14 Family court proceedings

Unless otherwise provided, the family court decides

1. on matrimonial matters referred to in sections 10 and 12 pursuant to the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applying thereto,
2. on the other matters referred to in sections 10, 11, 12 and 47 pursuant to the provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applying to parent and child matters.

Section 15 Provisional orders

Upon application or proprio motu, the court may make provisional orders in order to avert risks from the child or to avoid detriment to the interests of the participants, and especially to secure the child's abode during the proceedings, or to prevent the child's return from being obstructed or made difficult; Division 4 of Book 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction applies accordingly.

Division 5

Admission of compulsory enforcement, recognition finding and restoration of custody of children within the scope of application of the Hague Child Protection Convention and of the European Custody Convention

Subdivision 1

Admission of compulsory enforcement at first instance

Section 16 Application

(1) Within the scope of application of the Hague Child Protection Convention and the European Custody Convention, a title that is enforceable in another State is admitted for compulsory enforcement on application through attachment of the endorsement for enforcement thereto.

(2) The application for grant of endorsement for enforcement may be submitted to the family court with jurisdiction, in writing or orally to be recorded by the registry.

(3) Where contrary to section 184 of the Courts Constitution Act (Gerichtsverfassungsgesetz) the application is not drawn up in German, the court may enjoin the applicant to procure a translation of the application, the accuracy of which has been confirmed by a person having the authority to provide such confirmation

1. in a Member State of the European Union or
2. in another contracting State of a Convention needing implementation.

Section 17

Person authorised to accept service

(1) Where in their application the applicant has not designated a person authorised to accept service within the meaning of section 184 (1) sentence 1 of the Civil Procedure Code, every service on the applicant may, until subsequent designation, be effected by postage (section 184 (1) sentence 2 and section 184 (2) of the Civil Procedure Code).

(2) Subsection (1) does not apply if

1. the service is governed by directly applicable provisions of the European Union within the meaning of section 183 (1) sentence 1 of the Civil Procedure Code, or if
2. the applicant has appointed a representative for the proceedings upon whom service can be effected in Germany.

Section 18

Special provisions regarding the Hague Child Protection Convention

Within the scope of application of the Hague Child Protection Convention, it is the applicant alone, in proceedings at first instance for admission of compulsory enforcement, who receives the opportunity to make statements. The decision is given without holding an oral hearing. However, there may be an oral discussion with the applicant or a person authorised by the applicant, provided such person agrees thereto and the discussion serves the purpose of expedition.

Section 19

Special provisions regarding the European Custody Convention

A declaration of enforceability of a title from another contracting State of the European Custody Convention is also precluded in the cases of Articles 8 and 9 if the conditions referred to in Article 10 (1) letter a or b of the Convention subsist, in particular where the effects of the title would be incompatible with the basic rights of the child or of a person having custody.

Section 20 Decision

(1) Where compulsory enforcement based on the title is to be admitted, the court orders that the title be furnished with the endorsement for enforcement. In the order, the obligation to be enforced is to be described in German. In giving the reasons for the order, it is generally sufficient for reference to be made to the convention on recognition and enforcement which is to be implemented, as well as to the documents submitted by the applicant.

(2) Section 81 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction is to be applied accordingly to the costs of the proceedings.

(3) Where the application is not admissible or not well-founded, the court refuses the application in an order setting out the reasons. Costs are governed by subsection (2).

Section 21 Notification of the decision

(1) In the case of section 20 (1), service is to be effected *proprio motu* on the obligor of a certified copy of the order, of a certified copy of the title that does not yet bear the endorsement for enforcement and, if necessary, the translation thereof, as well as of the documents to which reference is made pursuant to section 20 (1) sentence 3. An order made pursuant to section 20 (3) is to be communicated informally to the obligor.

(2) A certified copy of the order made pursuant to section 20 and, in the case of section 20 (1), also an attestation of the effected service is to be sent to the applicant. The authentic issue of the title bearing the endorsement for enforcement is sent to the applicant only when the order made pursuant to section 20 (1) has come into effect and the endorsement for enforcement has been granted.

(3) In proceedings on the declaration of enforceability of a decision concerning parental responsibility, service is also to be effected on the child's statutory representative, on the child's representative in the proceedings, on the child him or herself, if he or she has reached the age of 14 years and is not incapable of entering into legal transactions, on a parent who was not a participant in the proceedings, as well as on the Youth Welfare Office. The child is not generally to be informed of the grounds if it is to be feared that this will jeopardise his or her development, upbringing or health.

(4) Where the measure declared to be enforceable concerns a placement, the order must also be notified to the head of the institution or the foster family in which the child is to be placed.

Section 22 Decision coming into effect

An order made pursuant to section 20 comes into effect only when it becomes binding with final legal force. This must be indicated in the order.

Section 23 Endorsement for enforcement

(1) On the basis of an effective order made pursuant to section 20 (1), the registry clerk grants the endorsement for enforcement in the following form:
"Endorsement for enforcement pursuant to section 23 of the International Family Law Procedure Act of 26 January 2005 (Federal Law Gazette I, p. 162). Pursuant to the order of ... (designation of the court and of the order), compulsory enforcement based on ... (designation of the title) is admissible for the benefit of ... (designation of the obligee) against ... (designation of the obligor)."

The obligation to be enforced reads as follows:

... (indication in German of the obligation, based on the foreign title, incumbent on the obligor; to be taken from the order made pursuant to section 20 (1))."

(2) Where compulsory enforcement is admitted only in respect of one, or more than one, claim granted by the foreign title or set down in another foreign title, or only in respect of part of the subject matter of the obligation, the endorsement for enforcement is to be designated as "part endorsement for enforcement pursuant to section 23 of the International Family Law Procedure Act of 26 January 2005 (Federal Law Gazette I, p. 162)".

(3) The endorsement for enforcement is to be signed by the registry clerk and stamped with the court stamp. Such endorsement is made either on the authentic issue of the title or on a page to be joined thereto. If there is a translation of the title, it must be joined to the authentic issue thereof.

Subdivision 2 Complaint

Section 24

Filing a complaint; time limit for a complaint

(1) A complaint may be filed against a decision given at first instance with the higher regional court. A complaint must be filed with the higher regional court by submission of a notice of complaint or by declaration to be recorded by the registry.

(2) The admissibility of the complaint is not affected by the fact that it has been filed with the court of first instance instead of with the higher regional court; without delay the complaint is to be transferred proprio motu to the higher regional court.

(3) A complaint against the admission of compulsory enforcement must be filed

1. within one month after service in a case where the person entitled to file a complaint habitually resides in Germany;
2. within two months after service in a case where the person entitled to file a complaint habitually resides abroad. The time limit begins to run on the day on which the declaration of enforceability is served on the person entitled to file a complaint, either in person or at his or her dwelling. An extension of this time limit on the ground of long distance is precluded.

(4) The time limit for a complaint is a mandatory time limit.

(5) The complaint is served on the respondent proprio motu.

Section 25

Objections to the claim to be enforced

Through a complaint against the admission of compulsory enforcement based on a title concerning reimbursement of the costs of proceedings, the obligor may also make objections to the claim itself in a case where the grounds on which the objections are based originated only after the title was issued.

Section 26

Proceedings and decision on the complaint

(1) The division of the higher regional court pronounces its decision in an order for which reasons must be stated and which may be given without holding an oral hearing.

(2) So long as no order has been made for an oral hearing, applications may be made, and statements given, to be recorded by the registry.

(3) A complete authentic issue of the order must then also be served on the participants proprio motu when the order has been pronounced.

(4) Section 20 (1) sentence 2, section 20 (2) and (3), section 21 (1), (2) and (4) as well as section 23 apply accordingly.

Section 27

Order for immediate effect

(1) A higher regional court order made pursuant to section 26 comes into effect only when it becomes binding with final legal force. This must be indicated in the order.

(2) In conjunction with the decision on the complaint, the higher regional court may make an order imposing the immediate effect of an order.

Subdivision 3

Complaint on a point of law

Section 28

Complaint on a point of law permitted

Pursuant to section 574 (1) no. 1 and section 574 (2) of the Civil Procedure Code, a complaint may lie to the Federal Court of Justice on a point of law in respect of such higher regional court order.

Section 29

Filing, and grounds for, a complaint on a point of law

Section 575 (1) to (4) of the Civil Procedure Code is to be applied accordingly. So far as a complaint on a point of law is based on the argument that the higher regional court has diverged from a decision of the Court of Justice of the European Union, the decision from which the contested order diverges must be designated.

Section 30

Proceedings and decision on a complaint on a point of law

(1) The Federal Court of Justice may only examine whether the order concerned is based on a violation of the law of the European Union, of a recognition and enforcement agreement, of other federal law or of another provision in force for an area extending beyond the district of a higher regional court. The Federal Court of Justice is not permitted to examine whether the court wrongly assumed that it had local jurisdiction.

(2) The Federal Court of Justice may give a decision on a complaint on a point of law without holding an oral hearing. Sections 546, 547, 560 and 577 of the Civil Procedure Code apply accordingly, with the exception of subsection (2) sentences 1 to 3.

(3) Section 20 (1) sentence 2, section 20 (2) and (3), section 21 (1), (2) and (4) as well as section 23 apply accordingly.

Section 31

Order for immediate effect

Upon application being made by the obligor, the Federal Court of Justice may revoke an order made pursuant to section 27 (2), or it may make an initial order pursuant to section 27 (2) upon application being made by the obligee.

Subdivision 4

Establishment of recognition

Section 32

Recognition finding

Subdivisions 1 to 3 are to be applied accordingly to proceedings on a separate application for a finding pursuant to Article 24 of the Hague Child Protection Convention or pursuant to the European Custody Convention, to recognise or not to recognise, a title from another State. Section 18 sentence 1 does not apply if the applicant has requested the finding that a title from another State is not to be recognised. In this case, section 18 sentence 3 is to be applied subject to the condition that the oral discussion can also take place with further participants.

Subdivision 5

Restoration of custody of children

Section 33

Order to deliver the child

(1) Where, pursuant to the law of the State in which it was established, an enforceable title, in the scope of application of the Hague Child Protection Convention or of the European Custody Convention, embraces the right to delivery of the child, the family court may, for clarification, include the order for delivery of the child in the endorsement for enforcement or in an order made pursuant to section 44.

(2) Where there is no enforceable title, in the scope of application of the European Custody Convention, to delivery of the child, the court makes a finding pursuant to section 32 that the custody decision or custody agreement from the other contracting State approved by the competent authority is to be recognised, and upon application being made, the court orders the obligor to deliver the child for the purpose of restoring custody of the child.

Subdivision 6

Revocation or amendment of orders

Section 34

Proceedings for revocation or amendment

(1) Where the title is revoked or amended in the State in which it was established and the obligor can no longer plead this fact in the proceedings for admission of compulsory enforcement, the obligor may apply for revocation or amendment of admission in separate proceedings. The same applies in the event of revocation or amendment of decisions that fall within the scope of the Hague Child Protection Convention or the European Custody Convention, and the recognition of which has been established.

(2) In respect of the decision on such application, exclusive jurisdiction lies with the family court that decided at first instance on the application for grant of endorsement for enforcement or that made the first-instance finding of recognition.

(3) The application may be made to the court in writing or by declaration to be recorded by the registry. The decision is given in an order.

(4) Subdivisions 2 and 3 are to be applied to a complaint accordingly.

(5) In the case of a title concerning reimbursement of the costs of the proceedings, sections 769 and 770 of the Civil Procedure Code apply accordingly to termination of compulsory enforcement and to revocation of enforcement measures already taken. Revocation of an enforcement measure is permissible also in the absence of provision of security.

Section 35

Compensation for unjustified enforcement based on a title concerning reimbursement of the costs of proceedings

(1) Where admission of compulsory enforcement based on a title concerning reimbursement of the costs of the proceedings has been revoked or amended upon a complaint made on a point of law, the obligee is bound to make compensation for the damage caused to the obligor by enforcement of the title or by a cost incurred to avert enforcement. The same applies where the admission of compulsory enforcement is revoked or amended pursuant to section 34, so far as the title admitted for compulsory enforcement could still be contested, at the time of its admission, by ordinary appellate remedy under the law of the State in which it was issued.

(2) In respect of applications asserting claims pursuant to subsection (1), exclusive jurisdiction lies with the court that decided at first instance on the application for the title to be furnished with the endorsement for enforcement. It decides in accordance with the provisions governing other family matters within the meaning of section 266 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

Subdivision 7

Court action to oppose enforcement

Section 36

Court action to oppose enforcement in respect of titles concerning reimbursement of the costs of proceedings

(1) Where there is admission of compulsory enforcement based on a title concerning the costs of the proceedings, the obligor may make objections to the claim itself in proceedings pursuant to section 767 of the Civil Procedure Code only in a case where the grounds on which his or her objections are based originated

1. after expiry of the time limit within which the obligor could have filed a complaint, or
2. if a complaint has been filed, after conclusion of these proceedings.

(2) A court action pursuant to section 767 of the Civil Procedure Code must be brought in the court that decided on the application for grant of endorsement for enforcement.

Division 6

Proceedings pursuant to the Hague Child Abduction Convention

Section 37

Applicability

Where in an individual case the return of the child can be considered pursuant to the Hague Child Abduction Convention and to the European Custody Convention, the provisions of the Hague Child Abduction Convention are initially to be applied, so far as the applicant does not make express application for the European Custody Convention to apply.

Section 38

Special procedural provisions

(1) The court deals with proceedings for the return of a child with priority and in an expedited manner at all instances. Except in the case of Article 12 (3) of the Hague Child Abduction Convention, there is no stay of the proceedings. The court applies all measures needed to expedite the proceedings, also to enable, in particular, the decision on the merits to be given within the time limit set in Article 24 (2) and (3) of Regulation (EU) 2019/1111.

(2) At every stage of the proceedings, the court examines whether the right of personal access to the child can be ensured.

(3) The participants assist in establishing the facts, in conformity with a procedure that is intent on advancing and expediting the proceedings.

(4) If proceedings pursuant to the Hague Child Abduction Convention are not instituted by the Central Authority pursuant to section 6 (2) sentences 1 and 2, then the court is to notify the Central Authority that proceedings have been instituted. The Central Authority is permitted to take part in the proceedings if it requests to do so.

Section 39

Issuance of certificates pursuant to Article 29 (2) of Regulation (EU) 2019/1111 and transmission of documents

(1) The certificate pursuant to Article 29 (2) of Regulation (EU) 2019/1111 is issued at the court of first instance by the family court judge, in proceedings before the higher regional court by the presiding judge of the division for family matters.

(2) Where, pursuant to Article 29 (3) of Regulation (EU) No. 2019/1111, documents are transmitted directly to the court with jurisdiction or the Central Authority abroad, copies are to be sent to the Central Authority for the discharge of its functions pursuant to Article 7 of the Hague Child Abduction Convention.

Section 40

Effect of the decision; appellate remedy

(1) A decision requiring the return of a child to another contracting State comes into effect only when it becomes binding with final legal force.

(2) A complaint in respect of a decision given at first instance may be filed to the higher regional court pursuant to Subdivision 1 of Division 5 of Book 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction; section 65 (2), section 68 (4) sentence 1 and section 69 (1) sentences 2 to 4 of that Act are not to be applied. A complaint must be filed, and grounds must be stated therefor, within two weeks. The right of complaint against a decision requiring the return of a child vests in the person opposing the application, in the child, so far as he or she has reached the age of 14 years, and in the Youth Welfare Office concerned. A complaint on a point of law is not admissible.

(3) Upon receipt of the notice of complaint, the court hearing the complaint examines, without delay, whether there is to be an order for the immediate effect of the contested decision on returning the child. As a general rule, immediate execution is to be ordered where the complaint is manifestly ill-founded or where returning the child before the decision on the complaint is compatible with the best interests of the child while taking into account the legitimate interests of the participants. The decision on immediate effect may be amended during the proceedings on the complaint.

Section 41 Determination of wrongfulness

(1) The decision on an application for a finding to the effect that the removal or retention of the child was wrongful pursuant to Article 15 sentence 1 of the Hague Child Abduction Convention lies in the following order with the family court

1. in whose district the child custody matter or matrimonial matter is, or was, pending at first instance;
2. in whose district the child had his or her last habitual residence in the area for which this Act is in force;
3. in whose district the need for care becomes known.

Section 12 applies accordingly.

(2) Reasons must be given for the application; any grounds asserted that indicate that such a removal or retention would be wrongful must be demonstrated to the satisfaction of the court.

(3) The court may reach its decision in written proceedings and without hearing the parties. Reasons must be stated for the decision.

(4) The order is contestable by a complaint subject to a time limit, upon applying sections 567 to 572 of the Civil Procedure Code accordingly. A complaint on a point of law is not admissible.

Section 42 Submission of applications to the local court

(1) An application that is to be dealt with in another contracting State may also be submitted to the local court, as the authority for the administration of justice, in whose district the applicant has his or her habitual residence, or where, in the absence of such residence in the area for which this Act is in force, the applicant is actually residing. After examining the requirements as to form, the court transmits the application, without delay, to the Central Authority, who will forward it to the other contracting State.

(2) Except in cases pursuant to section 5 (1), costs are not to be imposed for the tasks performed by the local court and the Central Authority in receiving and forwarding applications.

Section 43 Legal aid and advice

Notwithstanding Article 26 (2) of the Hague Child Abduction Convention, there is exemption from court costs and extra-judicial costs in proceedings pursuant to this Convention only in accordance with the provisions on legal advice and on legal aid.

Division 7 Enforcement

Subdivision 1

Specific provisions for the enforcement of titles regarding the delivery and return of persons and the regulation of access

Section 44

Coercive measures; enforcement proprio motu

(1) On infringement of a title to be enforced in Germany pursuant to Chapter IV of Regulation (EU) 2019/1111, to the Hague Child Protection Convention, to the Hague Child Abduction Convention or to the European Custody Convention, such title being aimed at the delivery or return of persons or the regulation of access, the court is generally to impose a coercive fine, and in the event of such fine not being recoverable, the court is generally to order coercive detention. Where the imposition of a coercive fine offers no prospect of success, the court is generally to order coercive detention.

(2) The higher regional court has jurisdiction as regards enforcement of a title in accordance with subsection (1) pursuant to the Hague Child Protection Convention, to the Hague Child Abduction Convention or to the European Custody Convention insofar as it has declared the title enforceable, or has issued or confirmed the title.

(3) Where a child has been delivered or returned, the court carries out enforcement proprio motu, unless the order is aimed at delivery of the child for the purpose of having access. Upon application by the obligee, the court is generally to dispense with this.

Subdivision 2

Specific provisions regarding the enforcement of titles pursuant to Chapter IV of Regulation (EU) 2019/1111

Section 44a

General procedural provisions

(1) A title pursuant to Chapter IV of Regulation (EU) 2019/1111 which is enforceable in another Member State may be enforced domestically by way of compulsory enforcement without an endorsement for enforcement being required.

(2) If, when submitting the documentation for enforcement required pursuant to Articles 35, 46 or 65 (2) sentence 2 of Regulation (EU) 2019/1111, the person who is entitled to enforcement fails to provide proof of when the obligor was served with the title to be enforced and the certificate issued pursuant to Articles 36, 47 or 66, then the body responsible for enforcement must, of its own motion, serve the obligor with copies of the certificate submitted to it as well as an official copy of the decision submitted to it.

(3) Where, pursuant to the law of the State in which it was established, an enforceable title pursuant to Chapter IV of Regulation (EU) 2019/1111 includes the right to delivery of the child, the family court may, for clarification, include the order for delivery of the child in an order made pursuant to section 44.

Section 44b

Procedure for refusal of enforcement pursuant to Article 59 of Regulation (EU) 2019/1111

(1) An application for refusal of enforcement pursuant to Article 59 of Regulation (EU) 2019/1111 may only assert those grounds for refusal as are provided for in Articles 41, 50, 56 (6) and 68 (2) and (3) of Regulation (EU) 2019/1111.

(2) An application pursuant to subsection (1) must be submitted to the court with jurisdiction in writing or orally to be recorded by registry. In general, it must specify the grounds for refusal of enforcement which are asserted and indicate the facts and evidence in support of the grounds. By way of derogation from section 114 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, representation by a lawyer is not required even in matrimonial matters at first instance.

(3) The court may set a deadline for the applicant to specify the grounds asserted for refusal of enforcement and to indicate the facts and evidence in support thereof. When a deadline is issued, the applicant must at the same time also be notified of the consequences of failing to comply with the deadline.

(4) Grounds for refusal of enforcement and supporting facts and evidence that are submitted only after a set deadline pursuant to subsection (3) sentence 1 are only admitted if

1. the court is convinced that the admittance of such elements would not delay the settlement of the proceedings; or

2. the applicant provides a sufficient excuse for the delay.

The grounds for the excuse pursuant to sentence 1 no. 2 must be demonstrated to the satisfaction of the court if the court so requires.

Section 44c

Decision on refusing enforcement and notification of the decision

(1) An application for refusal of enforcement pursuant to Article 59 of Regulation (EU) 2019/1111 is decided on by the court by way of an order. The order must be furnished with reasons. It may be issued without an oral hearing.

(2) Decisions in respect of costs are governed by sections 91 to 107 of the Civil Procedure Code in matrimonial matters; in other proceedings, sections 80 to 85 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction apply accordingly.

(3) The order is to be served on the parties.

(4) In proceedings concerning a refusal to enforce a decision affecting the parental responsibility, the order must also be served on:

1. the child's statutory representative;

2. the child's representative in the proceedings;

3. the child itself, if he or she has reached the age of 14 years and is not incapable of entering into legal transactions;

4. a parent who was not a participant in the proceedings; and

5. the Youth Welfare Office.

As a rule, the child is not to be informed of the grounds if it is to be feared that this will jeopardise his or her development, upbringing or health.

(5) In proceedings concerning a refusal to enforce a placement decision, the head of the institution or the foster family in which the child is to be placed must also be notified of the order.

Section 44d

Complaint subject to a time limit

(1) An order may be contested by way of a complaint subject to a time limit, applying sections 567 to 572 of the Civil Procedure Code accordingly.

(2) In deviation from section 571 (2) sentence 1 and section 571 (3) of the Civil Procedure Code, new challenges or defences are to be admitted only if they were not asserted by a party at first instance, without this being due to that party's negligence. The court hearing the complaint may require the facts justifying the admissibility of such new challenges or defences under sentence 1 to be demonstrated to the satisfaction of the court.

(3) Any challenges or defences, and the facts and evidence substantiating them, that were rightly dismissed in the proceedings before the court of first instance pursuant to section 44b (4) are to be ruled out. (4) Section 44c (2) to (5) applies accordingly.

Section 44e

Complaints on points of law

(1) A complaint on points of law against the order of the court hearing the complaint may be made to the Federal Court of Justice, if the court hearing the complaint granted leave for such a complaint on the points of law in its decision, applying section 574 (1) sentence 1 no. 2 and section 574 (3) accordingly.

(2) Sections 574 (4), 575 (1) to (4), 576 and 577 of the Civil Procedure Code and section 44c (2) to (5) apply accordingly. In matters of non-contentious jurisdiction, section 574 (4) and section 577 (2) sentences 1 to 3 of the Civil Procedure Code as well as the reference made to section 556 in section 576 (3) of the Civil Procedure Code are to be disregarded.

(3) So far as a complaint on a point of law is based on the argument that the court hearing the complaint has diverged from a decision of the Court of Justice of the European Union, the decision from which the contested order diverges must be designated in the grounds for the complaint.

Section 44f

Suspending enforcement in accordance with Article 56 (1), (2) and (4) of Regulation (EU) 2019/1111

(1) Pursuant to Article 56 (1) and (2) of Regulation (EU) 2019/1111, an application may also be made by the child concerned. Pursuant to Article 56 (4) of Regulation (EU) 2019/1111, an application may also be made by the child concerned and the Youth Welfare Office.

(2) The power to suspend enforcement within the meaning of Article 56 (1), (2) and (4) of Regulation (EU) 2019/1111 includes the power to abrogate enforcement proceedings already pursued. A decision suspending enforcement pursuant to Article 56 (1), (2) and (4) of Regulation (EU) 2019/1111 is incontestable.

(3) The competence for decisions on the suspension of enforcement lies with the higher regional court if a complaint subject to a time limit against an order made in enforcement proceedings is pending there.

(4) Section 93 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction is not applicable.

Section 44g

Termination of compulsory enforcement

(1) Compulsory enforcement must be terminated if an official copy of a final and binding decision is submitted which indicates that

1. enforcement has been refused in proceedings pursuant to Article 59 of Regulation (EU) 2019/1111; or
2. enforcement has been suspended pursuant to Article 56 (1), (2) or (4) of Regulation (EU) 2019/1111.

In the cases under sentence 1 no. 1, any enforcement activity already pursued must be abrogated. In cases under sentence 1 no. 2, any enforcement activity already pursued continues in force on a provisional basis, provided that the decision on suspending enforcement does not also order the abrogation of any enforcement activity already taken.

(2) Compulsory enforcement must be terminated or limited pursuant to section 775 nos. 1 and 2 and section 776 of the Civil Procedure Code if the following is submitted:

1. in cases of a decision certified in accordance with Article 47 of Regulation (EU) 2019/1111, a certificate indicating the lack or limitation of the enforceability pursuant to Article 49 (1) of Regulation (EU) 2019/1111;
2. in cases of a title not referred to in no. 1, a decision from the Member State in which the title was established, regarding the non-enforceability or limitation of enforceability.

In cases under sentence 1 no. 2, a translation of the decision into German must be submitted if this is requested by the enforcement body. The translation must be produced by a person duly authorised to produce such translations in one of the Member States of the European Union.

Section 44h

Compensation for unjustified enforcement based on a title concerning reimbursement of the costs of proceedings

(1) If a title concerning reimbursement of the costs of the proceedings has been revoked or amended in the Member State in which it was established, then the obligee is bound to make compensation for the damage caused to the obligor by enforcement of the title or by a cost incurred to avert enforcement, provided that at the time the compulsory enforcement measures were implemented, the title could still be contested by ordinary appellate remedy.

(2) The exclusive jurisdiction for an application asserting a claim pursuant to subsection (1) lies with the court that decided at first instance on the application for refusal of enforcement, or that would be the competent court to decide such an application. It decides in accordance with the provisions governing other family matters within the meaning of section 266 (1) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction.

Section 44i

Court action to oppose enforcement in respect of titles concerning reimbursement of the costs of proceedings

(1) The obligor of a title concerning reimbursement of the costs of proceedings may raise an objection to such a claim by way of an action pursuant to section 767 of the Civil Procedure Code, to the extent that the grounds on which the objections are based originated only after the title was issued.

(2) The exclusive jurisdiction for an action pursuant to subsection (1) lies with the court that decided at first instance on the application for refusal of enforcement, or that would be the competent court to decide such an application.

Section 44j

Procedure for establishing that there are no grounds for refusal of recognition and for refusal of recognition

(1) Proceedings for a separate application for a decision pursuant to Article 30 (3) of Regulation (EU) 2019/1111, and proceedings for a separate application for refusal of recognition pursuant to Article 40 (1) of Regulation (EU) 2019/1111 are governed by section 44b (2) sentences 1 and 3, section 44b (3) and (4) and section 44c accordingly. In order to have legal ability to file an application, a person must have a legal interest in the determination or refusal of recognition. An application for refusal of recognition pursuant to Article 40 (1) of Regulation (EU) 2019/1111 should stipulate which of the grounds for refusing recognition as listed in Articles 38, 39, 50 or 68 of Regulation (EU) 2019/1111 are being asserted, and the facts and evidence which serve to support this should be specified.

(2) An order made at first instance is contestable by way of a complaint subject to a time limit, upon applying section 44d accordingly. An order of the court hearing the complaint is contestable by way of a complaint on points of law, applying section 44e accordingly.

(3) If the title is revoked or amended in the Member State in which it was established, and if such a revocation or amendment can no longer be asserted in the proceedings to establish that there are no grounds for refusing recognition, the respondent may apply for the decision holding that there are no grounds for refusing recognition to be revoked or amended in separate proceedings. Exclusive jurisdiction for that application lies with that family court which ruled at first instance on the application for a decision pursuant to subsection (1). Section 44b (2) sentences 1 and 3, section 44c, section 44d (1) and (4) and section 44e apply accordingly.

Division 8 Cross-border placement

Section 45

Competence for consent to placement

For the grant of consent to placement of a child pursuant to Article 82 of Regulation (EU) 2019/1111 or to Article 33 of the Hague Child Protection Convention in Germany, competence lies with the supra-local agency responsible for the public youth welfare service in the area where, as proposed by the requesting agency, the child is to be placed, or otherwise with the supra-local agency with whose area the Central Authority has found the closest link. Alternatively, competence lies with the *Land* of Berlin.

Section 46 Consultation procedure

(1) As a rule, consent to the request must be granted where

1. carrying out the intended placement in Germany is in the best interests of the child, in particular because he or she has a particular connection with the country,
2. the foreign agency has submitted a report and, where necessary, medical certificates or reports setting out the reasons for the intended placement,
3. the child has been heard in proceedings abroad, unless this appeared inappropriate on the ground of the child's age or degree of maturity,
4. the consent of the appropriate institution or foster family has been given and there are no reasons not to place the child there,
5. any approval required by the law governing aliens has been given or promised,
6. the issue of assumption of costs has been dealt with.

(2) In the case of a placement linked with deprivation of liberty, the request must be refused notwithstanding the conditions set out in subsection (1) where

1. in the requesting State, the decision on the placement is not taken by a court, or
2. on the basis of the notified facts of the case, a placement linked with deprivation of liberty would not be admissible under national law.

(3) The foreign agency may be requested to provide supplementary information.

(4) Where there is a request for placement of a foreign child, the opinion of the aliens authority must be obtained.

(5) The decision, for which reasons must be stated, must also be notified to the Central Authority and to the institution or foster family where the child is to be placed. The decision is incontestable.

Section 47 Approval of the family court

(1) The consent of the supra-local agency responsible for the public youth welfare service, pursuant to sections 45 and 46, is admissible only with the approval of the family court. As a rule, the court must give its approval where

1. the conditions referred to in section 46 (1) nos. 1 to 3 are met, and
2. there is no apparent impediment to recognition of the intended placement.

Section 46 (2) and (3) apply accordingly.

(2) Local jurisdiction lies with the family court in whose district the higher regional court in whose area of jurisdiction the child is to be placed has its seat. Section 12 (2) and (3) applies accordingly.

(3) The order, for which reasons must be stated, is incontestable.

Division 9

Certificates concerning national decisions pursuant to Chapter IV of Regulation (EU) 2019/111

Section 48

Issuance of certificates

(1) Certificates pursuant to Article 36 (1) of Regulation (EU) 2019/1111 are issued by the court that made the decision. Certificates pursuant to Article 49 (1) of Regulation (EU) 2019/1111 are issued by the court that suspended or limited the enforceability of the decision.

(2) Certificates pursuant to Article 36 (1), Article 47 (1) and 49 (1) of Regulation (EU) 2019/1111 are issued by the family court judge at the court of first instance, or, at higher courts, by the presiding judge of the division for family matters. Certificates are issued without hearing the respondent.

(3) An official copy of certificates pursuant to Article 36 (1) and Article 47 (1) of Regulation (EU) 2019/1111 are served on the respondent. Service is effected by the court of its own motion. This does not apply in cases where the applicant has applied that it be transmitted to them for service on the respondent in keeping with the principle of party initiative in proceedings.

(4) A decision by the family court judge, rejecting an application for a certificate to be issued pursuant to Article 36 (1) or Article 47 (1) of Regulation (EU) 2019/1111, is contestable by a complaint subject to a time limit, upon applying sections 567 to 572 of the Civil Procedure Code accordingly. A complaint on a point of law is not admissible.

Section 49

Rectification of certificates

As regards the rectification of a certificate pursuant to Article 36 of Regulation (EU) 2019/1111 (Article 37 of Regulation (EU) 2019/1111) and the rectification of a certificate pursuant to Article 47 of Regulation (EU) 2019/1111 (Article 48 (1) and (3) of Regulation (EU) 2019/1111), section 319 of the Civil Procedure Code applies accordingly.

Section 50

Withdrawal of certificates

(1) The decision on whether to withdraw a certificate pursuant to Article 47 of Regulation (EU) 2019/1111 (Article 48 of Regulation (EU) 2019/1111) is made by the court that issued the certificate.

(2) Section 319 (2) and (3) of the Civil Procedure Code applies accordingly.

Division 10

Proceedings pursuant to the European Convention on Adoption

Section 51

Proceedings before the National Authority

As far as applications from another State pursuant to Article 15 of the European Convention on Adoption are concerned, sections 4 (1), 6 (1) and 9 apply accordingly.

Division 11

Costs

Section 52 (repealed)

Section 53 (repealed)

Section 54
Translations

The amount of remuneration for the translations arranged by the Central Authority is governed by the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*).

Division 12
Transitional provisions

Section 55
Transitional provisions for Regulation (EU) 2019/1111

If Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000 (OJ L 338 of 23 December 2003, p. 1; L 99 of 15 April 2016, p. 34), as last amended by Regulation (EC) No. 2116/2004 (OJ L 367 of 14 December 2004, p. 1) continues to apply to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements that have become enforceable before 1 August 2022 pursuant to Article 100 (2) of Regulation (EU) 2019/1111, then this Act is to be applied in the version current on 31 July 2022.