L.N. 45 of 2019

EUROPEAN UNION ACT
(CAP. 460)

International Maintenance Obligations (Legal Aid) Order, 2019

IN EXERCISE of the powers conferred by article 4(2) of the European Union Act, the Prime Minister, has made the following order:-

Title.

1. The title of this order is the International Maintenance Obligations (Legal Aid) Order, 2019.

Scope.

2. (1) This order implements the relevant provisions of:

(a) Council Regulation (EC) No4/2009 of 18 December, 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, insofar as these relate to legal aid; and

(b) the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, insofar as these relate to legal assistance.

Amends article 928A of the Code of Organization and Civil Procedure. Cap. 12.

3. In article 928A of the Code of Organization and Civil Procedure the definition "cross-border dispute" shall be substituted by the following:

" "cross-border dispute" means a dispute where the party applying for legal aid in the context of the Directive is domiciled or is habitually resident, as determined by Article 59 of Council Regulation (EC) No. 44 of 2001, in a Member State other than Malta or where the decision is to be enforced, with the exception of disputes relating to maintenance obligations;".

Adds a new Title X B to the Code of Organization and Civil Procedure. Cap. 12.

4. Immediately after Title X A of the Code of Organization and Civil Procedure there shall be added the following new Title:

"Title X B

OF LEGAL AID IN CROSS-BORDER DISPUTES RELATING TO MAINTENANCE OBLIGATIONS

Interpretation.

928I. (1) For the purposes of this Title:

"Central Authority" means the Director as designated pursuant to International Maintenance Obligations Order or such other authority as the Minister may by notice designate from time to time;

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"Contracting State" means a Member State of the European Union or a Contracting State to the Convention, as the case may be;

"the Convention" means the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on the 23rd November 2007;

"creditor" means any individual to whom maintenance is owed or is alleged to be owed;

"decision" means a decision in matters relating to maintenance obligations given by a court of a Contracting State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses;

"the Regulation" means 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;

"requested Contracting State" means the Contracting State whose Central Authority receives an application pursuant to Chapter VII of the Regulation or pursuant to Chapter III of the Convention;

"requesting Contracting State" means the Contracting State whose Central Authority transmits an application pursuant to Chapter VII of the Regulation or pursuant to Chapter III of the Convention'.

(2) For the purposes of this Title, the term 'court' includes the administrative authorities of the Contracting States with competence in matters relating to maintenance obligations pursuant to the Regulation or the Convention, as the case may be

Application for Legal aid.

928J. (1) An application for legal aid made by a party to a dispute covered by the Regulation or the Convention who is resident in Malta, being the requesting Contracting State, shall be submitted to the Central Authority which shall transmit such application to the Central Authority of the requested Contracting State.

(2) Where an applicant for legal aid who is a party to a dispute covered by the Regulation or the Convention is resident in another Contracting State, being the requesting Contracting State, the Central Authority shall receive and transmit such application to the Advocate for Legal Aid.

Waiver of fees.

928K. The Advocate for Legal Aid and the Registrar, as applicable, shall waive all fees pertaining to the provision of the assistance referred to in Article 45 of the Regulation, including in relation to the filing of any act, in respect of any application made by a creditor under Article 56 of the Regulation or under Chapter III of the Convention, concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21:

Provided that, in relation to applications other than those for the recognition or recognition and declaration of enforceability of decisions, or for the enforcement of decisions given or recognised in Malta as the requested Contracting State, the Advocate for Legal Aid and, or the Registrar may refuse to apply this Article if they consider that, on the merits, the application or any appeal or review is manifestly unfounded:

Provided further that where an applicant as referred to in this article, having received free legal aid, is unsuccessful in the case, the Advocate for Legal Aid and the Registrar shall be entitled to recover the expenses so waived, insofar as the applicant's financial situation so permits.".

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